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December 10, 2001

Jay Holmquist, General Manager
Nebraska Rural Electric Association
800 South 13th Street
P.O. Box 82048
Lincoln, NE 68501

Re: Charging Interest or Penalty for Delinquent Irrigation Accounts

Dear Jay:

I have been advised of the following regard the provision of electric service to irrigators:

(a) irrigation customers are billed for electric service provided during the irrigation season (usually 3 to 4 months) at the end of the irrigation season;

(b) customary late charges or threats to disconnect service for nonpayment are not enough to encourage some irrigation customers to promptly pay their bills;

(c) delinquent irrigators that desire to continue to irrigate for the next season, usually pay their delinquent bills including any penalty at the beginning of the next irrigation season; and

(d) in the intervening period between billing and payment, the public power district carries the unpaid account until the beginning of the next irrigation season.

You have asked whether a penalty different from other classes of customers or interest can be charged to delinquent irrigation customers in order to encourage prompt payment?

I. PENALTY

Neb. Rev. Stat. 70-408 (1996) provides that “[a]ll charges made for electrical energy for residential, commercial, and farm purposes” by an electric utility “engaged in the sale of electrical energy in cities of the first class having a population of more than five thousand and less than twenty-five thousand inhabitants, cities of the second class, villages, and unincorporated areas . . . “may provide for either a penalty on or a discount from the amount of any bill to promote prompt payment thereof under uniform rules and regulations governing such penalty or discount . . .” In *Blankenship v. Omaha Public Power District*, a Douglas County

District Court decision, the court held that OPPD could impose "late charges" for delinquent payments of electric bills under uniform rules and regulations governing penalties (Doc. 675 No. 126, dated January 3, 1977).

I believe that a penalty different from other classes of customers can be charged to delinquent irrigation customers because irrigation service is a separate class of service, irrigation customers are not billed on the same basis as other classes of customers, and irrigation bills are generally larger than residential bills.

II. INTEREST

Interest is generally governed by *Neb. Rev. Stat.* §§ 45-101.02 to 45-113 (1998 and Cum Supp. 2000). *Neb. Rev. Stat.* § 45-101.02(1) defines interest as "compensation agreed upon or allowed by law upon any loan or forbearance of money, goods, or things in action." Although these statutes in certain instances (not applicable here) provide for the imposition of statutory interest charges, they generally do not permit the imposition of interest, unless there is an agreement between the parties providing for such interest charges. If there is an agreement between the power district and the customer, then interest may be charged on an open account for services sold on credit at the rate of 1 1/3 % per month for any charge which remains unpaid for more than 30 days following rendition of the statement of account. *Neb. Rev. Stat.* § 45-101.04(7).

Nevertheless, interest may be charged without an agreement for claims under \$2,000.00 at the rate of 6% per annum for "charges covering articles and service affecting the life and well-being of the debtor which are adjudged by the court to be necessities of life" if the charges are not paid within 90 days after the charges are presented to the debtor. *Neb. Rev. Stat.* § 25-1801(8) (1995). It appears to me that electric service affects the life and well-being of the customer and therefore falls within the exception of this statute.

III. CONCLUSION

Irrigators are billed for electrical energy for farm purposes and reside in unincorporated areas and therefore a public power district, pursuant to *Neb. Rev. Stat.* § 70-408 (1996), may charge a penalty for delinquent accounts to promote prompt payment of electric utility charges under uniform rules and regulations governing such penalty. The penalties for irrigators may be higher as a class than for other classes of customers, since irrigators are a separate class of customers who are billed on a different basis.

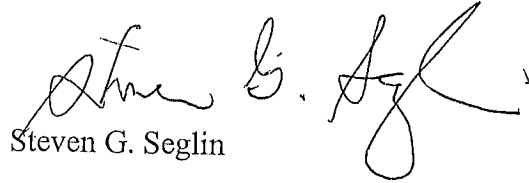
Public power districts may not, however, unilaterally impose an interest charge on delinquent payments unless the amount that remains unpaid in excess of 90 days is less than \$2,000.00 after charges are presented to the debtor. In that situation interest may be charged at the rate of 6% per annum. An interest charge at the rate not to exceed 1 1/3 % per month may be imposed on delinquent payments in excess of 30 days, if the irrigator agrees in writing pursuant to *Neb. Rev. Stat.* § 45-101.04(7). However, penalties should not be based on an interest rate factor, otherwise they could be confused with interest which is not unilaterally permitted except by agreement or if the account remains unpaid in excess of 90 days and is under \$2000.00.

Very truly yours,

CROSBY GUENZEL LLP

By

Steven G. Seglin

A handwritten signature in black ink, appearing to read "Steven G. Seglin". The signature is written in a cursive style with a large, stylized "S" and "G".

SGS:rrk