

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>CITY OF TERRIL, IOWA, Petitioner,</p> <p> v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY, Respondent.</p>	<p>DOCKET NO. SPU-06-8</p>
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ORDER DENYING MOTION TO DISMISS

(Issued November 2, 2006)

On June 6, 2006, the city of Terril, Iowa (Terril), 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. Terril is an Iowa municipal corporation presently receiving electric service from Interstate Power and Light Company (IPL). IPL owns the electric distribution system within Terril.

Terril's filing, commonly referred to as a municipalization proceeding, is identified as Docket No. SPU-06-8. Similar petitions were also filed on June 6, 2006, by five other municipalities (Everly, Kalona, Rolfe, Titonka, and Wellman) receiving electric service from IPL. All six filings were consolidated only for purposes of

hearing and procedural schedule by order issued August 17, 2006; a procedural schedule was set by order issued September 5, 2006.

On June 22, 2006, IPL filed a motion to dismiss Terril's petition. Of the six municipalization filings, Terril's is the only one subject to such a motion. Terril filed a response to the motion to dismiss on July 7, 2006. IPL renewed its motion to dismiss as part of a filing on July 20, 2006. At a prehearing conference with Board staff on August 30, 2006, both IPL and Terril indicated a desire to file additional pleadings with respect to the motion to dismiss. Terril filed an additional resistance on October 2, 2006; IPL filed a reply to the additional resistance on October 12, 2006.

IPL'S POSITION

IPL states that its electric franchise agreement with Terril, which is attached to Terril's petition as Exhibit 2, does not expire until April 13, 2018, although a Terril city ordinance permits Terril to cancel the franchise in either 2008 or 2013 by giving written notice to IPL. IPL states that the earliest Terril can give such notice is March 14, 2008, and that any municipalization petition filed by Terril before that date is time barred and must be dismissed.

IPL also argues that Terril's filing is premature because by the time Terril could establish a municipal utility under the terms of its franchise with IPL, the valuation of IPL's system in Terril could and likely would change. IPL notes that much can happen prior to March 14, 2008, that could impact other issues related to municipalization.

IPL points out that Terril does not dispute that it cannot contractually give notice of any intention to terminate its franchise with IPL until 2008, but rather argues that Terril can save time and money by joining with the other five cities in this proceeding. IPL states that Terril further argues the existence of the franchise is simply one factor to be taken into account in the public interest and value determinations and that it is otherwise of no relevance to this municipalization proceeding.

IPL disagrees with Terril's contention about the franchise and argues that the franchise between Terril and IPL is a contractual document entitled to enforcement by the Board and the courts, remaining in effect until its term expires or it is terminated according to its terms. IPL further argues that allowing Terril to proceed with a municipalization proceeding when it does not have the legal right to terminate the franchise for two years would be ignoring that provision of the franchise agreement. IPL notes that not only might valuations change significantly, but public sentiment could also change as Terril residents see the results of the other municipalization proceedings.

TERRIL'S POSITION

Terril states it is not premature or barred by the franchise from filing a municipalization petition. Terril points out the municipalization process takes a significant amount of time and that IPL's franchise authority, which runs until April 13, 2018, can be cancelled effective April 13, 2008, if notice is given by Terril on or after

March 14, 2008. Terril notes that by filing now there will be time for a smooth transition, if Terril is successful. Terril contends the existence, terms, and cancellation of a franchise agreement are factors the Board can consider in rendering its decision but should not bar Terril from presenting its case to the Board.

Terril states that one of IPL's arguments is that the value of the Terril electric system could change between the time of the municipalization proceedings and the expiration of the franchise. Terril believes if there is any change in value, it will be to a lesser value due to depreciation, given that Terril is unaware of any significant system upgrades planned by IPL.

Terril also points out that it has joined with five other cities to retain legal, engineering, and financial consultants to assist in the case. If Terril were forced to proceed on its own at a later date, costs would be greater.

Terril finally notes that if Terril cancels its franchise agreement in 2008, Terril will continue to receive service from IPL (at least until any municipalization process is complete). The other five cities that have joined with Terril continue to receive service from IPL even though no franchise is currently in existence. Terril states that IPL has not argued that it has acted in reliance upon the franchise for purposes of investing in upgrades to Terril's system.

BOARD DISCUSSION

Iowa Code § 476.23, which details the municipalization process, and the Board's administrative rules are silent as to when a municipalization petition might be

filed. The statute states, in part, that "[a]ny municipal corporation, after being authorized by a vote of the people, . . . may file a petition" The statute by its terms does not require the expiration or termination of any franchise and does not set time parameters for the vote or petition filing.

IPL and Terril appear to be in agreement that Terril cannot take over or municipalize the electric system in the city until the franchise is terminated. The earliest this can occur is April 2008. Until that time, IPL has a right pursuant to the franchise agreement to provide electric service to Terril and its citizens.

Even assuming IPL's franchise with Terril is terminated in April 2008, IPL is bound by Iowa's exclusive service territory statutes (Iowa Code §§ 476.22 through 476.26) to continue serving Terril until the Board authorizes another provider, either through a municipalization proceeding or transfer of IPL's exclusive service territory in Terril to another utility. In other words, if Terril were to terminate the franchise in April 2008, IPL would continue to be the service provider during the pendency of any municipalization proceedings (and would continue indefinitely as the provider if the municipalization request is denied or Terril determines not to complete the municipalization process). The presence or absence of a franchise does not change an electric utility's obligation to provide service within its exclusive service territory. However, with a franchise agreement, the electric utility has the certainty of knowing it will remain the service provider during the term of the agreement.

IPL will remain the electric service provider for Terril at least until April of 2008. If Terril's municipalization process is successful and is completed prior to that date, there will be time for transition. No actual transfer from IPL to Terril can take place prior to termination of the franchise, absent agreement of the parties and approval by the Board. However, if Terril is forced to wait until April of 2008 to file its petition, IPL will likely provide service to Terril for at least two or three years after franchise termination while the municipalization proceedings are pending before the Board and subject to any court appeals. In other words, if Terril is forced to wait to file until actual franchise termination to begin the municipalization process, IPL in effect receives an extension during the pendency of the proceedings.

If there were ten years remaining before Terril could terminate its franchise, the Board would dismiss Terril's petition as premature because information regarding valuation and other issues would be stale and outdated by the time any municipalization transfer could potentially occur. If Terril's petition were filed in early 2008, there is no question that it would not be dismissed because the franchise termination date would occur before any hearing before the Board. The Board is faced here with something in between. Hearings are currently scheduled for June 25, 2007. It is likely that the proceedings before the Board, particularly if rehearing is requested, will not be completed until late 2007. Given this time frame, Terril's petition for municipalization is not premature and will not be dismissed.

If IPL believes that valuations would increase significantly from the time of hearing to April of 2008, it can propose an upward adjustment that could be based on any number of factors, such as inflation or anticipated additional investment in Terril's facilities; likewise, Terril may advocate a downward adjustment for depreciation or other reasons. An adjustment for valuation changes is just one of many factors that the Board can consider in determining the valuation of IPL's Terril facilities. If unanticipated events cause values to change dramatically in a manner that could not be anticipated, either party could request that the Board revisit the valuation issue.

IT IS THEREFORE ORDERED:

The motion to dismiss filed by Interstate Power and Light Company on June 22, 2006, and renewed on July 20, 2006, is denied.

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 2nd day of November, 2006.