

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>MIDWEST RENEWABLE ENERGY PROJECTS LLC,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="text-align:center">v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. AEP-05-1</p>
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**ORDER GRANTING MOTIONS TO REOPEN RECORD, ESTABLISHING  
PROCEDURAL SCHEDULE, AND DENYING OBJECTION**

(Issued June 13, 2005)

On May 20, 2005, Interstate Power and Light Company (IPL) filed a motion to modify the briefing schedule and reopen the record in Docket No. AEP-05-1.

Pursuant to the parties' agreement, the Utilities Board (Board) issued an order on May 23, 2005, suspending the briefing schedule while the parties comment on, and the Board rules on, the motion to reopen the record. Midwest Renewable Energy Projects LLC (Midwest Renewable) filed a response to IPL's motion to reopen the record on May 24, 2005, and an amendment to its response on May 25, 2005.

In support of its motion, IPL said that one of the two issues in this case is to establish an avoided cost rate. IPL noted that an expedited procedural schedule set

in the docket was driven by the need to set the avoided cost rate in time to allow for a purchased power agreement with an in-service date on or before December 31, 2005, because of the expiration of a federal production tax credit applicable to a wind power project such as the one proposed by Midwest Renewable. At hearing, however, Midwest Renewable's witness indicated the docket no longer needs to be expedited because it was not able to procure wind turbines. (Tr. 103, 120-22).

IPL said that at hearing it argued that the results of its January 20, 2005, requests for proposal (RFP) would provide direct and probative evidence on the avoided cost issue. IPL stated that while evidence of the RFP process and its outcome was included in the record, a purchase power agreement resulting from the RFP process had not been completed. IPL represented its negotiations with the winning bidder were near completion and should be concluded by May 27, 2005. IPL asked that the record be reopened so that testimony and exhibits related to the executed purchase power agreement can be filed.

Midwest Renewable did not object to IPL's motion to reopen the record provided that four conditions were met. First, IPL must file and serve all additional evidence no later than June 1, 2005. Midwest Renewable stated that while turbines were unavailable for 2005, it intends to proceed with the project for 2006. Thus, while expedited treatment is no longer required, a timely resolution of the issues is still necessary given the lead-time required for such projects.

Second, Midwest Renewable argued that the additional evidence filed by IPL should include the entire purchase power agreement and any other agreements, contracts, term sheets, or other documents supplemental, ancillary, or related to the purchase power agreement. Midwest Renewable argued IPL should not be permitted to pick and choose which provisions of the agreement it will disclose and which it will not. In other words, Midwest Renewable maintained the “complete deal” must be included in the record.

Midwest Renewable's third condition was that it must have an opportunity to file additional evidence in a reopened record. Midwest Renewable said it expected to file, within the next day or so, its own motion describing the evidence it wished to file.

Fourth, Midwest Renewable and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) should be given a full and fair opportunity to file rebuttal or responsive testimony and exhibits to the additional evidence filed by IPL. Midwest Renewable said there was no disagreement among the parties regarding this condition.

Midwest Renewable subsequently filed its own motion to submit additional evidence on June 3, 2005. Midwest Renewable asked to submit additional information in four areas: 1) mean and median prices as discussed in a late-filed exhibit; 2) levelized costs; 3) an exhibit comparing additional evidence submitted on an average, levelized, and year-specific basis; and 4) cost evidence, including the Midwest Independent Transmission System Operator wholesale Day 2 market rate.

IPL responded to Midwest Renewable's motion on June 7, 2005. IPL did not object to Midwest Renewable's motion, provided that all parties are given an opportunity to file rebuttal testimony and exhibits with respect to the additional evidence. IPL did object to the admission of the mean and average prices of the bids in IPL's competitive bidding process referred to in subparagraph (3)"a" of Midwest Renewable's motion, claiming that such evidence was not relevant.

With respect to the four conditions outlined in Midwest Renewable's response to IPL's motion to reopen the record, IPL did not object to any of the conditions, but noted that the first condition, that all additional evidence be filed by June 1, 2005, appeared to be supplanted by Midwest Renewable's motion to submit additional evidence, which asked that a procedural schedule for the new filings be established. IPL asked that the deadline for filing additional evidence be no earlier than June 14, 2005.

Consumer Advocate filed a response to both IPL's and Midwest Renewable's motions to reopen the record on June 8, 2005. Consumer Advocate did not object to either motion, provided that Consumer Advocate has an opportunity to file rebuttal or responsive testimony and exhibits concerning the additional evidence.

It appears all parties agree that the record should be reopened to allow additional evidence. The June 1, 2005, date originally suggested by Midwest Renewable is supplanted by its June 3, 2005, filing, which asks that a procedural schedule for the filings be set for the filing of the additional testimony. In any event,

given the filing dates of the two motions to reopen the record and responses, a June 1 date was unreasonable. IPL appears to agree with the other three conditions set forth by Midwest Renewable, although its response is somewhat vague with respect to the second condition, that the “complete deal” regarding the purchase power agreement be disclosed. IPL states that its current intent is to make the “complete deal” available, but IPL also states that the purchase power agreement is still not finalized.

The Board will grant both motions to reopen the record and set a procedural schedule for the filing of the additional evidence. IPL’s motion is granted with the explicit condition that the “complete deal” be made available to Midwest Renewable witness Dryden, although this may be done under confidential cover and subject to protective agreement, if the information qualifies for confidential treatment pursuant to Iowa Code § 22.7.

The Board notes that as of the date of IPL’s response to Midwest Renewable’s motion to reopen the record, that is, June 7, 2005, the power purchase agreement was not complete. This is well past the May 27, 2005, date IPL projected for completion when it filed its motion to reopen the record. While this case no longer requires expedited treatment, it does require completion in a timely matter so that the parties can plan for 2006. If the purchase power agreement is not available by the filing date established in this order, June 20, 2005, the Board does not intend to grant any extensions and the record on that subject will be closed. At this time, the Board

does not believe the agreement would be an appropriate rebuttal filing, based on the representations in Midwest Renewable's motion on the evidence it intends to file.

The Board will deny IPL's objection to a portion of the evidence Midwest Renewable plans to file. Until the evidence is filed for the Board to review, it is premature to determine that such evidence should be excluded from the record. After the evidence is filed, IPL, if it wishes, may renew its objection and the Board will rule on the objection pursuant to the evidentiary standards contained in Iowa Code chapter 17A.

The Board does not know if a hearing will be required by either the Board or one of the parties for cross-examination of some or all of the new evidence that will be filed. The Board will set a date for the parties to notify the Board if one of them desires a hearing. The Board will also set a date for the reply brief filing, which had been suspended pending a ruling on the motions to reopen the record. This new reply brief date will be automatically suspended in the event one of the parties requests a hearing. A new date would then be set after the hearing.

**IT IS THEREFORE ORDERED:**

1. The motions to reopen the record filed by Interstate Power and Light Company on May 20, 2005, and Midwest Renewable Energy Projects LLC on June 3, 2005, are granted as discussed in this order.

2. IPL and Midwest Renewable shall file prepared direct testimony, with underlying workpapers and exhibits, consistent with this order on or before June 20, 2005.

3. Consumer Advocate, IPL, and Midwest Renewable shall file any rebuttal testimony, with underlying workpapers and exhibits, on or before June 27, 2005.

4. If any party desires a hearing for cross-examination of the new evidence, it shall notify the Board and the other parties on or before July 1, 2005.

5. Parties may file reply briefs on or before July 8, 2005.

6. The evidentiary objection filed by Interstate Power and Light Company on June 7, 2005, is denied as discussed in the body of this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 13<sup>th</sup> day of June, 2005.