

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>MIDWEST RENEWABLE ENERGY PROJECTS LLC,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="text-align:center">v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. AEP-05-1</p>
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**ORDER GRANTING REQUEST FOR CONFIDENTIALITY AND DENYING
REQUEST FOR SPECIAL CONFIDENTIALITY**

(Issued December 6, 2006)

On November 6, 2006, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) an application for confidential treatment of some testimony and exhibits contained in IPL's rebuttal testimony. The material for which confidential treatment was sought included wind purchase profiles and terms and conditions of wind energy purchases. IPL supported the request for confidentiality with an affidavit by a corporate officer. The material for which confidentiality was requested was filed in a separate envelope and marked confidential. IPL cited Iowa Code § 22.7(6) (2005) as authority for confidential treatment of the data.

IPL claims the information is a report to a governmental agency that, if released, would give advantage to competitors and serve no public purpose and, therefore, should be held confidential pursuant to section 22.7(6). IPL states release of the information would enable its energy suppliers to obtain prices and contract terms and therefore discourage suppliers from submitting a bid below the price contained in the contract. IPL argues the end result will be higher bids in future power solicitations, perhaps fewer bidders, and eventually higher costs to IPL's customers.

The wind purchase profile information filed on November 6, 2006, qualifies as a report to a government agency. Based upon the information supplied by IPL, release of such information serves no public purpose. Therefore, the Board will hold the information confidential pursuant to Iowa Code § 22.7(6).

On November 6, 2006, IPL also filed an application for special confidential treatment of a portion of its rebuttal testimony, specifically Exhibit REF-2 and an unredacted version of page 3 of witness Kitchen's rebuttal testimony. IPL has shared the information for which it requests special confidentiality with the Consumer Advocate Division of the Department of Justice (Consumer Advocate), but provided the other party to the case, Midwest Renewable Energy Projects LLC (Midwest Renewable), with only a redacted copy of page 3 of the testimony (the exhibit was not provided). This differentiates the information which IPL has called "special confidential" from the information that was subject to the request for confidential

treatment discussed and granted above, which was provided to both Consumer Advocate and Midwest Renewable pursuant to protective agreements but will be held confidential in the public record.

IPL states in its request for special confidential treatment that the protective agreement it has with Midwest Renewable does not envision the sharing of the special confidential information with Midwest Renewable because it could disadvantage the wind developers with which IPL is contracting. The special confidential information contains pricing information for wind projects for which IPL is completing contract development.

On November 20, 2006, Midwest Renewable filed a resistance to IPL's request for special confidential treatment. Midwest Renewable argued that granting the request would violate Midwest Renewable's due process rights as a party to this proceeding. Midwest Renewable argued that the confidentiality agreement it has with IPL (a copy is attached to Midwest Renewable's resistance) provides that IPL need not furnish any renewable energy power purchase agreements or confidential information disclosed to IPL by bidders in response to a request for proposals (RFP) issued by IPL on or about January 19, 2005. Midwest Renewable said the information in question is merely under contract development and not related to the January 15, 2005, RFP. In addition, Midwest Renewable noted that IPL did not provide Midwest Renewable with the alternate information, in lieu of bid sheets, contemplated by enumerated paragraph 4 of the confidentiality agreement.

Midwest Renewable said the confidentiality agreement does not represent a waiver of its right to examine and respond to evidence IPL files for the Board to consider in making its decision. Midwest Renewable asked the Board to deny the request for special confidential treatment or, in the alternative, strike the exhibit and the unredacted version of page 3 of witness Kitchen's rebuttal testimony from the evidentiary record.

IPL filed a response to Midwest Renewable's resistance on November 28, 2006. IPL noted the redacted information specifically concerns non-final term sheets for projects that remain in active negotiations between IPL and third parties. IPL enumerated several reasons why the information (which was provided to Consumer Advocate) should not be provided to Midwest Renewable, including the fact that the negotiations were with direct competitors of Midwest Renewable. IPL said revealing terms still under active negotiation could harm both present and future negotiations, resulting in potentially higher costs to customers. IPL cited several cases where discovery of commercial or trade secrets has been limited by the courts.

IPL opposed Midwest Renewable's alternative request, to strike the special confidential information, because IPL believes the information is another market indicator that can serve the Board as a comparison for the results of the revised and updated electric generation expansion analysis system (EGEAS) analysis at issue in the upcoming hearing. IPL maintained that the information qualifies for special

confidential status and emphasized that the information in question qualifies as a trade secret under Iowa law.

The Board does not question that the information qualifies for confidential treatment as a report to a government agency or as a trade secret and therefore is entitled to protection from public scrutiny pursuant to 199 IAC 1.9. The issue is whether the information can be withheld from a party to the proceeding who has executed a confidentiality agreement.

IPL attempts to frame the issue as a discovery dispute. The Board does not, however, consider this a discovery dispute. Originally, the information was provided to Consumer Advocate in response to a data request, with a redacted version provided to Midwest Renewable. Midwest Renewable then requested an unredacted copy and IPL refused. That discovery dispute has not come before the Board.

IPL subsequently used the information in the data request response in its rebuttal testimony. This is not a case of alleged abuse of discovery by Midwest Renewable because IPL itself has presented the information as part of its rebuttal case, in the belief that it is relevant information the Board should consider when making its decision. Midwest Renewable should be able to see, review, and rebut the information (pursuant to protective agreement) that is offered to support IPL's case; otherwise, IPL's theories of the case cannot be challenged because a litigant (in this case, Midwest Renewable, which started these proceedings with a complaint against IPL) does not know what information to challenge.

The Board does, though, recognize the sensitive nature of sharing information from other power suppliers with a direct competitor of those suppliers. The Board, from prior proceedings in this and other dockets, knows that there may be confidentiality agreements between potential suppliers and IPL with respect to pricing information. Therefore, IPL will be given the option to either provide the exhibit and unredacted page of the testimony to Midwest Renewable or the Board will strike the unredacted version of page 3 of witness Kitchen's testimony and Exhibit REF-2 from the evidentiary record. IPL is to notify the Board within three business days of the date of this order whether it will immediately provide the exhibit and unredacted copy of the testimony to Midwest Renewable, pursuant to a protective agreement. Absent such action by IPL, the identified evidence will be stricken without further order of the Board.

IT IS THEREFORE ORDERED:

1. The request for confidentiality filed by Interstate Power and Light Company on November 6, 2006, is granted.
2. The filed information shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).
3. The request for special confidential treatment filed by Interstate Power and Light Company on November 6, 2006, is denied, although the information shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).

4. IPL shall notify the Board within three business days whether it will provide unredacted copies of the information to Midwest Renewable; if IPL fails to provide the information denominated as special confidential to Midwest Renewable, the unredacted version of page 3 of witness Kitchen's testimony and Exhibit REF-2 are stricken from the evidentiary record without further order.

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 6th day of December, 2006.