

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY AND FPL ENERGY DUANE ARNOLD, LLC	DOCKET NO. SPU-05-15
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**ORDER ACCEPTING FILING AND COMMENCING INVESTIGATION,
AND NOTICE OF HEARING AND ORDER SETTING
PROCEDURAL SCHEDULE, INTERVENTION DEADLINE,
AND EXTENDING DECISION DEADLINE**

(Issued August 19, 2005)

On July 29, 2005, Interstate Power and Light Company (IPL) and FPL Energy Duane Arnold, LLC (FPLE Duane Arnold), filed with the Utilities Board (Board) a joint application for reorganization pursuant to Iowa Code §§ 476.76 and 476.77 (2005) to allow IPL to sell and transfer its ownership interest in the Duane Arnold Energy Center (DAEC), including nuclear fuel, to FPLE Duane Arnold. IPL owns 70 percent of DAEC; the remainder is owned by Central Iowa Power Cooperative (20 percent) and Corn Belt Power Cooperative (10 percent).

The joint application states that the proposed sale was the result of a competitive auction process and that IPL and FPLE Duane Arnold have entered into a long-term power purchase agreement (PPA) that will provide IPL the equivalent power and energy that DAEC currently represents. The joint application notes that the sale also includes transfer of IPL's decommissioning liability and the associated decommissioning trust funds. The Consumer Advocate Division of the Department of

Justice (Consumer Advocate) filed an answer, objection, and response on August 18, 2005. Consumer Advocate said it was investigating the extensive filing and had not reached definitive conclusions on many of the matters set forth in the joint application.

Pursuant to Iowa Code § 476.77(2), the proposed reorganization shall be deemed to have been approved by operation of law unless disapproved by the Board. The statute also provides that the Board shall not disapprove a proposal for reorganization without providing for a hearing. The statute provides that a notice of hearing must be issued no later than 50 days after the proposal for reorganization has been filed. Because this proposed reorganization involves the sale of Iowa's only nuclear plant, which represents a significant portion of IPL's rate base, the Board will conduct an investigation, including a hearing, into the proposed reorganization. In furtherance of the investigation being conducted by the Board to review the reorganization proposal, the Board will set a date for hearing and establish a procedural schedule and deadline for intervention.

Iowa Code § 476.77(2) states "[a] proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within ninety days after the filing." This section further provides "[t]he board, for good cause shown, may extend the deadline for acting on an application for an additional period not to exceed ninety days."

IPL and FPLE Duane Arnold requested the Board act on the proposed reorganization within 90 days of filing. The applicants said the purchase price for DAEC is reduced in the contract by \$128,000 a day for each day that the closing of

the transaction is delayed beyond January 31, 2006. If the Board issues its order prior to November 30, 2005, IPL has voluntarily committed to reduce this potential liability to \$64,000 a day by adjustments to a regulatory liability account so that ratepayers will receive more of the net proceeds of the sale. The 90-day statutory deadline is October 27, 2005.

Consumer Advocate filed a request to extend the statutory deadline on August 15, 2005. Consumer Advocate asked for the full 90-day extension, or until January 25, 2005.

In support of its request, Consumer Advocate said the joint application was several hundred pages in length and included testimony and exhibits for 11 witnesses. (Motion, p. 1.) Consumer Advocate noted that its analysis is focusing on the ratepayer impact of the proposed reorganization, particularly an analysis of alternatives to the proposed reorganization and the cost-benefit analyses concerning the proposed reorganization. (Motion, p. 6.) Consumer Advocate stated this analysis is taking time because the joint application did not analyze the impact on rates of IPL's continued ownership and relicensing of DAEC. Therefore, Consumer Advocate will have to conduct extensive discovery to do this analysis. (Motion, pp. 7-15.)

Consumer Advocate pointed out other issues it was assessing, including the reasonableness of the assumptions upon which the power purchase agreement is structured and whether the successful bid maximized ratepayer value. (Motion, p. 16.) Consumer Advocate said it is aware of the financial considerations if a Board

decision was delayed, but the benefits of a complete analysis of the reorganization outweighed any financial penalties. (Motion, pp. 20-21.)

IPL and FPLE Duane Arnold filed a joint resistance to the request for extension on August 19, 2005, arguing that no extension should be granted. IPL and FPLE note that Consumer Advocate's discovery in the case began on January 25, 2005, six months prior to the filing of the joint application, and that Consumer Advocate was aware since December 2004 that IPL had decided not to re-license DAEC. (Joint Resistance, p. 4.) IPL and FPLE Duane Arnold argued that the Board does not have any jurisdictional authority to review and approve IPL's December 2004 decision not to re-license DAEC. (Joint Resistance, p. 8.) Therefore, the applicants concluded that the analysis of continued ownership and re-licensing Consumer Advocate is preparing is irrelevant. (Joint Motion, p. 11.)

IPL and FPLE state that the bidding instructions did not provide for a reduction in the purchase price for DAEC in the event of a delay in the closing date, but that all the bids submitted to IPL required such a penalty. IPL and FPLE contended that delay increases the opportunity that an intervening factor could diminish DAEC's value or jeopardize the sale, and that if the transaction does not close, a significant number of jobs will be lost in the future because IPL will not re-license the plant. (Joint Application, pp. 14-15.)

The Board does not intend to rule on evidentiary issues at this time. However, Consumer Advocate's extensive investigative powers and Iowa's broad discovery rules appear to justify Consumer Advocate's analysis of the impact of re-licensing, even if that is an option IPL has ruled out. The Board's initial review of the joint

application, which involves the sale of Iowa's only nuclear plant and a significant portion of IPL's generation assets, shows that there are financial issues presented that require extensive analysis. The Board finds that good cause for an extension has been established. The question becomes one of how long the extension should be.

The Board understands that other regulatory approvals, both state and federal, need to be obtained before the transaction can close. The Board cannot control when those other agencies will act. However, because DAEC is located in Iowa and most of the costs associated with the plant have been allocated to IPL ratepayers, the Board believes that some agencies might reasonably choose not to act until the Board issues its decision. The Board also understands that at least one of the federal filings cannot be made until all state approvals are obtained. These factors argue in favor of a schedule that is no longer than necessary to allow for full consideration of the issues.

As of this date, issues that may be raised by any intervening parties, other than Consumer Advocate, are unknown. The Board must balance the various parties' interests. The statute, which provides for a maximum of 180 days for review, clearly contemplates expedited review of reorganizations. While the Board will grant a 90-day extension, the procedural schedule that will be set will allow the Board to complete its work by November 30, 2005, if circumstances warrant. In the event the Board can complete its work by that date, any financial penalty caused by any subsequent delay in closing will be minimized. However, the Board will not hesitate

to use more time if it is clear that a thorough review of the proposed reorganization cannot be completed by that date.

The Board will also set an intervention deadline and date for filing testimony. The Board encourages any intervenors to file prefiled testimony pursuant to the schedule established. Prefiled testimony is useful to the Board, and other parties, in narrowing and focusing the issues and preparing for cross-examination at hearing. However, the failure to file testimony does not preclude intervenors from presenting testimony and exhibits at hearing. 199 IAC 32.9(1). The Board realizes that prefiled direct testimony and exhibits may be supplemented or expanded at hearing to accommodate information that was not available or ready in testimony and exhibit form at the time of the prefiled testimony deadline.

IT IS THEREFORE ORDERED:

1. The proposal for reorganization filed by Interstate Power and Light Company and FPL Energy Duane Arnold, LLC, on July 29, 2005, is accepted as substantially complying with the filing requirements contained in 199 IAC 32.4. The Board will docket the proposal for reorganization as a separate contested case proceeding, identified as Docket No. SPU-05-15. The expenses reasonably attributable to these investigations shall be assessed to Interstate Power and Light Company in accordance with Iowa Code § 476.10 (2005).
2. The following procedural schedule is established:
 - a. Requests to intervene shall be filed on or before September 9, 2005.

b. Consumer Advocate and any intervenors may file prepared direct testimony, with underlying workpapers and exhibits, on or before September 28, 2005. If a party references a data request in its prepared testimony, the data request shall be filed as an exhibit.

c. Applicants may file reply testimony, with underlying workpapers and exhibits, on or before October 10, 2005.

d. The parties shall file a joint statement of the issues on or before October 13, 2005.

e. A hearing shall be held beginning at 9 a.m. on November 1, 2005, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Iowa Utilities Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

f. All parties may file simultaneous initial briefs on or before November 10, 2005.

3. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination that have not been previously filed shall

become a part of the evidentiary record of these proceedings. The party making reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

5. In the absence of objection, when the Board has called for further evidence on any issue and the evidence is filed after the close of the hearing, the evidentiary record will be reopened and the evidence will become part of the record five days after the evidence is filed with the Board. All evidence filed pursuant to this paragraph shall be filed no later than three days after the close of the hearing in this proceeding.

6. The 90-day time period for rendering a decision pursuant to Iowa Code § 476.77(2) is extended, for good cause, an additional 90 days, to January 25, 2006.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 19th day of August, 2005.