

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 GRANTING INTERVENTIONS AND
MOTION TO APPEAR PRO HAC VICE**

(Issued June 15, 2007)

On May 30, 2007, American Transmission Company LLC and its corporate manager, ATC Management Inc. (ATC), filed with the Utilities Board (Board) a petition to intervene in Docket No. SPU-07-11. On June 1, 2007, petitions to intervene were filed by three additional entities or groups: Sierra Club; Dairyland Power Cooperative (Dairyland); and a coalition of Clean Wisconsin, Community Energy Solutions, Environment Iowa, Iowa Chapter of Physicians for Social Responsibility, Iowa Citizens for Community Improvement, Iowa Environmental Council, Iowa Farmers Union, and Iowa Renewable Energy Association (collectively, the Coalition).

Docket No. SPU-07-11 involves the joint application for reorganization filed by Interstate Power and Light Company (IPL) and ITC Midwest LLC (ITC Midwest), collectively "Applicants," 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.

The joint application states that the proposed sale is 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.

In support of its petition to intervene, the Sierra Club stated that it is a non-profit corporation with approximately 6,000 Iowa members. Sierra Club said its Iowa members support policies and actions that promote renewable energy sources, including a concern about global climate change produced by carbon emissions, especially emissions from coal-fired electric generating plants. Sierra Club argued it had an interest in the proceeding because IPL may use the proceeds from the reorganization to construct new coal-fired power plants and because the Board must ensure that any new transmission owner will provide renewable energy sources with fair access to transmission lines. Sierra Club asserted that it "would not be in the

public interest for the Board to approve the sale of the transmission lines if Interstate Power intends to use some or all of the proceeds for construction of a coal-fired power plant." (Sierra Club petition to intervene, p. 3).

The Coalition said it is a group of energy, environment, and public health advocacy organizations with an interest in IPL's transmission assets because of the potential impacts on transmission access for producers of renewable energy, potential impacts on interconnection policies and farm-based income derived from renewable energy, and the viability of the distributed generation of renewable energy in Iowa. A description of the various groups making up the Coalition is contained in the petition to intervene. (Coalition petition to intervene, pp. 2-3).

The Coalition said it would present testimony on, among other things, the financial impacts of the reorganization on Iowa ratepayers and the public generally, whether improvements to the transmission system are more likely to be forthcoming after the sale, and whether rate regulation of transmission at the federal level would effectively eliminate Iowa public participation in ratemaking proceedings. The Coalition also said it had an interest in whether "the sale of the transmission system will have an adverse impact on the economic viability now and for the planning horizon of the alternative energy production industry in Iowa, especially during a period when there is likely to be significant new regulation of major CO₂ emitting facilities." (Coalition petition to intervene, p. 4).

On June 8, 2007, Applicants filed a resistance to the petitions to intervene filed by Sierra Club and the Coalition. Applicants argued that neither qualifies as an

intervenor pursuant to 199 IAC 7.13(3) and (5). Applicants said that other than expressing environmental concerns about future coal plants, Sierra Club has not identified an interest in the proceeding; Sierra Club's concerns about coal plant construction are more appropriately addressed in the regulatory proceeding which the Board will conduct after IPL files its siting application for the next generating facility. With respect to two other issues raised by Sierra Club, Applicants pointed out that IPL has committed to use a portion of the proceeds to fund renewable generation and that non-discriminatory transmission access is a federal matter addressed by the Federal Energy Regulatory Commission (FERC).

Applicants stated the Coalition raised similar environmental and renewable issues as the Sierra Club. While some of the Coalition's members are alleged to be unidentified customers of IPL, Applicants argued that this is insufficient to support intervention. In addition, Applicants maintained the financial and jurisdictional issues raised by the Coalition are issues that are likely to be addressed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and others already granted intervenor status, such as the Municipal Coalition.

The Board will grant the petitions to intervene. Both petitions allege an interest in transmission rates and the operation and growth of the transmission system. As the Board has indicated, even though it may not have direct jurisdiction over all of the transmission issues that might be raised, this does not mean that those issues may not be factors to consider in a reorganization when evaluating the public interest. Interstate Power and Light Company and ITC Midwest LLC, "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," Docket No. SPU-07-11 (4/27/2007). The Board believes that such issues as transmission access and transmission rates may very well be relevant to its consideration of the proposed reorganization.

While Consumer Advocate (and other parties) will likely address some of the issues raised by the Sierra Club's and the Coalition's petitions to intervene, the Consumer Advocate's role of representing the public interest is not to be interpreted as representing every potential interest in a proceeding. 199 IAC 7.13(4). The fact that Consumer Advocate might address some of the issues raised by potential intervenors does not justify, by itself, denying the interventions. Although other parties may also address some of the issues of concern to Sierra Club and the Coalition, the intervention process should not be a race to see who files first; both interventions were filed by the intervention deadline of June 1, 2007.

The Board is concerned, however, that some of the issues directly raised or alluded to by the Sierra Club and the Coalition are not likely to be relevant to this proceeding. For example, issues regarding carbon emissions from coal plants do not appear relevant to this reorganization proceeding. The transmission system transports electricity from all generation sources, including coal, nuclear, gas, wind, biomass, and other renewables, but the transmission system itself is not a significant contributor to carbon emissions. A robust transmission system is necessary to

deliver electricity to wholesale and retail customers, regardless of the generation source. The Board reminds all intervenors that it has the authority, at its discretion consistent with the statutory guidelines, to assess some of the Board's expenses to intervenors who, for example, raise new issues or otherwise increase the overall cost of the proceeding. Iowa Code § 476.10.

The Board is also concerned about the number of intervenors in this proceeding. Because this is a reorganization proceeding, the Board is operating under a statutory deadline to issue a decision and therefore has only limited time available for hearing. In reviewing the petitions for intervention, it appears that some intervenors have many common issues. The Board encourages coordination between intervenors with similar interests so that there will not be duplicative cross-examination at the hearing. If coordination is not successful in focusing the cross-examination, the Board may have to impose time limits on cross-examination or take other appropriate measures so that the hearing may be concluded in a timely manner to allow adequate time for all necessary post-hearing procedures, such as post-hearing briefs and Board review, deliberation, and issuance of a final order.

In reorganization proceedings, the Board's rules contemplate that witness testimony and exhibits can be filed at hearing (199 IAC 32.9(1)), although the Board has always encouraged prefiled testimony. Here, because of the number of intervenors, prefiled testimony is the only workable method of receiving initial testimony so that the hearing may be timely concluded; there simply is not enough time to receive initial testimony orally in question and answer form. In fact, most of

the parties responded to the Board's request for prefiled testimony (and the Board recognizes that some parties may not prefile testimony but only participate at hearing by cross-examination of witnesses). The Board is pleased that many intervenors filed prefiled testimony on or before the June 1, 2007, deadline. Intervenors who have not prefiled testimony (but intend to present testimony) should do so as soon as possible; the Board intends to limit new testimony at the hearing to the extent allowed by law.

There is one additional issue to address with respect to the Coalition's intervention. Applicants' resistance noted that they were not served a copy of the intervention until June 6, 2007, although they had previously obtained a copy from the Board's Records Center. The Board expects all parties to serve their pleadings and testimony on participants in accordance with the Board's rules. A service list for this proceeding is available on the Board's website or by calling the Records Center (515-281-5563). Service of documents is addressed in 199 IAC 7. Because of the time constraints in a reorganization proceeding, it is particularly important that pleadings and testimony be timely served on all parties.

ATC and Dairyland also filed petitions to intervene. No objections were filed to either petition. In support of its petition to intervene, ATC said it owns electric transmission facilities in Wisconsin, Michigan, and Illinois and that it currently monitors and controls the transmission facilities that are the subject of this proceeding through an operating agreement with one of IPL's affiliated companies. ATC noted it has an interest in the control and operation of these facilities

subsequent to any reorganization. Dairyland is a generation and transmission cooperative that is directly interconnected with IPL's transmission system.

The Board will grant the petitions to intervene filed by ATC and Dairyland. 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.

Accompanying the petition to intervene filed by ATC was a motion for admission pro hac vice filed by Dan L. Sanford. Accompanying the petition to intervene filed by Dairyland was a motion for admission pro hac vice filed by Jeffrey L. Landsman. Both attorneys are members in good standing of the bar in other states, but not Iowa. Mr. Sanford and Mr. Landsman each filed statements agreeing to comply with 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 were appearances 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 petitions to intervene filed by American Transmission Company LLC and its corporate manager, ATC Management, Inc., Sierra Club, Dairyland Power Cooperative, and Clean Wisconsin, Community Energy Solutions, Environment Iowa, Iowa Chapter of Physicians for Social Responsibility, Iowa Citizens for Community Improvement, Iowa Environmental Council, Iowa Farmers Union, and Iowa Renewable Energy Association are granted.

2. The motion for admission pro hac vice filed by Dan L. Sanford on May 30, 2007, is granted.

3. The motion for admission pro hac vice filed by Jeffrey L. Landsman on June 1, 2007, is granted.

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 15th day of June, 2007.