

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>MIDWEST RENEWABLE ENERGY PROJECTS LLC,</p> <p style="text-align:right">Complainant,</p> <p style="text-align:center">v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="text-align:right">Respondent.</p>	<p>DOCKET NO. 199 IAC 15.3 (PURPA Section 210)</p>
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ORDER HOLDING COMPLAINT IN ABEYANCE

(Issued November 13, 2006)

On June 30, 2006, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) its biennial report of Public Utility Regulatory Policies Act of 1978 (PURPA) avoided cost information pursuant to 199 IAC 15.3 (2006 PURPA Report). Rule 199 IAC 15.3 requires rate-regulated utilities, such as IPL, to file “the information required to be supplied to the Board under 18 CFR 292.302.” Rule 18 CFR 292.302 and other federal rules cited later in this order were promulgated by the Federal Energy Regulatory Commission (FERC).¹

¹ Specifically, FERC subrule 18 CFR 292.302(b) requires rate-regulated electric utilities to supply the following:

(b) General rule. To make available data from which avoided costs may be derived, not later than November 1, 1980, June 30, 1982, and not less often than every two years thereafter, each regulated electric utility described in paragraph (a) of this section [utilities with annual retail sales greater than 500 million kWh] shall provide to its State regulatory authority, and shall maintain for public inspection . . . the following data:

On July 27, 2006, Midwest Renewable Energy Projects LLC (Midwest Renewable) filed a complaint with the Board about the information provided in IPL's 2006 PURPA Report. On August 10, 2006, IPL filed an answer and motion to dismiss Midwest Renewable's complaint. On August 24, 2006, Midwest Renewable filed a resistance to IPL's motion. No other entities have filed comments or pleadings in this docket.

I. Midwest Renewable Position

Midwest Renewable complains that IPL's 2006 PURPA Report does not comply with the requirements of 18 CFR 292.302. Specifically, Midwest Renewable argues that IPL's 2006 PURPA Report does not provide estimated avoided energy cost information for various levels of purchases from qualifying facilities (QFs). 18 CFR 292.302(b)(1). Instead, Midwest Renewable points out that IPL's report reflects avoided energy costs for only one block size (1 MW). Midwest Renewable contrasts IPL's 2006 PURPA Report with the one filed by MidAmerican Energy Company, which estimates avoided costs for blocks of 0+, 50, 100, 150, and 200

(1) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next 5 years;

(2) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years; and

(3) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

MW. Midwest Renewable states that IPL's 2006 PURPA Report might provide a basis for determining avoided costs for 1 MW, but not 80 MW facilities.

Midwest Renewable also argues that the 2006 PURPA Report does not provide estimated avoided energy costs for "the current calendar year" as required by 18 CFR 292.302(b)(1). Instead, Midwest Renewable argues the 2006 PURPA Report is based on outdated 2004 assumptions and input data, especially for fuel costs. As a result of these alleged deficiencies, Midwest Renewable maintains that the 2006 PURPA Report does not comply with 18 CFR 292.302(b), which requires that such reports "make available data from which avoided costs may be derived."

Midwest Renewable contends the deficiencies in IPL's 2006 PURPA Report are of concern to all persons interested in developing PURPA QFs, and not Midwest Renewable alone. Midwest Renewable maintains that 18 CFR 292.302(e) authorizes the Board to review the avoided cost data in IPL's 2006 PURPA Report and places the "burden of proof" on IPL for justifying its data. Midwest Renewable states that IPL has not met its "burden of proof" and, accordingly, asks that the Board require IPL to file an updated 2006 PURPA Report that estimates avoided costs at various purchase levels (not just 1 MW), based on current (not 2004) input data and assumptions.

II. IPL Position

IPL argues that Midwest Renewable offers no valid basis for its complaint and, therefore, the complaint should be dismissed. IPL acknowledges that it would have the burden of proof in any Board review of its 2006 PURPA Report under

18 CFR 292.302(e), but argues that the Board has not initiated such a review, which IPL states is not mandatory. IPL points out that the Board has never conducted such a review.

IPL claims that it has met the filing requirements of 18 CFR 292.302. With regard to providing avoided cost information for “various levels of purchases” (i.e., beyond 1 MW), IPL argues that information for larger blocks would not correspond closely enough to any actual proposed project to be meaningful and that estimating between block sizes through linear interpolation would be inaccurate. IPL contends that the information contained in its 2006 PURPA Report provides a starting point for case-by-case analysis of avoided costs for specific actual projects.

Regarding the age of IPL’s input data and assumptions, IPL argues that it has used the most up-to-date, comprehensive information available. Although some of the information is based on 2004 costs, that information has been escalated to current year dollars based on information from the DOE Energy Information Administration’s (EIA) *Annual Energy Outlook 2005*. IPL contends that Midwest Renewable overstates the escalation in fuel costs and does not take into account projections beyond 2007. Also, IPL doubts the accuracy of making selective updates without taking into account the effects of these changes on other factors, and notes that a comprehensive updating of its data and assumptions will not be available until late 2007, at which time, IPL believes, Midwest Renewable would probably regard the data as outdated.

IPL contends that Midwest Renewable overstates FERC's intentions for the avoided cost information filed under 18 CFR 292.302. Specifically, IPL points to FERC's 1980 order adopting 18 CFR 292.302, in which FERC explains:

Section 292.302 of these rules is intended by the Commission to assist those needing data from which avoided costs can be derived. It requires electric utilities to make available to cogenerators and small power producers data concerning the present and anticipated future costs of energy and capacity on the utility's system. . . .

The Commission has clarified [18 CFR 292.302(b)] to emphasize that these data are not intended to represent a rate for purchases from qualifying facilities. Rather, these data are to be considered the first step in the determination of such a rate. FERC ¶ 30,128 at p. 30,868 (45 FR 12218, February 25, 1980).

IPL maintains that its 2006 PURPA Report provides sufficient data for this "first step," i.e., as an informational filing, not intended by itself to define avoided cost rates. Otherwise, IPL notes that there would be no need for avoided cost proceedings such as those currently involving Midwest Renewable in Docket No. AEP-05-1 and Docket Nos. AEP-05-2, 3, and 4. IPL contends the relevant substantive issue is not the information provided in IPL's 2006 PURPA Report, but rather how that information will be used in setting avoided cost rates in separate proceedings.

IPL argues that the substantive issue at the heart of Midwest Renewable's complaint is the appropriate avoided cost rate for Midwest Renewable's proposed project, which is already being addressed in one of Midwest Renewable's avoided cost proceedings currently before the Board, Docket No. AEP-05-1. IPL points out

that the changes that Midwest Renewable seeks in IPL's 2006 PURPA Report are already being sought in that docket. IPL contends that its 2006 PURPA Report complies with the filing requirements of 18 CFR 292.302 and 199 IAC 15.3, and provides a "starting point" for determining avoided cost rates.

III. Board Discussion

Midwest Renewable's complaint raises two separate issues relating to IPL's 2006 PURPA Report. The first is whether IPL is in compliance with the filing requirements of 18 CFR 292.302(b) and 199 IAC 15.3. The second is the validity of the avoided cost information provided in IPL's 2006 PURPA Report.

The first issue is whether IPL has satisfied the filing requirements for its 2006 PURPA Report. While 18 CFR 292.402² indicates that FERC enforces its own filing requirements under 18 CFR 292.302(b), the Board believes it also has the authority not only pursuant to PURPA but also under Iowa Code chapter 476 to require that additional information be filed as part of the PURPA report.

Iowa utilities have traditionally used the avoided cost information from their PURPA Reports as the basis for proposing standard avoided cost tariff rates for QFs with a capacity of 100 kW or less, pursuant to 199 IAC 15.5(3). However, this information is potentially subject to change by the Board in approving final tariff rates, based on evidence presented by the utility and other parties. Most recently, IPL used

² Rule 18 CFR 292.402 states:

292.402 Implementation of certain reporting requirements.

Any electric utility which fails to comply with the requirements of § 292.302(b) shall be subject to the same penalties to which it may be subjected for failure to comply with the requirements of the Commission's regulations issued under section 133 of PURPA.

an updated version of its 2004 PURPA Report as the basis for proposing revisions to its standard tariff rates for QFs with a capacity of 100 kW or less, in TF-05-259.

For QFs larger than 100 kW, 199 IAC 15.5(4) states that avoided cost rates “shall be determined in contested case proceedings before the board, unless the rates are otherwise agreed upon by the qualifying facility and the utility involved.” In Docket No. AEP-05-1, IPL has been ordered to update its avoided cost estimate for Midwest Renewable’s proposed 80 MW wind project, based on the same modeling inputs and assumptions used to produce its 2006 PURPA Report. Again, these inputs and assumptions are potentially subject to change by the Board in determining the final avoided cost rate, based on evidence presented by IPL and other parties in that proceeding.

The information contained in the PURPA report, particularly for larger projects, appears to largely represent first-step information that is used to determine whether further negotiations with the utility should be pursued. While the information may not determine the final negotiated rate, it should nonetheless allow an investor to estimate with some reasonable certainty whether there is any basis for further discussions with the utility. After the conclusion of Docket No. AEP-05-1, the Board will determine whether additional information, such as avoided costs for multiple blocks, should be required in the 2006 PURPA report or future reports.

The second issue is the validity of the avoided cost information contained in the 2006 PURPA Report. Midwest Renewable argues that 18 CFR 292.302(e) authorizes the Board to review the avoided cost data in IPL’s 2006 PURPA Report,

and places the “burden of proof” on IPL for justifying its data, which Midwest Renewable argues IPL has not done. Midwest Renewable asks that the Board require IPL to file an updated 2006 PURPA Report based on current (not 2004) input data and assumptions. IPL presents various arguments about why the data it used is the best and most comprehensive available.

This is similar (if not identical) to the issue that Midwest Renewable is currently litigating with regard to IPL’s 2006 PURPA Report data in Docket No. AEP-05-1. As noted above, PURPA report data is appropriately validated through the Board’s avoided cost ratemaking process. Because the PURPA report data validity issue will be resolved in Docket No. AEP-05-1, the Board will not separately litigate the issue here through the complaint process. The Board will not utilize its resources and those of other parties (including the Consumer Advocate Division of the Department of Justice) to litigate the same issue twice.

The Board notes that the resolution of this data validity issue in Docket No. AEP-05-1 might require IPL to make revisions to its standard avoided cost tariff rates for small QFs under subrule 199 IAC 15.5(3). In addition, as discussed above, the Board might require that information such as avoided costs for multiple purchase blocks be included in the PURPA reports. Therefore, the Board will hold this docket in abeyance until the conclusion of the rehearing process in Docket No. AEP-05-1.

IT IS THEREFORE ORDERED:

The complaint filed by Midwest Renewable Energy Projects LLC on July 27, 2006, is held in abeyance until the completion of the rehearing process in Docket No. AEP-05-1.

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 13th day of November, 2006.