

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>CITY OF EVERLY, IOWA,</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 style="text-align:center">DOCKET NO. SPU-06-5</p>
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**ORDER DENYING MOTION TO ASSESS COSTS**

(Issued August 15, 2006)

On June 6, 2006, the city of Everly, Iowa (Everly), filed with the Utilities Board (Board) a petition requesting a certificate of authority to furnish electric service to the existing point of delivery of customers already receiving electric service from another electric utility, commonly known as a municipalization proceeding. Everly is an Iowa municipal corporation presently receiving electric service from Interstate Power and Light Company (IPL). IPL owns the electric distribution system within Everly.

On June 22, 2006, IPL filed a pleading that included a motion for assessment of direct costs incurred by the Board and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) as a result of this municipalization proceeding, identified as Docket No. SPU-06-5, to Everly. Consumer Advocate filed

a response on June 27, 2006, and Everly responded on July 7, 2006. IPL filed a reply to the responses on July 27, 2006.

Iowa Code § 476.10 and 199 IAC 17 govern assessments of direct costs of a proceeding and list various factors the Board may consider. IPL argues that consideration of these factors weighs in favor of direct assessment of costs to Everly because the action is brought voluntarily for Everly's own benefit by the city on behalf of its citizens; no greater public interest is served by this case; and if Everly is not directly assessed the costs, they will likely be paid by IPL's other ratepayers. IPL states that in enacting Iowa Code § 476.23(1), the Legislature sought to assure the other customers of the currently serving utility (here, IPL) that they would not have to bear the costs caused by customers petitioning to leave. This principle would be violated if IPL's other customers had to pay the direct costs of the Board and Consumer Advocate in this proceeding.

In its response, Consumer Advocate notes that pursuant to Iowa Code § 476.10, the Consumer Advocate, separately and apart from the Board, determines who to charge for expenses incurred by Consumer Advocate in the performance of its duties and certified to the Board for Consumer Advocate direct assessments. Consumer Advocate states that with respect to Consumer Advocate's direct assessments, IPL should direct its proposal to Consumer Advocate, not the Board.

Consumer Advocate also argues IPL's motion is premature. Consumer Advocate states that, pursuant to Iowa Code § 476.10, the Board's determination of direct assessments may be based, in part, upon consideration of the proceeding

before the Board and the participation and actions of the parties to the proceeding; the Board cannot consider these factors until the proceeding is completed.

Consumer Advocate finally notes that while IPL asserted this case impacts only Everly, Iowa Code § 476.23 contains a public interest standard, which is broader than the interest of any particular party.

In its response, Everly points out, as did Consumer Advocate, that § 476.10 does not authorize the Board to assess Consumer Advocate's costs and that the standard for determining whether Everly will be permitted to form a municipal utility is a public interest standard. In addition, Everly cites 199 IAC 17.4(4), which lists the factors the Board will consider in assessing costs. One of these factors is whether participation in the Board proceeding is in good faith; Everly argues that this petition was brought in good faith and that the Legislature designated the Board as the appropriate body to hear municipalization petitions.

Everly also argues that when the proceedings are completed, it believes IPL will have made no contribution to the public interest but rather will have focused on protecting its customer base and territorial monopoly. Everly states that to assess all costs to Everly for exercising its legal rights is inappropriate and that its ability to pay such costs is minimal and would create an undue hardship, particularly if its petition for a certificate of authority is denied.

In its reply, IPL provides detailed information it obtained in response to data requests submitted to Everly regarding Everly's financial condition. IPL states that Everly's claim that it cannot pursue the litigation if it is assessed direct costs is untrue

and that IPL does not have "vast and unlimited" resources to defend its service territory.

IPL acknowledges that the Board is without authority to consider assessment of Consumer Advocate's direct costs to Everly. IPL asks Consumer Advocate to consider its previous pleadings to be a request to Consumer Advocate that it assess its direct costs to Everly.

The Board agrees that it has no authority to determine assessment of Consumer Advocate's direct costs. Iowa Code § 476.10 specifically provides that the Board determines the assessment of the Board's direct costs and Consumer Advocate determines the assessment of Consumer Advocate's direct costs. IPL properly redirected its request for assessment of Consumer Advocate's direct costs to Consumer Advocate and the Board will not further address that request.

With respect to the Board's direct costs, the motion is premature. Iowa Code § 476.10 and 199 IAC 17.4(4) allow the Board to consider factors such as good faith participation, financial resources, nature of the proceeding, whether directly assessing costs is fair and in the public interest, and other factors. Some factors, such as good faith participation, cannot be determined until the proceeding is concluded. The Board does not determine its assessment of direct costs in cases where assessment may be at issue at this early stage of the proceedings.

The Board recognizes, though, that some guidance with regard to the Board's general assessment policy might be useful to the parties. One of the factors the Board considers is the nature of the proceedings. This proceeding involves two

entities, one a utility and another that wants to form a utility; the proceeding does not involve a utility customer's complaint about its individual service. In proceedings where the parties are two commercial entities and the subject matter of the proceedings is not related to the provision of utility service to an individual customer, the Board generally assesses each party one-half of the direct costs. Absent unusual circumstances, the Board would expect the direct assessment of its costs to be one-half to IPL and one-half to Everly; however, a final determination will not be made until the proceeding is concluded.

**IT IS THEREFORE ORDERED:**

The motion for direct assessment of costs filed by Interstate Power and Light Company on June 22, 2006, is denied. The Board will assess its direct costs from this proceeding at the conclusion of the proceeding.

**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 15<sup>th</sup> day of August, 2006.