

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY AND FPL ENERGY DUANE ARNOLD, LLC	DOCKET NOS. SPU-05-15
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ORDER ON REHEARING AND DENYING REQUEST FOR STAY

(Issued January 18, 2006)

On November 30, 2005, the Utilities Board (Board) issued its "Order" (Final Order) in Interstate Light and Power Company's (IPL) reorganization proceeding, Docket No. SPU-05-15. The Board's order, among other things, allowed IPL's proposed sale and transfer of its ownership interest in the Duane Arnold Energy Center (DAEC) to FPL Energy Duane Arnold, LLC (FPLE Duane Arnold) to go forward by operation of law. Iowa Code §§ 476.76 and 476.77. On December 20, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and the Iowa Consumers Coalition (ICC) each filed timely applications for rehearing. Consumer Advocate also filed a separate request for stay. On December 28, 2005, IPL and FPLE Duane Arnold (collectively, Applicants) filed a joint resistance to the request for stay. The Applicants filed a joint resistance to the applications for rehearing on January 3, 2006. On January 11, 2006, Consumer Advocate filed a response to the joint resistance to stay.

Generally, the applications for rehearing filed by Consumer Advocate and the ICC raise no new issues or arguments that were not considered at hearing, and the

Board will affirm the decision in its Final Order to allow the sale of DAEC to FPLE Duane Arnold to go forward. Nevertheless, the Board will address the arguments and provide additional clarification and analysis. The ICC's request for rehearing will be addressed first, followed by Consumer Advocate's. Finally, the Board will discuss Consumer Advocate's request for stay.

A. ICC Rehearing Request

The ICC claims that the Board's decision to allow the reorganization to go forward is inconsistent with several of the Board's findings or discussions in the Final Order. In particular, the ICC claims that there are three factors discussed in the order that will detrimentally impact customers: loss of fuel diversity and environmental benefits, IPL's failure to pursue DAEC relicensing alternatives, and IPL's overstatement of the risks of continued ownership and relicensing of DAEC.

Fuel diversity has not been lost because of the purchase power agreement (PPA) between IPL and FPLE Duane Arnold that runs until 2014. IPL retains the right to DAEC's output at lower projected costs and higher projected output than under IPL's continued ownership. IPL will simply no longer own the facility that produces the output, but in supply terms its fuel diversity is unaffected through 2014. Environmental benefits are addressed in the asset sale agreement (ASA), which provides that one-half of any future value of "green" or "zero carbon" power attributes will be provided to IPL. (Tr. 54.) Further, environmental risks associated with nuclear plant ownership, most significant being storage and disposal of spent nuclear fuel, are transferred to FPLE Duane Arnold. (Final Order at 27, 34.) Thus, the transfer

will not have a detrimental effect on customers' interests in potential environmental benefits and detriments.

The second area of alleged detrimental effect involves DAEC relicensing. In the Final Order, the Board expressed its frustration that IPL had not pursued legislative options that might have made relicensing and continued IPL ownership more attractive. The Board understands, however, based on IPL's testimony at hearing, that in the company's view a legislative solution still might not have provided IPL adequate financial rewards when compared with the risks of continued ownership, and that it could be difficult to obtain acceptable ratemaking principles on an established plant, even if the availability of ratemaking principles were extended by statute to existing nuclear plants. (Final Order at 37.) The ICC's contention that a fixed ratemaking principle on DAEC for the relicensed life of the plant could be made available is speculative at best and, even if it were available, such a ratemaking principle for an existing generating plant would likely attract significant opposition. As Applicants pointed out in their rehearing resistance, IPL under this approach would simply have been seeking a new regulatory scheme to increase earnings associated with an existing asset while providing no risk mitigation or other benefits. (Tr. 24-25.)

The ICC's claim that IPL overstated the risks of continued DAEC ownership does not establish detriment to customers; instead, it goes to the credibility of IPL's testimony. The Board recognized the financial risks associated with nuclear ownership, particularly for a relatively small utility like IPL (on a national scale), which owns a single nuclear plant. (Final Order at 38.) The ICC's argument regarding overstatement of risk ignores the numerous benefits associated with the

reorganization, such as the \$56 million of available net proceeds, \$23.6 million of PPA savings, and the increased capacity factor. The list goes on with benefits to ratepayers and the public interest generally cited throughout the Final Order. The Board concluded that there are immediate ratepayer benefits from the reorganization as well as continued benefits, although more speculative, through 2034. (Final Order at 46.)

Applicants describe several instances of what they call mischaracterizations of the record by ICC. (Applicants' Resistance at 10-15.) The Board believes its Final Order addresses most of the points raised, but it does want to comment on the ICC's argument that IPL never made a comparison between market purchases, the cost of a new coal plant, and the costs of a relicensed DAEC. (ICC Rehearing Application at 5.) This comparison, while not provided in IPL's initial testimony, was provided in rebuttal testimony by IPL witness Hampsher. Also, contrary to ICC's assertion, quantifiable ratepayer benefits were established both in the pre- and post-2014 time frame. (Final Order at 54.) Non-quantifiable benefits, such as risk mitigation, were also established and are cited throughout the Final Order.

In addition to asking that the Board deny the reorganization, the ICC asks for clarification with respect to the actions the Board will take "to ensure that ratepayers are held harmless from the effects of the PPA debt equivalency attribution." (ICC Rehearing Application at 9.) The Board in its Final Order said at page 19:

The Board does not find that the transaction would impair IPL's capital structure. However, if evidence in future rate cases demonstrates the solution to the debt equivalency issue chosen by IPL was only a temporary fix, the Board could reverse the impact on the capital structure to insure

that ratepayers are not negatively impacted by the use of proceeds from the sale.

The Board cannot provide additional guidance on the particular corrective steps it might take because this Board cannot and will not bind future Board's and because it is impossible to predict all possible events that might occur and the appropriate Board response to each. Any additional commentary would be pure speculation and dicta and not binding in a future proceeding. Parties in addition to those participating in this docket could raise arguments about appropriate corrective measures to take that the existing parties have not proposed at this time.

Likewise, the ICC seeks an explicit finding that IPL's ratepayers will not be responsible for any post-closing decommissioning costs. Again, the Board was as clear as it could be in its order, stating that the reorganization is being allowed to go forward with the explicit understanding that IPL ratepayers will have no further decommissioning liability after closing. (Final Order at 45.) Based on the transaction documents and representations at hearing, the Board does not see any risk that these costs will be recovered from IPL ratepayers.

B. Consumer Advocate Rehearing Request

1. DAEC Relicensing

Consumer Advocate argues that the pervasive issue in this case is the prudence of IPL's decision to sell rather than retain ownership and pursue relicensing of DAEC. Consumer Advocate also believes that IPL's assertion that it would not relicense DAEC under any circumstances was the sole reason the Board did not disapprove the reorganization. (Consumer Advocate Application at 2-3.)

Consumer Advocate's reading of the Board's order is incorrect. While the Board expressed its frustration that the relicensing option had not been pursued more forcefully, the Board clearly found, based on the record evidence, that the reorganization was not detrimental to ratepayers in both the pre- and post-2014 periods and that the assumptions used by IPL in its analysis were reasonable. (Final Order at 31, 54.) The Board did not find Consumer Advocate's assumptions and projections to be reasonable. The evidence in the proceeding demonstrated that, based upon reasonable assumptions and projections, the proposed transaction will produce ratepayer benefits when compared to the option of IPL relicensing DAEC. The Board's order does not indicate, as Consumer Advocate argues at page 4 of its rehearing application, that relicensing DAEC was "superior" to the proposed sale. The Board would not have allowed the reorganization to go forward if it believed the transaction would be detrimental to ratepayers. In fact, the evidence showed not only that the reorganization would not be detrimental to ratepayers, it provided both quantifiable and non-quantifiable benefits.

Consumer Advocate argues "the mere fact the greatest benefit to ratepayers is provided by IPL relicensing DAEC means any other option selected by IPL is detrimental to ratepayers." (Consumer Advocate Application at 5.) The Board found, though, that the reorganization provided greater benefits than relicensing, both in the pre- and post-2014 periods. Also, the reorganization statute does not require that the alternative selected by the utility must be superior to any other alternative that some party argued might be possible. The statute merely requires that the alternative selected not be detrimental to ratepayers.

2. Failure to comply with Iowa Code § 17A.16(1)

Consumer Advocate claims the Board failed to comply with Iowa Code § 17A.16(1), which requires that an agency decision “include an explanation of why the relevant evidence in the record supports each material finding of fact.” In particular, Consumer Advocate argues finding of fact number 6, which found the projected benefits of the reorganization presented by IPL, pre- and post-2014, more reasonable than projections by other parties, fell short of the statutory standard.

Consumer Advocate believes its analysis is more reasonable because of its treatment of carbon taxes and emissions and because there is “no evidence in the record to support the position that there will not be regulation of carbon dioxide emissions during the time frame covered by IPL’s relicensing analysis.” While the Board addressed this issue in its Final Order, it will do so again. First, no such regulation by federal, state, or regional bodies exists today. Second, even if it is assumed such taxes may exist in the future, the level of such taxes is uncertain, as acknowledged by one of Consumer Advocate’s witnesses. (Tr. 1447-48.) Third, it is unreasonable to require Applicants to address every speculative environmental regulation that may or may not exist at some unknown level at some unknown time in the future. Fourth, under cross-examination, it appears that carbon taxes were immaterial to Consumer Advocate’s market price forecasts. (Tr. 1475-76.)

Numerous observations are made throughout the order regarding the various analyses submitted. (Final Order at 24-25, 28-29, 30-31, 42, 43, 46.) Every analysis can be the subject of disagreement. For example, Consumer Advocate’s analysis ignored the \$56 million in projected benefits, relied upon speculative coal technology,

and increased market prices by 30 percent in one year. Each of these tends to call the overall credibility of the analysis into question. Taken as a whole, the analysis presented by Consumer Advocate was not persuasive, because there were too many flaws and speculative assumptions.

3. Miscellaneous arguments

Consumer Advocate states that PPA net benefits to customers can only be shown when the impacts of relicensing are considered by assuming that DAEC could not be relicensed until 2012. (Consumer Advocate Application at 17.) In other words, if DAEC were relicensed earlier (2010), the net benefits of the reorganization would be lost. This is incorrect. All of Consumer Advocate witness Fuhrman's adjustments are to IPL witness Hampsher's calculated revenue requirements. Consumer Advocate uses its present value calculation of \$65 million, compares this to the net proceeds of \$56 million estimated by Mr. Hampsher, and concludes that IPL has to change the time of relicensing to show a net benefit. Consumer Advocate did not include the net present value of the PPA benefits of \$23 million as calculated by Mr. Hampsher, which results in total present value benefits of \$79 million, not \$56 million. Using Consumer Advocate's present value of \$65 million based on a 2010 relicensing, a net benefit from the transaction of \$14 million results. In addition, as noted in the order, the Board questioned whether 2010 was an appropriate assumption to use for the relicensing date; the evidence demonstrated that 2012 was a more reasonable assumption and the Board finds the projection of net benefits by IPL reasonable.

Consumer Advocate argues that IPL ratepayers are obligated to fully fund DAEC decommissioning through the PPA rates by the end of the PPA term. The Board addressed this argument in the Final Order, noting at pages 33-34 that there is no decommissioning windfall and that FPLE Duane Arnold is obligated to make up any decommissioning shortfall that may occur.

Consumer Advocate cites its Electric Generation Expansion Analysis System (EGEAS) analysis to contend that the Board's finding that IPL will be able to provide safe, reasonable, and adequate service after the reorganization is unsupported by the record. In the Final Order, the Board discussed the EGEAS analysis at page 43, fully explaining why it did not rely on this analysis. For example, the model is not designed to forecast revenue requirements and, as used by Consumer Advocate, the analysis did not take into account the divergent useful lives of a new coal plant in 2014 and a relicensed DAEC.

Both the ICC and Consumer Advocate argued about IPL's plans to replace DAEC capacity and energy with a coal plant when the PPA expires in 2014. These arguments, however, are based on a misreading of IPL's testimony. IPL presented three post-2014 market price forecasts and its witness testified that the most likely scenario for replacing DAEC is a market-based PPA for both capacity and energy. (Tr. 103-04; IPL Ex. 11.) IPL witness Kitchen's EGEAS analysis did not model purchase power contracts, because the model is only designed to evaluate owned-resource options; the failure of the EGEAS analysis to include purchase power contracts does not mean DAEC energy and capacity will be replaced with a coal plant. Consumer Advocate's use of a price cap represented by a coal plant

overstates market prices; in fact, this market price forecast presented by Consumer Advocate ignored the Midwest Independent Transmission System Operator Day-2 market and price forecasts for that market. IPL's forecast specifically accounted for new coal-fired generation announced in the region that should be in operation between 2011 and 2013. (Tr. 877.) While IPL believes the purchase power option is the most likely replacement for DAEC, it has sufficient time between now and February 2014 to consider various options. (Tr. 940.)

C. Application for Stay

Consumer Advocate filed a request for stay at the same time as its rehearing application. Applicants filed a resistance on December 28, 2005.

Consumer Advocate's request did not specifically address the four criteria relevant to the Board's consideration found in Iowa Code § 17A.17(5)(c) and referenced in 199 IAC 7.28(2). The Board will consider the four factors briefly.

The first factor is likelihood of prevailing on the merits. As discussed in the rehearing portion of this order, the Board is affirming its decision to allow the reorganization to go forward. The Board believes that the evidence supports its decision and that an appeal of the Board's decision is unlikely to prevail. Thus, the first factor weighs against a stay.

The second factor is the extent to which IPL customers will suffer irreparable injury if the stay is denied. The Board's review and findings based on the record in this proceeding demonstrate that there are both quantifiable and non-quantifiable benefits to IPL's ratepayers if this reorganization goes forward. If the reorganization

does not proceed, these benefits will be lost. The second factor also argues against a stay.

The third factor examines whether a stay will substantially harm other parties to this docket. As described above, ratepayers face substantial harm if the stay is granted, because the transaction could not be closed until after judicial review is completed, a process that could take several years. In fact, it is questionable whether the reorganization would in fact take place if a stay were granted; in other words, granting a stay would amount to reversing the Board's decision, even though the Board has decided to re-affirm.

The fourth factor is the public interest. Granting a stay would adversely affect the public interest because the myriad benefits cited in the Board's Final Order that specifically affect the public interest could be lost or delayed. The evidence at hearing demonstrated the reorganization favorably impacts both ratepayer and the public interests. The request for stay will be denied.

IT IS THEREFORE ORDERED:

1. The application for rehearing filed by the Iowa Consumers Coalition in Docket No. SPU-05-15 on December 20, 2005, is granted to the extent discussed in this order and denied in all other respects.

2. The application for rehearing filed by the Consumer Advocate Division of the Department of Justice on December 20, 2005, is granted to the extent discussed in this order and denied in all other respects.

3. The request for stay filed by the Consumer Advocate Division of the Department of Justice on December 20, 2005, is denied.

4. The order of the Utilities Board, issued November 30, 2005, is modified and clarified in accordance with the body of this order, and the decision not disapproving the reorganization and allowing it to take place pursuant to law is affirmed.

5. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the rehearing application not specifically addressed in this order is rejected as either not supported by the evidence or as not being of sufficient persuasiveness to warrant comments.

UTILITIES BOARD

/s/ John R. Norris

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 18th day of January, 2006.