

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY AND ITC MIDWEST LLC	DOCKET NO. SPU-07-11
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**ORDER ACCEPTING FILING AND COMMENCING INVESTIGATION,
NOTICE OF HEARING AND ORDER SETTING PROCEDURAL SCHEDULE,
INTERVENTION DEADLINE, ORDER GRANTING INTERVENTIONS AND
MOTIONS TO APPEAR PRO HAC VICE, AND EXTENDING DECISION DEADLINE**

(Issued April 27, 2007)

On March 30, 2007, Interstate Power and Light Company (IPL) and ITC Midwest LLC (ITC Midwest), collectively "Applicants," filed with the Utilities Board (Board) a joint application for reorganization pursuant to Iowa Code §§ 476.76 and 476.77 (2007) and 199 IAC 32 to allow IPL to sell and transfer its electric transmission assets to ITC Midwest. Pursuant to the proposed sale, ITC Midwest would purchase, among other things, IPL's Iowa-based electric transmission assets.

IPL is an Iowa corporation providing retail electric and gas service in Iowa and is a wholly-owned subsidiary of Alliant Energy Corporation, a public utility holding company. IPL's retail electric and gas service is regulated by the Board. ITC Midwest is a Michigan limited liability company that will operate an independent transmission company managing an electric transmission system in Iowa, Illinois, Minnesota, and Missouri. ITC Midwest is owned by ITC, a holding company that is the largest independent transmission company in the United States.

The joint application states that the proposed sale was the result of IPL's long-standing efforts to explore alternative independent transmission organization structures that would best serve the needs of IPL's customers and the region. The joint application notes that the proposed transmission sale is part of IPL's larger plan for major electric utility infrastructure development for its customers to advance economic development, enable renewable energy, and support the Midwest's burgeoning alternative fuels industry. IPL and ITC Midwest argue in their application that the infusion of capital into IPL from the sale, along with ITC Midwest's ability to provide the transmission infrastructure needed to support IPL's proposed base load generation and wind power facilities, are the keys to success for these projects, which support economic and infrastructure development in Iowa.

Pursuant to Iowa Code § 476.77(2), the proposed reorganization shall be deemed to have been approved by operation of law unless disapproved by the Board. The statute also provides that the Board shall not disapprove a proposal for reorganization without providing for a hearing. The statute provides that a notice of hearing must be issued no later than 50 days after the proposal for reorganization has been filed. This reorganization application involves the proposed sale of IPL's transmission assets to an independent transmission company and, if allowed to proceed, would represent the first such transaction in Iowa. The transmission assets that are the subject of the proposed sale represent a significant portion of IPL's rate base. The Board's preliminary review shows that the reorganization application substantially complies with the Board's filing requirements. Therefore, the Board will

accept the application and commence an investigation into the proposed reorganization. In furtherance of the investigation, the Board will set a date for hearing and establish a procedural schedule and deadline for intervention.

Iowa Code § 476.77(2) states "[a] proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within ninety days after the filing." This section further provides "[t]he board, for good cause shown, may extend the deadline for acting on an application for an additional period not to exceed ninety days."

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion for extension of the 90-day deadline on April 4, 2007. In support of the request, Consumer Advocate cited the voluminous filing made by Applicants, the size of the transaction, and issues that Consumer Advocate intends to investigate, including jurisdictional issues. No objections to the motion for extension were filed.

The Board's initial review of the joint application, which involves the sale of all of IPL's transmission assets, shows that there are issues presented that are unique and require extensive analysis. The Board finds that good cause exists for extension of the statutory deadline for the maximum time allowed, 90 days. The statutory deadline for Board decision is therefore September 27, 2007.

In its request, Consumer Advocate also asked for an additional 60 days to file its testimony and exhibits. 199 IAC 32.9(1). The Board is unable to grant the full extension requested because the Board must provide adequate time for the

remainder of the procedural schedule, including briefs and Board decision, within the deadline mandated by statute. However, additional time for filing testimony is contained in the procedural schedule that will be established in this order. The Board will also set an intervention deadline.

The Board encourages any intervenors to file prefiled testimony pursuant to the schedule contained in this order. Prefiled testimony is useful to the Board and other parties, narrowing and focusing the issues and helping parties to prepare for cross-examination at the hearing. However, the failure to file testimony will not preclude intervenors from presenting testimony and exhibits at the hearing. 199 IAC 32.9(1). The Board realizes that prefiled direct testimony and exhibits may be supplemented or expanded at hearing to accommodate information that was not available or ready in testimony and exhibit form at the time of the prefiled testimony deadline.

Several petitions or motions to intervene have been filed. Those requesting intervenor status are: the Iowa Association of Municipal Utilities, Midwest Municipal Transmission Group, Missouri River Energy Services, and Wisconsin Public Power Inc. (collectively, Municipal Coalition) filed on April 6, 2007; Central Iowa Power Cooperative (CIPCO) filed on April 12, 2007; Corn Belt Power Cooperative (Corn Belt) filed on April 12, 2007; MidAmerican Energy Company (MidAmerican) filed on April 13, 2007; and the Community Coalition for Rate Fairness, the Large Energy Group, and the Resale Power Group of Iowa (CCRF/LEG/RPG) filed on April 13, 2007.

In support of their petition to intervene, the Municipal Coalition states that its members include a non-profit association that has many member municipal utilities dependent on or interconnected with IPL; a non-profit association representing city and governmental entities (many of which interconnect with the IPL transmission grid); a municipal joint agency that supplies power to its members (some of the firm load uses the IPL transmission system); and a municipal electric company in Wisconsin that has a long-term requirements contract with an Iowa municipal utility. The Municipal Coalition further states that the proposed sale could expose the municipal systems using the IPL transmission system to "sharp rate increases upon transfer, with further increases likely over time." (Petition to Intervene, p. 3). The Municipal Coalition notes that upon completion of the transfer, transmission rates would be subject only to the jurisdiction of the Federal Energy Regulatory Commission (FERC). While the Municipal Coalition acknowledges that Consumer Advocate represents the public generally in such proceedings, the Municipal Coalition states that its interests are unique.

Applicants filed a resistance to the Municipal Coalition's petition to intervene on April 13, 2007. Applicants note, as acknowledged by the Municipal Coalition, that after the sale of IPL's transmission system, transmission rates charged to municipalities will be subject only to FERC jurisdiction. Applicants also note that this is true today—the wholesale transmission rates currently charged by IPL to municipalities are subject only to FERC jurisdiction. (Resistance, p. 3). Applicants suggest that the Municipal Coalition could adequately protect its interests by

intervening in the FERC approval process for the proposed sale, but their intervention in the Iowa reorganization proceeding should be denied because the Board has no lawful authority to address the rate issues raised by the Municipal Coalition. In addition, Applicants argue that any potential transmission services rate increase is speculative and that any arguments regarding the rate process and the appropriateness of incentives can be raised before FERC.

On April 18, 2007, the Municipal Coalition filed a pleading that was entitled "Response or Amendment Regarding Intervention." The Municipal Coalition notes that the proposed transfer of IPL's transmission assets could impact the quality, nature, price, or quantity of transmission service and that these issues should be examined. The Municipal Coalition points out that it is not only retail ratepayers' interests that are cognizable under Iowa's reorganization statutes because Iowa Code § 476.77(2)"e" sets forth "whether the public interest is detrimentally impacted" as one of the issues for the Board to consider in a reorganization.

Applicants filed a joint response to the Municipal Coalition's response or amendment on April 25, 2007. Applicants took issue with factual allegations made by the Municipal Coalition regarding corporate control and structure of ITC Midwest and provided copies of public filings to show the correct control and structure. (The Board will not further describe the allegations or response because they were not relevant to the Board's consideration of the Municipal Coalition's petition to intervene.) On the merits of the Municipal Coalition's intervention petition, Applicants state the public interest standard used by the Municipal Coalition is too broad and would set an

unreasonable standard for intervention, allowing every member of the public to intervene on an individual basis.

On April 26, 2007, the Municipal Coalition filed a "Further Response Regarding Intervention," clarifying its interest in this proceeding.

The Board will grant the petition to intervene. Iowa Code § 476.77 requires the Board to look at both ratepayer and public interests; they are listed as separate decision criteria in the statute. The Board has always considered public interest to mean that the Board must look at the impact of the proposed reorganization on the public interest generally, and in the past the Board has considered such diverse factors as employment levels and home office retention under this criterion. The potential impact of this reorganization on the Municipal Coalition's members could be significant because their members are transmission-dependent utilities. Quality, nature, price, access, and availability of transmission service are issues that could be relevant to this reorganization proceeding. The Municipal Coalition should have the opportunity to conduct discovery and offer prefiled testimony with respect to such potential impacts on their members' wholesale transmission service.

The Board recognizes that FERC regulates wholesale transmission rates today and that FERC will continue to regulate wholesale transmission rates if the reorganization proceeds. However, this does not mean that potential rate impacts are not relevant to the Board's consideration of public interest. Potential rate impacts on wholesale and retail customers are factors to consider in evaluating the public interest. Other factors that might become relevant are any proposed improvements

to quality or quantity of transmission service, including transmission upgrades or addition of new lines, which could be facilitated by the reorganization. In ruling on a proposed reorganization, the Board looks at numerous factors and balances the interests of ratepayers and the public interest generally. Numerous factors are relevant, but no single factor is determinative.

The Board notes that persons with interests similar to those of the Municipal Coalition were granted intervenor status in a prior Board docket involving a proposed transmission reorganization. Interstate Power and Light Company and MidAmerican Energy Company, 2003 Iowa PUC Lexis 176 (4/29/2003) (Docket Nos. SPU-02-21 and SPU-02-23). Also, a case cited by Applicants to support their position to deny intervention is readily distinguishable. In that case, intervention was denied because the potential intervenor was not a customer of the utility involved in the proceeding (and it was unknown whether the potential intervenor ever would be a customer) and the potential intervenor's interests were specifically the subjects of a pending docket before the Board. Interstate Power and Light Company and FPL Duane Arnold LLC, "Order Denying Intervention," Docket No. SPU-05-15 (9/06/2005). Here, some of the Municipal Coalition's members are current IPL customers that will be directly impacted by the reorganization and there is no other docket before the Board dealing with their interests. In addition, while Consumer Advocate represents the interests of "all consumers generally and the public generally in all proceedings before the Board," in most proceedings before the Board, Consumer Advocate's primary focus is on the retail customers of the utility, not the wholesale customers. Iowa Code

§ 475A.2(3). This is because the Board regulates retail electric rates, not wholesale rates, which are regulated by FERC. The Board's application of its intervention standard has been consistent and has not resulted in every member of the public intervening in reorganization or other dockets.

MidAmerican, Corn Belt, CIPCO, and CCRF/LEG/RPG also filed petitions to intervene. In support of its petition to intervene, MidAmerican said that it had substantial transmission system interconnections with IPL throughout the state and that MidAmerican's electric transmission operations and maintenance could be significantly impacted by the proposed transaction. Corn Belt and CIPCO are generation and transmission cooperatives and each state in their separate petitions to intervene that they are interconnected with IPL's transmission system. The joint petition to intervene filed by CCRF/LEG/RPG states that CCRF and LEG are made up of groups of IPL customers, including cities, hospitals, and large industries, and RPG is an association of public and private agencies existing pursuant to an Iowa Code chapter 28E agreement that has 28 municipal utilities interconnected to the IPL system.

No objections to these four petitions to intervene were filed. On April 20, 2007, Applicants filed a response indicating they did not object to the four petitions to intervene. However, Applicants said they reserved the right to request that the Board limit or otherwise impose conditions on the interventions (199 IAC 7.13(5)) if the intervenors attempt to raise matters that Applicants do not believe are cognizable in this reorganization proceeding, such as the matters raised by the Municipal Coalition.

The Board will grant the four petitions to intervene. Each intervenor has alleged a specific and unique interest that should be represented in this proceeding and that is not adequately represented by other parties. Applicants may raise objections to evidentiary matters or seek to limit the interventions at an appropriate time, if necessary, but the Board takes a broader view of what is relevant in this proceeding than the position taken by Applicants in their objection to the Municipal Coalition's intervention.

One final matter must be addressed. Accompanying the petition to intervene filed by the Municipal Coalition were motions for admission pro hac vice filed by Cynthia S. Bogorad and David E. Pompor. Both attorneys are members of the bar in other states or the District of Columbia, but not Iowa. Ms. Bogorad and Mr. Pomper agreed to submit and comply will all provisions and requirements of the Iowa Rules of Professional Conduct applicable to attorneys admitted to practice on a pro hac vice basis. Iowa Court rule 31.14. Attached to their motions was an appearance of Iowa counsel for purposes of service of process. The motions for admission pro hac vice will be granted.

IT IS THEREFORE ORDERED:

1. The proposal for reorganization filed by Interstate Power and Light Company and ITC Midwest LLC on March 30, 2007, is accepted as substantially complying with the filing requirements contained in 199 IAC 32.4. The Board will docket the proposal for reorganization as a separate contested case proceeding, identified as Docket No. SPU-07-11.

2. The following procedural schedule is established:
 - a. Requests to intervene shall be filed on or before June 1, 2007.
 - b. Consumer Advocate and any intervenors may file prepared direct testimony, with underlying workpapers and exhibits, on or before June 7, 2007. If a party references a data request in its prepared testimony, the data request shall be filed as an exhibit.
 - c. Applicants may file reply testimony, with underlying workpapers and exhibits, on or before July 6, 2007.
 - d. The parties shall file a joint statement of the issues on or before July 13, 2007.
 - e. A hearing shall be held beginning at 9 a.m. on August 1, 2007, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Iowa Utilities Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.
 - f. All parties may file simultaneous initial briefs on or before August 17, 2007.
 - g. All parties who filed initial briefs may file reply briefs on or before August 24, 2007.

3. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination that have not been previously filed shall become a part of the evidentiary record of these proceedings. The party making reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

5. In the absence of objection, when the Board has called for further evidence on any issue and the evidence is filed after the close of the hearing, the evidentiary record will be reopened and the evidence will become part of the record five days after the evidence is filed with the Board. All evidence filed pursuant to this paragraph shall be filed no later than three days after the close of the hearing in this proceeding.

6. The following petitions to intervene are granted: the petition filed on April 6, 2007, by the Iowa Association of Municipal Utilities, Midwest Municipal Transmission Group, Missouri River Energy Services, and Wisconsin Public Power Inc.; the petition filed on April 12, 2007, by Central Iowa Power Cooperative; the petition filed on April 12, 2007, by Corn Belt Power Cooperative; the petition filed on April 13, 2007, by MidAmerican Energy Company; and the petition filed on April 13, 2007, by the Community Coalition for Rate Fairness and Large Energy Group and Resale Power Group of Iowa.

7. The motions for admission pro hac vice filed by Cynthia S. Bogorad and David E. Pomper on April 6, 2007, are granted.

8. The 90-day time period for rendering a decision pursuant to Iowa Code § 476.77(2) is extended, for good cause, an additional 90 days, to September 27, 2007.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 27th day of April, 2007.