

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CITY OF EVERLY, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-5
CITY OF KALONA, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-6
CITY OF ROLFE, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-7
CITY OF TERRIL, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-8
CITY OF TITONKA, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-9
CITY OF WELLMAN, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent.	DOCKET NO. SPU-06-10

ORDER ON CONSOLIDATION AND SCHEDULING PREHEARING CONFERENCE

(Issued August 17, 2006)

On June 6, 2006, the cities of Everly, Kalona, Rolfe, Terril, Titonka, and Wellman, Iowa (collectively, Cities), each 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 service from another electric utility. These filings, commonly referred to as municipalization proceedings, are identified as Docket Nos. SPU-06-5 through SPU-06-10. Each of the Cities is an Iowa municipal corporation presently receiving electric service from Interstate Power and Light Company (IPL). IPL owns the electric distribution system within each of the Cities.

On July 7, 2006, each of the Cities filed a motion for consolidation of these municipalization proceedings. IPL filed resistances to each of the motions on July 20, 2006. On August 8, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed its response to the Cities' motions and IPL's resistances. Because the motions, resistances, and responses are virtually identical for each of the dockets, the Board will address issues related to consolidation in a single order.

Cities' Position

The Cities note that there are 137 municipal utilities in Iowa serving approximately 11 percent of total sales to electric customers in Iowa. The Cities cite Iowa Code § 476.23(1), which provides that any municipal corporation, after being authorized by a vote of its citizens, may file a petition with the Board requesting a certificate of authority to provide electric service. The Cities assert that each of them has held an election with results that favored forming a municipal utility.

The Cities state that pursuant to Iowa Code § 476.23(1), if the Board, after notice and opportunity for a hearing, determines that service to customers by the petitioner (i.e., the Cities) is in the public interest, including consideration of any unnecessary duplication of facilities, the Board shall grant the certificate of authority in whole or in part, with any conditions the Board deems justified. The Cities note this section also provides that a municipal utility that acquires an existing electric utility shall pay the reasonable price for the facilities (in each case here, the facilities are owned by IPL) and that reasonable price is ordinarily defined as fair market value, with due consideration given to the cost of the facilities being acquired, any necessary generating capacity and transmission capacity dedicated to each city's customers, depreciation, loss of revenue, and the cost of facilities necessary to reintegrate the system of the utility after detaching the portions sold.

In requesting consolidation, the Cities assert that the incumbent utility (IPL) is the same in each case, the experts and other witnesses are substantially the same, the issues before the Board will be substantially the same, the majority of the testimony before the Board would be the same, and a consolidated proceeding would be more economical and more efficient for both the parties and the Board. The Cities argue that no party would be prejudiced by consolidation.

Consumer Advocate's Position

Consumer Advocate states that 199 IAC 7.14(1) directs the Board to consider four factors in determining whether to consolidate any or all matters at issue in two or more contested cases. Consumer Advocate lists the factors contained in the rule:

1) whether the matters at issue involve common parties or common questions of fact

or law; 2) whether the consolidation is likely to expedite or simplify consideration of the issues involved; 3) whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and 4) any other relevant factors.

Consumer Advocate believes that consideration of these factors weighs strongly in favor of consolidation.

With respect to the first factor, Consumer Advocate notes that the respondent, IPL, is the same in all six cases and the applicable statutory law (Iowa Code § 476.23) is also the same for all six cases. Consumer Advocate argues any differences in the six proceedings pale in comparison to the similarities.

Consumer Advocate argues the second factor, expedition or simplification of the proceedings, also favors consolidation. Because of the similarities of parties, issues, and applicable law, Consumer Advocate states consolidation would likely result in expedited treatment.

Consumer Advocate notes that by requesting consolidation, the Cities are accepting any risk of prejudice to their rights by consolidation. While IPL asserts it will be prejudiced by consolidation because there are factual differences in the cases, Consumer Advocate asserts that IPL will be able to conduct separate discovery with respect to each city and will be able to address any individual factual issues.

Addressing the final factor, the catch-all "other relevant factors," Consumer Advocate states that without consolidation, parties have to file multiple copies of virtually identical documents, such as the pending motions to consolidate. Consumer Advocate believes that by reducing unnecessary and inefficient duplication, the

parties and the Board will be better able to focus their efforts on the substance of the proceedings rather than the logistics of six separate, but nearly identical, cases.

IPL's Position

IPL cites, as did the Cities and Consumer Advocate, Iowa Code § 476.23, which deals with municipalization and the factors for the Board to consider in determining the fair market value of the facilities in question. IPL also lists the factors for the Board to consider in determining whether two or more cases should be consolidated. 199 IAC 7.14.

IPL argues that the municipalization proceeding brought by each city will differ factually from the others with respect to each and every issue the Board is to consider pursuant to § 476.23, including whether the public interest would be served by allowing the municipalization to proceed, the cost of the facilities to be acquired by each city, the generating and transmission capacity dedicated to each city's customers, the depreciation applicable to those facilities, the loss of revenue to be experienced by IPL as a result of the municipalization by each city, and the cost to be incurred to reintegrate IPL's system after detaching the portion sold to the city.

IPL argues that each of the Cities has a unique location on IPL's electric generation, distribution, and transmission system. IPL states that four of the Cities are in its IES rate zone, one in the IES southern zone, and one in the IPC zone. IPL notes that differences in rates between the zones will impact savings calculations and that each city now pays a different price for transmission and the delivered price of energy. Because of the numerous factual differences, IPL does not believe consolidation will simplify or expedite the process.

IPL maintains that consolidation, given the factual issues that are specific to each individual municipality, will prejudice the substantial rights of IPL. IPL states that it is entitled to conduct discovery with respect to each separate municipality, to address the specifics of each municipality's factual case, and to have the Board apply the applicable law to the specific facts of each municipality's case. In addition, IPL argues that each docket must have its own separate record in the event of appeal.

IPL states that if, as the case progresses, certain legal and factual issues evolve which lend themselves to a joint hearing, IPL would have no objection. IPL gives as an example expert testimony on the appropriate valuation standard. IPL notes, however, that at this point consolidation of any issues would be premature and that the record in each docket would need to contain the transcript of hearing and briefs on the consolidated issue or issues.

Discussion

Perhaps the strongest argument in favor of some form of consolidation is that the pleadings filed to date by all parties have been virtually identical; in most cases, little more than the name of the city has been changed. The Board recognizes, though, that these municipalization dockets are in their early stages and that factual differences among the six dockets might become greater as discovery is conducted and prefiled testimony submitted. IPL points out some of the potential factual differences among the six dockets; others may arise.

At the same time, there appear to be significant common questions of law and fact that apply to all six dockets. Some form of consolidation should expedite and simplify the proceeding, particularly on issues such as valuation method, which are

likely to be common to all six dockets. The Cities indicate that the same experts will be used in all six dockets and counsel for all parties is the same in each docket. The task for the Board is to balance the advantages of some form of consolidation while maintaining all the parties' due process rights in the individual dockets.

The Board is not persuaded by IPL's argument that its discovery would be hampered by consolidation. Even with consolidation, IPL would be free to submit data requests that applied to each separate city. The Board does believe, however, that the individual dockets must be maintained for purposes of potential appeals. Even though there may be common issues, some cities may decide to appeal the Board's decision on common issues while other cities may not. The administrative and evidentiary records also must be maintained separately because there will likely be issues or factual determinations that will only impact individual cities.

The Board, based on the current status of these proceedings and the pleadings filed to date, believes the interests of all parties can best be balanced by consolidating the dockets for purposes of hearing and procedural schedule only, but maintaining the individual dockets as separate contested cases. The Board anticipates that it will issue one final order that applies to all six dockets, with the order being divided into common issues and issues that apply to individual cities. That way, all issues will be decided at the same time. If the Board, for example, were to decide common issues first, there would be some question whether that order would be subject to immediate appeal or would have to wait for the decision on individual issues. By issuing one decision, there will be no question as to when the appeal time begins to run.

With respect to filing pleadings and prefiled testimony, consolidation for purposes of hearing and procedural schedule only will reduce the amount of paper that needs to be filed. On pleadings or prefiled testimony that is identical in all six dockets, the parties no longer need to file an original and ten copies in each of the six dockets (66 copies). Instead, pursuant to 199 IAC 7.4(4)"c," only six extra copies will need to be filed (an original plus 16), so that a copy can be placed in each individual docket. On pleadings or prefiled testimony that apply to only one city or docket, an original and ten will need to be filed in the individual docket; copies of those individual docket filings will not need to be submitted for the other dockets.

The Board recognizes that consolidation of the dockets only for purposes of hearing and procedural schedule creates some issues not addressed in the arguments for and against consolidation. For example, should there be a hearing first on common issues, followed by some time delay before continuing with individual issues, or should the hearing flow continuously? Before issuing a procedural schedule, the Board will set a prehearing conference for the Board's counsel and staff to discuss with the parties' counsel these types of issues. Parties may participate by telephone. The Board will issue a procedural schedule subsequent to this conference.

IT IS THEREFORE ORDERED:

1. The motions for consolidation filed by cities of Everly, Kalona, Rolfe, Terril, Titonka, and Wellman, Iowa, on July 7, 2006, are granted to the extent discussed in this order and denied in all other respects.

2. A prehearing conference is scheduled for Wednesday, August 30, 2006, beginning at 10 a.m. The conference will be held in Conference Room 3 at the Board's offices at 350 Maple Street, Des Moines, Iowa. Parties may participate by phone by calling the Board's bridge line, 1-866-708-4636. The line will be available approximately five minutes prior to the start of the conference.

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 17th day of August, 2006.