

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: 100px;">Petitioner,</p> <p style="text-align:center">v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NOS. AEP-05-2 AEP-05-3 AEP-05-4</p>
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**ORDER DISSOLVING STAY AND DIRECTING  
SCHEDULING OF PREHEARING CONFERENCE**

(Issued July 26, 2006)

On February 7, 2006, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) a motion to hold consolidated Docket Nos. AEP-05-2, AEP-05-3, and AEP-05-4 (collectively, Consolidated Dockets) in abeyance pending the outcome of a rule making proceeding initiated by the Federal Energy Regulatory Commission (FERC), identified as FERC Docket No. RM06-10. The FERC rule making is designed to implement provisions of the Energy Policy Act of 2005 (EPACT 2005) that exempt utilities, under certain circumstances, from the requirement to purchase energy from qualifying facilities (QFs) under the Public Utilities Regulatory Policies Act of 1978 (PURPA).

The basis for IPL's request was its argument that any rules adopted in the FERC rule making would likely exempt IPL from PURPA purchase obligations for the three Midwest Renewable Energy Projects LLC (Midwest Renewable) qualifying facilities at issue in the Consolidated Dockets. The Board on July 7, 2006, issued an order granting a stay; the Board indicated, among other things, that it was concerned with expending significant resources on dockets where there is a significant likelihood that any results will be rendered moot by the FERC rule making.

On the same date the Board issued its order, FERC issued an order granting a petition for declaratory order that had been filed on October 20, 2005, by Midwest Renewable. FERC's ruling in Docket No. EL06-9-000 (116 FERC ¶61,017) indicated that regardless of the outcome of the FERC rule making proceeding in FERC Docket No. RM06-10, IPL continues to have a PURPA obligation to purchase power from the three QFs at issue in the Consolidated Dockets because of a "savings clause" contained in EPCACT 2005.

On July 14, 2006, Midwest Renewable filed a motion to dissolve the stay in the Consolidated Dockets. Counsel for the Board contacted representatives of IPL and the Consumer Advocate Division of the Department of Justice; neither will file a response to Midwest Renewable's motion.

Based on the FERC ruling, the conclusions reached in the July 7, 2006, order granting stay must be reexamined using the four-factor test that was applied in that order. It now appears to be a certainty that IPL will not obtain a FERC exemption

from its PURPA purchase obligation for the three QFs at issue in the Consolidated Dockets. Also, while significant resources are likely to be expended by the parties and the Board in bringing the Consolidated Dockets to a conclusion, there now appears to be little chance that any results will be rendered moot by FERC. The Board, after applying the test used in its July 7, 2006, order, will dissolve the stay.

The Board notes that the Consolidated Dockets were assigned to an administrative law judge by order issued October 27, 2005; subsequent to that time the Board has ruled on several motions regarding consolidation and stay because the motions related both to the Consolidated Dockets and to another ongoing docket, Docket No. AEP-05-1, that is being decided by the Board. Now that all of these motions have been ruled upon, the Board will direct the administrative law judge (ALJ) to convene a prehearing conference in the Consolidated Dockets for purposes of establishing a procedural schedule.

The Board notes that in its order assigning the Consolidated Dockets to an ALJ, the ALJ was directed not to set a procedural schedule in the Consolidated Dockets until the Board issued its decision in Docket No. AEP-05-1. That decision has been issued, but the Board granted limited rehearing and will take additional evidence and hold a hearing. Absent unforeseen circumstances, the rehearing process should be completed by the end of the calendar year. Because the rehearing decision may impact the Consolidated Dockets, a hearing in the

Consolidated Dockets should not be scheduled until the rehearing decision in Docket No. AEP-05-1 is issued.

**IT IS THEREFORE ORDERED:**

1. The stay issued on July 7, 2006, in Docket Nos. AEP-05-2, AEP-05-3, and AEP-05-4 is dissolved, effective immediately.
2. The administrative law judge is to convene a prehearing conference and establish a procedural schedule pursuant to the discussion contained in the body of this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 26<sup>th</sup> day of July, 2006.