

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY	DOCKET NOS. PSA-04-1 PSA-04-2
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ORDER ASSESSING CIVIL PENALTIES

(Issued February 24, 2005)

PROCEDURAL HISTORY

The Utilities Board (Board) issued an order opening Docket No. PSA-04-1, In re: Interstate Power and Light Company, on August 12, 2004, directing Interstate Power and Light Company (IPL) to show cause why it should not be assessed civil penalties under the provisions of Iowa Code § 476.51 for violations of federal and Board gas safety regulations in IPL's Mason City zone. On September 10, 2004, the Board issued an order opening Docket No. PSA-04-2, In re: Interstate Power and Light Company, directing IPL to show cause why it should not be subject to civil penalties for violations of federal and Board gas safety regulations in IPL's Creston zone. In the September 10, 2004, order, the Board consolidated Docket Nos. PSA-04-1 and PSA-04-2 for hearing and established a procedural schedule for the filing of prepared testimony.

On October 28, 2004, IPL filed a motion to compromise these two civil penalty proceedings as provided in Iowa Code § 476.51. In the motion, IPL indicated that it

acknowledged in the prefiled testimony of James House, IPL's Gas Operations Support Manager-West Engineering Department, that there is sufficient evidence that 9 of the 11 probable violations cited in the Board's August 12, 2004, order, and 20 of the 20 probable violations cited in the September 10, 2004, order did occur. IPL proposed that a civil penalty not to exceed \$29,000 for the acknowledged violations in both dockets would be appropriate.

IPL stated that it did not agree there was sufficient evidence that there was a probable violation of 49 CFR §192.469 for failing to take a sufficient number of readings to determine the adequacy of cathodic protection on 15 systems in the Belmont district. This is violation paragraph 4 described in the Board's August 12, 2004, order. IPL points out that Board staff cited a book by A.W. Peabody, Peabody's Control of Pipeline Corrosion, to support the cited violation. IPL states that the Peabody book is not incorporated by reference into the federal regulations and therefore should not be used as the basis for the violation.

IPL also contended that there was not sufficient evidence to support the pattern of violations described in violation paragraph 11 in the Board's August 12, 2004, order. IPL contended that the pattern of violations is not a probable violation cited in the June 10, 2004, inspection report but is found in the July 13, 2004, addendum. IPL then insisted that there is no continuing pattern of violations of the nature found by the Board in Docket No. PSA-01-1, an earlier pipeline safety docket involving IPL.

In the offer to compromise, IPL proposed to file certain information on a semi-annual basis through the end of 2006 to provide the Board assurance that the Gas Inspection and Management Maintenance System (GIMMS), the new maintenance tracking spreadsheets, the staffing changes, and the organizational changes implemented by IPL are effectively addressing the 29 specific violations described in these consolidated dockets. The information to be provided in the semi-annual reports is as follows:

1. A description of the regulatory safety inspections that were done in the preceding six-month time period for each zone/district with information showing the inspections' timeliness or lack thereof. The filing will include attestation that the identified inspections were the only ones known by IPL to be required within the time period. If a violation occurred, IPL will explain how the violation occurred and what steps were taken to avoid re-occurrence.
2. A description of the compliance inspections that will be accomplished during the next reporting period and the approximate dates those inspections are scheduled to be completed. The description will include whether or not the inspection was required and the required date for completion.
3. A description of any facilities and equipment reported by IPL staff or others to not be in compliance with regulatory requirements and the repairs

and upgrades that were made or that are planned to meet current or forthcoming standards.

4. A description of any internal audits or other performance checks by higher level management during the prior reporting period, including a summary of the results of those audits and any responsive actions taken.

5. A description of any problems either zone managers or other IPL staff report in meeting regulatory standards during the reporting period and any higher level management's responses.

6. An attestation statement by appropriate management that the information is true and correct.

On December 15, 2004, the Board issued an "Order Overruling Objection, Taking Official Notice, and Addressing Motion to Compromise." In the order, the Board stated that the show cause orders described 31 violations, many that were for multiple compliance failures of the same federal and Board safety standard. One of the violations described was a pattern of violations where IPL management failed to properly supervise employees to ensure compliance standards were met. The Board indicated that the acknowledgement of the 29 specific violations by IPL and agreement to a civil penalty of \$29,000 for those violations appeared reasonable. The Board indicated that although it found the total civil penalty proposed to be reasonable for resolution of the 29 acknowledged violations, it did not agree that each of the 29 violations was of equal severity and should receive the same civil

penalty since some were minor or mitigated and a penalty for these minor violations might send the wrong signal to companies.

In the December 15, 2004, order, the Board did not accept the compromise because IPL did not acknowledge the pattern of violations. The Board pointed out that the pattern of violations cited in the show cause orders addresses the failure of IPL's management team and processes to keep IPL in compliance with all federal and Board safety standards, not just those that were addressed in Docket No. PSA-01-1. The Board stated that the corrective actions approved by the Board in that docket were to keep IPL in compliance with all pipeline safety standards and based upon the number and nature of the violations cited in the consolidated dockets, the corrective measures do not seem to have achieved the desired result.

The Board stated that performing required inspections at the required intervals is an integral part of maintaining a natural gas system in compliance with applicable safety standards. The Board stated that the violations cited in the consolidated dockets were just as serious as those cited in Docket No. PSA-01-1 and IPL's apparent failure to recognize this showed a failure of management oversight. Admissions by Mr. Greiner and Mr. House in their prefiled testimony showed that IPL management did not focus on this important aspect of safety compliance and this supports the cited pattern of violations.

The Board also indicated that it should be kept informed concerning the determination by IPL of the appropriate number of points for testing cathodic

protection on its distribution system and that it would like to see any reports filed more frequently than semi-annually.

On December 29, 2004, IPL filed the rebuttal testimony of Gebhart, Greiner, and House. The rebuttal testimony addressed the Board's December 15, 2004, order. A hearing was held as scheduled on February 2, 2005, at which IPL acknowledged the pattern of violations. IPL filed a brief on February 16, 2005.

IPL has acknowledged 30 of the 31 violations described by the Board in the August 12, 2004, and September 10, 2004, show cause orders. The one violation not acknowledged is being addressed by IPL to determine a reasonable number of test points for cathodic protection. Since IPL has acknowledged the other 30 violations cited in the show cause orders, the Board must consider the appropriate civil penalty for the violations.

IPL Brief

IPL in its brief summarizes the procedural history of these consolidated dockets and then states that it has acknowledged the pattern of violations and cites Mr. Gebhart's testimony in response to a question by Chairman Munns. Mr. Gebhart testified:

- A. That's correct, based upon our understanding—originally we thought that pattern violation meant that every violation was exactly the same as the one in PSA-01-1, and we obviously misunderstood. We now understand it to be that the pattern violation that the Board is concerned with was lack of management oversight, and we

do admit to that, yes, and that's why we've made all of these changes.

(Tr. 62-63.)

IPL then argues that there is no willful violation to assess a penalty under Iowa Code § 476.51(2) and the penalty should be assessed under Iowa Code § 476.51(1). IPL argues that the Board is limited to assessing a one time violation of \$2,500 for the pattern of violations since the Board did not give IPL an appropriate time for compliance in the August 12, 2004, or September 10, 2004, orders, as required by § 476.51(4). IPL points out that pursuant to § 476.51(3), the Board "may consider the appropriateness of the penalty in relation to the size of the public utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of a violation, and any other relevant factors."

IPL then provides a summary of the actions taken by IPL management to correct the problems that caused the violations. These actions include changes in the organizational structure, changes in the scope of management responsibility, relocating managers closer to work areas, and installation of GIMMS, as well as additional paper procedures for tracking compliance. IPL concludes by stating that it wants the Board to understand:

1. IPL's management and field personnel are very committed to ensuring that IPL's gas system is safe, reliable, and in compliance with all safety code provisions;

2. IPL understands that the Board, and more importantly its customers, expects no less from IPL;
3. IPL does not believe the Board or its staff is its enemy but IPL's ally in making sure that this goal is accomplished;
4. IPL has instituted a number of management and organizational changes, at the highest level of the organization, to assure that it obtains and maintains this goal;
5. IPL's compliance has improved dramatically since the issuance of the first order in December 2001, but recognizes that it still has a ways to go;
6. IPL's policy today is to be proactive in finding and correcting deficiencies rather than waiting for the Board staff to find violations; and,
7. IPL also wants the Board to understand that the Company understands the importance and priority that should be placed on these compliance issues.

Specific Violations

IPL has now acknowledged all but one of the 30 specific violations cited by Board staff in the inspection reports for the Mason City and Creston zones. The one violation not acknowledged is the number of soil-to-pipe cathodic test points that IPL should have on its distribution system. This issue is being addressed by IPL through use of a consultant and field surveys.

IPL offered \$29,000 as a civil penalty to resolve the 29 specific violations and the Board indicated in the December 15, 2004, "Order Overruling Objection, Taking Official Notice, and Addressing Motion to Compromise," the amount was a reasonable resolution of the 29 specific violations. The Board still considers the \$29,000 amount to be reasonable for the 29 specific violations.

The Board pointed out that although the total amount of the civil penalty is reasonable, the Board did not agree that each of the 29 violations should be assessed an equal civil penalty. Since some of the violations were minor and some of the violations resulted from one employee's apparently deliberate acts, a situation that IPL discovered and addressed and then reported to Board staff, it might not be appropriate to assess civil penalties for those violations. The Board does not want to discourage a utility from correcting violations and reporting them to the Board.

The Board is not finding a violation of safety standards in these consolidated dockets based upon the number of test point readings used by IPL to determine the adequacy of cathodic protection in the Belmont district. IPL has hired a consultant to evaluate the number of test points and is doing field tests. IPL will be directed to keep Board staff informed of the results of studies and the consultant's recommendation and to consult with Board staff concerning the decision on the number of test points that IPL decides are necessary.

Pattern of Violations

At the hearing, IPL acknowledged the pattern of violations and described the organizational changes and procedures implemented to ensure compliance with all federal and Board safety standards and to correct the pattern of violations. Since IPL has acknowledged the pattern of violations, the Board is required only to determine the amount of civil penalty to be assessed for the pattern of violations. IPL argues that the Board should only assess the \$2,500 penalty allowed for a single violation as provided in Iowa Code § 476.51(1) and that the Board did not give a compliance date and so cannot assess a penalty for a continuing violation.

Iowa Code § 476.51(1) provides that the Board may assess a civil penalty of not less than one hundred dollars and not more than two thousand five hundred dollars per violation. Subsection (3) then provides that each violation is a separate offense and in the case of a continuing violation, each day a violation continues, after the time specified for compliance in the written notice by the board, is a separate and distinct offense. Subsection (4) states that the written notice given by the Board to a public utility under § 476.51 shall specify an appropriate time for compliance.

The Board gave written notice of the potential for civil penalty for future violations of federal and Board gas pipeline safety regulations in the "Order Addressing Safety Violations" issued January 21, 2003, in Docket No. PSA-01-1. In that order, the Board stated,

In the order issued December 13, 2001, the Board gave IPL written notice as required by Iowa Code § 476.51 that

it could be subject to civil penalties for the violations of Board gas pipeline safety rules. Notice was given because of IPL's failure to comply with past agreements to correct violations. If IPL fails to maintain compliance with gas pipeline safety rules, the Board without further notice may seek statutory civil penalties.

The Board considers the pattern of violations to be a continuing violation because the Board gave notice, as described above, that future violations would be subject to civil penalties when it approved the actions taken by IPL to correct the violations in Docket No. PSA-01-1. Iowa Code § 476.51(4) requires that the Board "specify an appropriate time for compliance," not that a date certain for compliance be specified. The statutory requirement is satisfied when an appropriate period of time is allowed for compliance, even if no date certain is specified.

When the inspection reports showed that the procedures and management oversight established by IPL to maintain compliance with all federal and Board safety regulations were not effective, it was already past the period allowed by the Board for compliance. The Board had given a reasonable time for compliance in Docket No. PSA-01-1 and implementation of the actions agreed to by IPL should have been in place on January 21, 2003, or shortly thereafter. In addition, IPL has indicated that it will not be able to ensure compliance with all federal and Board safety regulations until after GIMMS has been installed in all of the districts. GIMMS is to be installed in all 12 IPL zones by the end of 2005.

Even though the Board considers the pattern of violations to be a continuing violation, the Board does not consider it reasonable to assess IPL for a continuing

violation based upon the number of days from January 21, 2003, until the date of this order. The primary purpose of a civil penalty is to ensure that a similar violation does not occur again. This purpose can be accomplished with less than the maximum penalty available. However, the Board finds that a minor penalty of \$2,500 for the pattern of violations is also not reasonable. The management failure and lack of procedures to ensure compliance with all federal and Board gas pipeline safety regulations is a serious matter and the civil penalty should reflect the severity of the violation.

Iowa Code § 476.51 provides criteria for determining the amount of a civil penalty. These criteria are the size of the utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of the violation. IPL is a large utility with more than 200,000 natural gas customers and, according to IPL's annual report filed with the U.S. Department of Transportation, 256 miles of transmission pipelines, 4587 miles of distribution mains, and 207,445 service lines in Iowa. The Board considers the failure of IPL management to ensure compliance with all federal and Board safety regulations after the closing of Docket No. PSA-01-1 to be a very grave matter, yet there did not seem to be a recognition by IPL of the severity of the problem until IPL acknowledged the problems with management oversight and procedures at the hearing.

The Board recognizes that IPL has taken action including reorganization and implementation of new procedures to ensure compliance in the future, and the

acknowledgement of the pattern of violations at the hearing shows that IPL management has now recognized that they need to place a greater emphasis on meeting all compliance requirements. Based upon evaluation of these criteria, the Board finds that a civil penalty of \$25,000 is reasonable for the pattern of violations. Acknowledgement of the failure of management oversight ameliorates what otherwise could have been a much larger penalty.

Management Efficiency Adjustment

In addition to the civil penalty for the pattern of violations, the Board finds that the issue of management efficiency needs to be raised in the next IPL gas rate case. Iowa Code § 476.52 provides that it is state policy that a public utility shall operate in an efficient manner and, if the Board determines in a rate case proceeding that a utility is operating in an inefficient manner or is not exercising ordinary, prudent management or, in comparison with other utilities in the state, the Board determines that the utility is performing in a less beneficial manner than other utilities, the Board may reduce the level of profit or adjust the revenue requirement for the utility to the extent the Board believes appropriate to provide incentives to the utility to correct its inefficient operation.

The Board adopted rules in 199 IAC 29 that establish a method for analyzing a utility's management. Rule 29.1 establishes Board policy that a utility shall be operated in an efficient manner. Rule 29.3 establishes the methodology for analyzing a utility's management on a case-by-case basis and states that in

evaluating a utility's management, the Board may consider any of the factors listed in subrule 29.3(1) and any additional relevant information.

The number of specific violations and the pattern of violations acknowledged in these consolidated dockets raises an issue about the efficient management of IPL's gas pipeline safety compliance. The Board will require IPL to file testimony in its next gas rate case demonstrating that it has corrected or is correcting the management deficiencies acknowledged in these dockets. The Board can then, based upon the evidence in the record, decide whether there should be an adjustment to IPL's return on equity based upon the inefficient management of its gas safety compliance program.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Interstate Power and Light Company, pursuant to Iowa Code § 476.51, is assessed a civil penalty of \$29,000 for the acknowledged 29 specific violations.
2. Interstate Power and Light Company, pursuant to Iowa Code § 476.51, is assessed a civil penalty \$25,000 for the pattern of violations it has acknowledged of failing to provide management and procedures to ensure compliance with all federal and Board gas pipeline safety regulations.
3. Interstate Power and Light Company shall file quarterly reports concerning compliance with federal and Board gas pipeline safety regulations as described in this order.

4. Interstate Power and Light Company shall provide to Board staff copies of its cathodic protection test station studies and consultant report when completed and is directed to discuss the results of these studies with Board staff.

5. Pursuant to Iowa Code § 476.51, Interstate Power and Light Company is put on notice that future violations of federal and Board safety regulations may result in additional civil penalties.

6. Interstate Power and Light Company shall file testimony in its next gas rate case concerning the management of its gas pipeline safety program, as described in the body of this order.

UTILITIES BOARD

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 24th day of February, 2005.