

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<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 style="text-align:center">DOCKET NO. AEP-05-1</p>
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ORDER ON REHEARING

(Issued June 12, 2006)

PROCEDURAL HISTORY

On January 12, 2005, Midwest Renewable Energy Projects LLC (Midwest Renewable) filed with the Utilities Board (Board), pursuant to 199 IAC 15.4 and 15.5, a petition to determine specific rates to be paid by Interstate Power and Light Company (IPL) for purchases of qualifying energy and/or capacity from a specific qualifying small power production facility. The petition also asked that the Board order IPL to purchase such energy and/or capacity from the facility pursuant to a long-term agreement that may, but need not, convey to IPL any environmental attributes, such as emission credits, alternate energy credits, or similar tradable certificates.

In its petition, Midwest Renewable requested that the Board issue a decision on an expedited basis. At the time, Midwest Renewable hoped that its proposed wind project could be in-service on December 31, 2005, to take advantage of federal tax credits. At the hearing held on April 5, 2005, Midwest Renewable's witness testified that wind turbines were not available to Midwest Renewable for a December 31, 2005, in-service date, so the need for an expedited ruling was reduced.

On May 20, 2005, prior to the deadline for reply briefs, IPL filed a motion to reopen the record to file additional testimony and evidence regarding an anticipated wind generation power purchase agreement with Endeavor Power Partners, LLC (Endeavor PPA) resulting from a request for proposals (RFP) that IPL had issued. On June 3, 2005, Midwest Renewable filed its own motion to present additional evidence. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) did not object to either motion and the Board issued an order on June 13, 2005, reopening the record.

IPL was unable to file its Endeavor PPA by the deadline established by the Board, but Midwest Renewable filed additional prefiled testimony and exhibits. IPL and Consumer Advocate filed responsive testimony and a second hearing was held on July 20, 2005. At the second hearing, IPL presented the Endeavor PPA resulting from its RFP process. (Ex. 105). Final briefs were filed subsequent to the second hearing.

On August 12, 2005, IPL filed a motion to hold the docket in abeyance pending a ruling by the Federal Energy Regulatory Commission (FERC) on a petition for declaratory order filed by IPL asking FERC to determine that IPL is no longer required to enter into a new contract or obligation to purchase electricity under the Public Utility Regulatory Policies Act of 1978 (PURPA), or to enter into a PPA with any unbuilt Qualifying Facilities (QF) project, such as the Midwest Renewable project. IPL claimed that the Energy Policy Act of 2005 relieved it of these obligations, making it unnecessary for the Board to determine avoided cost in this docket because there was no longer an obligation for IPL to purchase energy from a QF such as Midwest Renewable.

On September 21, 2005, the Board denied IPL's motion to hold the docket in abeyance. (The Board notes that while FERC has not granted IPL the relief it requested, it has opened a rule making docket that will be addressed later in his order.)

The Board issued its "Final Decision and Order" (Final Decision) in this docket on December 28, 2005. In that order the Board, among other things, set the avoided cost rate for IPL's purchases of energy or capacity from Midwest Renewable's proposed qualifying small power production facility in Worth County that are made pursuant to PURPA and 199 IAC 15 at \$29 per MWh. The Board said if the parties are unable to agree on terms for the sale of environmental attributes, IPL is required to make the energy or capacity purchases regardless of whether the agreement conveys to IPL any associated environmental attributes.

In its Final Order, the Board relied on IPL's Electric Generation Expansion Analysis System (EGEAS) results and the results of IPL's competitive bidding process in setting IPL's avoided cost. The Board also noted that while Consumer Advocate did not endorse IPL's avoided cost analysis, Consumer Advocate's preferred method produced results relatively close to IPL's EGEAS analysis and the best bids received in IPL's RFP. (Final Decision, p. 10).

Midwest Renewable filed an application for rehearing and reconsideration on January 17, 2006. Included with the application was a conditional motion for procedural consolidation with three other dockets where Midwest Renewable has requested that the Board determine IPL's avoided costs for other projects, Docket Nos. AEP-05-2, AEP-05-3, and AEP-05-4. Midwest Renewable filed a supplement to its application for reconsideration and rehearing on January 25, 2006. IPL and Consumer Advocate each filed responses to the application for rehearing on January 31, 2006. Midwest Renewable filed a reply to IPL's response on February 2, 2006.

On February 14, 2006, IPL filed a pleading entitled "Disclosure of Change in Evidentiary Facts." The pleading indicated that there had been "subsequent developments that change facts in the evidentiary record in this docket," while the actual evidentiary facts were disclosed in a filing for which IPL requested confidentiality. The Board denied IPL's request for confidentiality by order issued February 24, 2006. The change in evidentiary facts disclosed by IPL included an acknowledgement of the supporting role of the Endeavor PPA resulting from IPL's

RFP process played in the Board's adoption of IPL's EGEAS avoided cost analysis and a disclosure that the Endeavor PPA contractor "is not likely to perform under the contract terms, including price."

Because the disclosure of change in evidentiary facts was filed two days before the statutory deadline for a rehearing order, the Board on February 16, 2006, issued an order granting rehearing for the purposes of reconsidering its Final Decision. The order also set a March 10, 2006, deadline for responding to IPL's disclosure; Midwest Renewable and Consumer Advocate each filed responses on that date.

The Board will summarize the parties' positions on several issues raised by Midwest Renewable in its rehearing request. Because the issues are intertwined, the Board will offer most of its analysis and conclusions in a separate section following the summaries. Before addressing the substantive issues, however, the Board will address the procedure used to decide the case. Midwest Renewable, in its rehearing request, repeatedly referred to a December 12, 2005, staff memorandum from John Pearce, a member of the Board's staff, to the Board.

STAFF MEMORANDUM

Midwest Renewable, in its rehearing application, devoted a substantial amount of discussion to a staff memorandum from Mr. Pearce to the Board dated December 12, 2005 (staff memorandum). It is important to note at the outset that the staff memorandum is not referred to in the Final Decision and cannot form the basis

for alleged errors in the Board's findings of fact and conclusions of law. The Final Decision stands on its own, supported by the evidentiary record. The staff memorandum is simply a tool for the Board to use in reaching its decision.

Utilities Board decisions are made in a variety of ways. For some cases, the Board holds a public meeting to make and announce its decision. In other cases, a draft order circulates among Board members, who make additions and deletions until it reflects the final decision of at least two Board members. A third way in which decisions are made, and the one utilized in this case, is through a staff memorandum containing a staff recommendation, which is circulated among the Board members. The Board members individually may agree or disagree with the staff recommendation, in whole or in part, and either sign the memo (accepting the staff recommendation) or write comments regarding the recommendation. The staff memorandum continues in circulation among the Board members until it reflects the decision of at least two Board members.

The process does not end with the staff memorandum. A draft order is then circulated based on the Board's agreement or disagreement with the staff recommendation and any Board member comments. The Board is then free to make additions or deletions to the draft order. In fact, the Board members may change their minds on the outcome at any time prior to a final order being signed and issued.

The staff memorandum in question was prepared as a tool for the Board, providing a summary of the parties' positions and the relevant arguments, pro and con, that supported those positions. The staff memorandum is not the decision of the

Board and alleged minor errors in the staff memorandum do not affect the Board's final decision. The Board has available to it the entire evidentiary record and the post-hearing briefs filed by the parties when reaching its decision. The staff memorandum merely provides a summary of the arguments and a recommendation from one staff member on how to proceed. On rehearing, the Board will not address alleged errors in the staff memorandum; it will only address alleged errors in the final decision.

DETERMINATION OF AVOIDED COST

Midwest Renewable maintained that the Board's finding of an avoided cost rate of \$29 per MWh is erroneous. To support its position, Midwest Renewable cited a recent Board decision involving IPL's sale of the Duane Arnold Energy Center (DAEC) and IPL's post-sale purchase of power generated by DAEC. Interstate Power and Light Company and FPL Energy Duane Arnold, LLC, Docket No. SPU-05-15 (11/30/05). Midwest Renewable argued that the price of the DAEC purchase power contract and recent market prices posted by the Midwest Independent Transmission System Operator (MISO) on its Web site are above the Board's finding of avoided cost, making the Board's determination in this case inherently unreasonable. In addition, Midwest Renewable was critical of the Board's reliance on the EGEAS model used by IPL.

At the outset, it should be noted that the Board said at page 8 of its Final Decision that, pursuant to 199 IAC 15.1, which mirrors the relevant FERC rule,

avoided costs can be based either on an operational analysis of the utility's system or on market purchase prices established through competitive bidding. IPL used both operational analysis (EGEAS) and competitive bidding for estimating avoided costs; IPL's EGEAS analysis results were generally confirmed by the results of the RFP issued by IPL. While the final contract executed as a result of the RFP was for a slightly higher price than that determined by the EGEAS analysis, the final contract contained an "all-in" price that included green credits; the Board found in the Final Decision that IPL was required to purchase energy from Midwest Renewable at the avoided cost rate regardless of whether green credits were conveyed. The results were also generally confirmed by the results of Consumer Advocate's analysis, which used a different approach. Based on the record available to the Board, the Board found the EGEAS analysis, revised to reflect the 20-year term of Midwest Renewable's proposed project, provided the most reasonable avoided cost figure in this docket. It appeared that an avoided cost figure that substantially deviated from the Board's determination would have required IPL's ratepayers to pay Midwest Renewable more than the current market price for wind energy.

IPL noted in its response that comparison of wind energy avoided costs with DAEC purchase power costs is unrealistic because the DAEC contract is for both capacity and energy. IPL referred to Exhibit A of the DAEC PPA, which shows the avoided energy cost well below the \$29 per MWh determined by the Board as the avoided cost for Midwest Renewable's project. The DAEC PPA appears to provide

more support for the Board's avoided cost determination than it does for a higher figure.

The Board does not give significant weight to Midwest Renewable's reference to recent MISO market prices because they are not part of the record in this proceeding. Even if the Board were to consider this extra-record evidence, it would not change the Board's decision. The Board recognizes that MISO prices have been volatile, in part because of current natural gas prices; selected spot prices do not reflect average prices. As pointed out by IPL, if MISO prices were thought to reflect long-term average prices, Midwest Renewable could simply withdraw its avoided cost request and sell directly into the MISO market.

Midwest Renewable argued that the Board's reliance on EGEAS in this docket was in error, and Midwest Renewable reiterated arguments that were presented in post-hearing briefs and addressed in the Final Decision. The record in this case established that EGEAS is a well-recognized industry tool for system expansion analysis that also has an avoided cost feature (Tr. 141, 151, 239-40) that IPL utilized as one method of determining avoided cost (the other was its RFP and resulting contract). The Final Decision at page 6 describes in some detail how EGEAS works to determine avoided cost. Midwest Renewable's arguments were considered in the Final Decision and found not to be persuasive. There was no convincing evidence presented by Midwest Renewable or anyone else that challenged EGEAS or the inputs and assumptions used in the analysis.

Midwest Renewable also argued that IPL's competitive bidding method was flawed for determining avoided cost because it was not an all-source bidding process. This is not persuasive. In the FERC decision¹ cited by Midwest Renewable, FERC found a state-mandated competitive bidding process flawed because lower cost, non-QF bidders were excluded from the bidding process, forcing utilities to pay higher than avoided costs. In other words, the competitive bidding process in that case was flawed because it biased prices above avoided cost by excluding non-QF bidders.

In this case, there is no evidence that IPL's bidding process excluded either QFs or non-QFs and thereby biased prices in either direction. Wind generation has unique production characteristics. To determine the market price of generation equivalent to the production characteristics of wind, it was reasonable for IPL to restrict the bidding to wind generation. Also, unlike the FERC case cited, no one is alleging that IPL's bidding process produced a result significantly higher than the avoided cost associated with Midwest Renewable's 80 MW wind farm. In fact, a broader-based bidding process could only have reduced IPL's avoided cost calculation, not increased it. If new bidders had bid higher than the winning bidder, their bids would be irrelevant, since the lower winning bidder would still be selected. If new bidders had bid lower, then they might have been selected, potentially establishing a lower avoided cost level. Thus, a broader bid process could only

¹ So. Cal. Edison Co. and San Diego Gas & Elec.Co., 70 FERC 61,215, reconsideration denied, 71 FERC 61,269.

provide evidence to support a lower avoided cost, not a higher one. Midwest Renewable cannot show it was harmed by the bid process used by IPL.

REOPENING THE RECORD

Midwest Renewable asked for relief in the alternative. In the event the Board continues to rely on IPL's EGEAS analysis as the basis for the avoided cost determination, Midwest Renewable asked that the Board grant rehearing for the purpose of considering IPL's EGEAS analysis based on more current inputs. Midwest Renewable argued the inputs used in this record were at least two years old and that material changes in IPL's generation and supply situation have occurred since regular briefing in this docket was completed in August 2005; Midwest Renewable said the most significant events are IPL's sale of DAEC and the filing of a 2005 electric resource plan with the Minnesota Public Utilities Commission that uses EGEAS for the bulk of IPL's analysis of its supply-side resource alternatives. If rehearing is granted to hear additional evidence, Midwest Renewable requested that the rehearing proceedings be consolidated, for procedural purposes, with consolidated Docket Nos. AEP-05-2, AEP-05-3, and AEP-05-4, which involve the same parties and a PURPA avoided cost determination.

Consumer Advocate agreed with Midwest Renewable that if the Board intends to rely on the EGEAS analysis as the basis for its avoided cost determination, the Board should grant rehearing to allow a full investigation and review of the inputs and assumptions used by IPL. Consumer Advocate also believed updated inputs and

data should be considered on rehearing. Consumer Advocate noted that the expedited procedural schedule that accompanied the first phase of the hearing limited Consumer Advocate's ability to review IPL's EGEAS model.

IPL opposed reopening the record, noting that Midwest Renewable ignores the fact that IPL's completed PPA from its recent wind RFP would continue to be strong probative evidence, even if the EGEAS analysis was updated. IPL argued that this request comes after more than 11 months of litigation and that rehearing should not be granted "based on staleness requested by a party that kept this docket going after it announced on the record in early April that it could not perform under a power purchase agreement in 2005. (Tr. 108.)" (IPL Answer, p. 11). If Midwest Renewable was concerned about stale data, IPL said, it could have asked for a dismissal at any time and subsequently refiled.

CHANGE IN EVIDENTIARY FACTS

In its Final Decision, the Board stated: "IPL's EGEAS analysis is generally confirmed by the results of its RFP. Although slightly higher, the RFP results are consistent with the EGEAS results. . . . The results of the RFP bolster the credibility of IPL's EGEAS analysis." (Final Decision, p. 11). IPL's disclosure that the winning bidder in its RFP will not perform potentially undermines one of the underpinnings of the Board's Final Order.

Midwest Renewable argued that it can reasonably be assumed that the winning PPA failed because the price was too low, calling into question IPL's EGEAS

analysis. If the Board is unwilling to use Midwest Renewable's analysis, the Board should allow for new evidence to be considered, including data from the MISO Day-2 energy market. Otherwise, Midwest Renewable asked that the inputs and assumptions of IPL's EGEAS analysis be updated and the results compared with recent data from the MISO Day-2 market.

Consumer Advocate argued IPL's disclosure provides additional support for rehearing. Consumer Advocate said the Board had relied on the EGEAS analysis being confirmed by the PPA price.

ANALYSIS AND CONCLUSION

As the Board said in its Final Decision, IPL's analysis is logically structured and is based on EGEAS, an industry-recognized analytical tool for system expansion planning. Midwest Renewable's arguments against IPL's EGEAS analysis made on rehearing are similar to the arguments it made during the case and do not convincingly challenge IPL's approach. To do so, Midwest Renewable would have had to identify specific flaws in IPL's approach that convincingly explain the wide difference between Midwest Renewable's and IPL's results (i.e., \$47.65 per MWh versus \$29 per MWh), and would need to persuasively rebut IPL's challenges to Midwest Renewable's own dispatch analysis approach (Tr. 150-52, 245-46, 299-302). MREP has not done this. IPL's explanation at hearing regarding the difference between Midwest Renewable's and IPL's results was more plausible than Midwest Renewable's. This has not changed.

Both Midwest Renewable and Consumer Advocate noted that IPL's EGEAS inputs and assumptions were never made part of the formal record. Yet, IPL testified that it provided the EGEAS inputs and assumptions to both Midwest Renewable and Consumer Advocate (Tr. 215, 221-28; Exhibit 21), and neither party challenged them, with the exception of the adjustment made by the Board to IPL's analysis (13-year to 20-year time frame) that increased the EGEAS estimate. Consumer Advocate explained that the initially expedited procedural schedule limited the time it had for review, and Midwest Renewable also seemed to have difficulty reviewing the data. (Tr. 215, 221-28).

Initially, the need for a more rigorous review of the EGEAS analysis did not appear justified because IPL's RFP competitive bidding results (Exhibit 105) confirmed that IPL's avoided cost was approximately \$29 per MWh. However, IPL's disclosure that the RFP contract will not be performed casts doubt on the RFP evidence, suggesting that the Endeavor PPA contract price may no longer be a valid measure of IPL's avoided cost. This, in turn, raises questions about the EGEAS analysis, which still did not seem to be reviewed in much depth by either Midwest Renewable or Consumer Advocate. For example, IPL testified that its 80 MW EGEAS avoided cost analysis was based on the same data inputs and assumptions used to generate its 2004 PURPA avoided cost report filed with the IUB. (Tr. 170-73, 239-42; Exhibit 201). Yet, when IPL provided Midwest Renewable an update of its PURPA avoided cost report showing significantly higher avoided costs associated with 1 MW of load (Exhibit 14), neither Midwest Renewable nor Consumer Advocate

asked IPL for a similar update of its 80 MW EGEAS analysis and it was never made part of the record. Given the significantly higher avoided energy costs shown in the updated PURPA report (Exhibit 14), compared with the 2004 PURPA report filed with the Board (Exhibit 201), and the apparent issues with IPL's RFP process, it is possible to conclude that IPL's 80 MW EGEAS analysis results (Exhibit 101) might have been significantly lower than IPL's avoided costs, at the time of the hearing. Therefore, the Board will grant rehearing for the limited purpose of updating IPL's 80 MW EGEAS analysis and allow the parties additional time to review the data inputs and assumptions of IPL's updated analysis.

Midwest Renewable has not established that its arguments about Docket No. SPU-05-15 and the MISO Day-2 energy market relate to IPL's avoided costs. These issues were not developed at hearing and the Board will not allow them to be interjected now, for the first time, in the rehearing process.

Similarly, as IPL points out, consolidated Docket Nos. AEP-05-2, AEP-05-3, and AEP-05-4 currently have no procedural schedule or testimony and, if the dockets were consolidated with Docket No. AEP-05-1, the issues would not be limited to updating IPL's EGEAS analysis. To preserve the limited nature of the rehearing based on updating IPL's EGEAS analysis, Docket No. AEP-05-1 will not be consolidated with Docket Nos. AEP-05-2, AEP-05-3, and AEP-05-4.

Another factor weighing against consolidation is FERC's January 19, 2006, issuance of a "Notice of Proposed Rulemaking" related to the Energy Policy Act of 2005 (EPACT 2005), which may terminate IPL's PURPA purchase obligation with

respect to the remaining three AEP dockets. On February 7, 2006, IPL filed a motion to hold the three dockets in abeyance pending the outcome of the FERC rule making. The Board, not the administrative law judge, will rule on this motion, after issuance of this rehearing order. The Board does not believe consolidation will expedite the review process of the four dockets or promote administrative efficiency.

The Board grants rehearing for the sole purpose of taking new evidence on EGEAS with some reluctance. The Board expended significant resources to expedite this proceeding, pursuant to Midwest Renewable's request. It was not until the first hearing that Midwest Renewable said an expedited schedule was no longer necessary. After that hearing, both IPL and Midwest Renewable requested that new evidence be introduced. In its pleadings at that time, Midwest Renewable said nothing about updating the EGEAS analysis or conducting additional discovery regarding investigation of the inputs. Midwest Renewable only asked for additional discovery and evidence on this issue when the Board's decision reached a result with which Midwest Renewable disagreed.

As noted by IPL at page 12 of its answer, there are always changes occurring in a utility's generation and supply situation. An EGEAS analysis can always be updated with more recent data; there must be a conclusion to this docket. However, the questions raised about EGEAS, combined with nonperformance of contract by IPL's successful RFP bidder, justifies rehearing for the limited purpose of updating IPL's 80 MW EGEAS avoided cost analysis and allowing the parties additional time to review the data inputs and assumptions of IPL's updated analysis.

IPL will be directed to update its EGEAS analysis based on the same data inputs and assumptions used to generate its 2006 PURPA avoided cost report. IPL is to file its completed analysis in this docket, including all data inputs and assumptions. IPL, Midwest Renewable, and Consumer Advocate will be directed to file a joint report within 15 days of the date of this order indicating approximate time frames necessary for IPL to complete the EGEAS analysis and Midwest Renewable and Consumer Advocate to complete their reviews of the updated analysis. After receiving this report, the Board will set a procedural schedule.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The application for rehearing filed by Midwest Renewable Energy Projects LLC on January 17, 2006, is granted for the limited purpose discussed in this order and denied in all other respects.
2. The "Final Decision and Order" of the Utilities Board issued December 28, 2005, is modified and clarified in accordance with the body of this order.
3. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the rehearing pleadings not specifically addressed in this order is rejected either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comments.

4. Interstate Power and Light Company shall conduct an updated EGEAS analysis consistent with this order and file the completed analysis, together with data inputs and assumptions, in this docket.

5. The parties to this proceeding shall file a joint report within 15 days of the date of this order containing the information referenced in the body of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 12th day of June, 2006.