

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CITY OF EVERLY, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-5
CITY OF KALONA, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-6
CITY OF ROLFE, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-7
CITY OF TERRIL, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent;	DOCKET NO. SPU-06-8
CITY OF WELLMAN, IOWA, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent.	DOCKET NO. SPU-06-10

**ORDER GRANTING MOTION FOR CONTINUANCE,
MODIFYING PROCEDURAL SCHEDULE, COMPELLING
RESPONSES, AND DENYING MOTION TO STRIKE**

(Issued July 27, 2007)

On July 19, 2007, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) two motions, one for leave to file surrebuttal testimony and reschedule the hearing and the other to strike filed responses and compel proper

responses. The motions relate to filings made by the cities of Everly, Kalona, Rolfe, Terril, and Wellman, Iowa (collectively, Cities), on July 9, 2007 (the Cities' rebuttal testimony), and July 12, 2007 (the Cities' responses to the Board's June 29, 2007, order requiring additional information).

Because the hearing in the Cities' municipalization dockets is currently scheduled to begin on August 27, 2007, the Board issued an order on July 19, 2007, requiring responses to the two motions by July 25, 2007. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response on July 20, 2007, urging the Board to grant the two motions filed by IPL. MidAmerican Energy Company (MidAmerican) filed a joinder to the two motions on July 24, 2007. The Cities filed a response to the motions on July 25, 2007.

MOTION TO FILE SURREBUTTAL AND FOR CONTINUANCE

The Cities' initial direct testimony, other than that of its valuation witness, was filed on December 1, 2006; the valuation witness filed direct testimony on February 1, 2007. IPL filed its prefiled testimony on May 15, 2007, and the Cities filed rebuttal testimony on June 9, 2007.

In support of its motion to file surrebuttal and continue the hearing, IPL said that the Cities' filing did not appear to be a rebuttal filing but a substantially new case. IPL presented a dollar comparison between the Cities' direct and rebuttal cases showing that valuations had been changed, at least for one city, by about 50 percent. (IPL Surrebuttal Motion, p. 2). IPL noted that while the Cities purport in rebuttal to

accept some of IPL's numbers, IPL has been unable to tie these numbers to either the Cities' prefiled direct cases or IPL's case. IPL said that in essence the Cities have filed substantially different cases in rebuttal with little support that would allow IPL to understand the differences. IPL's pleading cites numerous examples of changes in methodology or valuation. IPL asked for two months to file its surrebuttal.

Consumer Advocate in its response said that, at a minimum, the Cities changed data, assumptions, inputs, and projections in their calculations and creation of rebuttal exhibits, particularly Exhibit ____ (LRE-25/RJL-25), in each case.

MidAmerican in its joinder noted that a completely new analysis had been presented in rebuttal by the Cities, including changing the year of municipalization from 2006 to 2009. MidAmerican said this change in date is significant and other parties should be allowed to present rebuttal on the impact of the change.

The Cities in their response claimed that "[a]ny changes that occurred between the time of the original filing and the rebuttal filing were the direct result of the Cities attempting to employ the figures utilized by IPL and to update the model to a realistic starting year." (Cities Response, p. 3). The Cities indicate that many of the issues raised in IPL's motion can be dealt with on cross-examination and through responses to data requests. (Cities Response, p. 4).

The Cities responded to IPL's claim that they did not pursue their case with vigor early in the proceeding by noting it is a complex case requiring thorough analysis but that "without a clear picture as to IPL's position on various issues, the Cities were required to present their initial testimony with some presumptions

contained therein." (Cities Response, p. 5). The Cities said it "was not possible for the cities to know the manner in which IPL would present its case and until it did so, the Cities could not pose meaningful data requests that would assist in the presentation of the case to the Board." (Cities Response, p. 5).

The Cities asked that the motion for continuance and to file surrebuttal be denied. In the event the motion is granted, the Cities asked that they be allowed to respond to any surrebuttal, that the continuance not exceed 90 days, and that a deadline for all data requests be established.

The Board has reviewed not only the motions and responses but also the rebuttal testimony filed by the Cities. From the review by the Board and its staff, it appears that a substantial portion of the rebuttal filing is new. As pointed out by Consumer Advocate, the Cities changed data, assumptions, inputs, and projections in their calculations and creation of rebuttal exhibits, with little or no explanation in the rebuttal testimony.

This does not appear to be a case where parties have updated pre-filed information or adopted testimony or adjustments of the opposing witnesses in some areas but rather a case of major change to the direct case initially filed by the Cities. Although it is the Cities who have proposed to municipalize, according to their response to the motions it "was not possible for the cities to know the manner in which IPL would present its case and until it did so, the Cities could not pose meaningful data requests that would assist in the presentation of the case to the Board." (Cities Response, p. 5). This sentence makes it appear that the Cities' initial

direct case was not fully developed but filed in part to draw out IPL's response, even though the Cities had several months from the date the petitions were filed to prepare their direct case. During this time, the Cities had ample opportunity to conduct discovery for use in their direct case. Municipalization is an enormous undertaking and it appears that when their direct testimony was filed the Cities had not yet settled on their data, inputs, assumptions, and projections. This resulted in increased litigation costs for all parties.

There is no statutory deadline in this proceeding and the Board believes it must allow other parties an opportunity to respond because of the changes in the Cities' rebuttal testimony that go beyond what the Board usually sees in rebuttal. Otherwise, the Board would be forced to hold a hearing where only one party has been able to fully present its case in prefiled testimony. The Board notes that in all its hearings of this type it makes extensive use of prefiled testimony and cross-examination is generally limited to questions regarding prefiled testimony; new direct testimony is rarely taken at hearing. Without allowing other parties the opportunity to file additional rebuttal, substantial new testimony (and cross examination of such testimony) would have to take place at hearing. The Board believes in utility matters such as these, it is a more efficient use of its time and the parties' time to utilize prefiled testimony. Prefiled testimony also eliminates the element of surprise testimony, which typically has no place in complex utility hearings.

The Board will continue the hearing and allow IPL and the other parties to file surrebuttal. The Board will also allow the Cities to file a response to the surrebuttal.

The Board cautions all parties that it expects this testimony to be responsive to what has already been filed; this is not an opportunity to present another new case and the Board will not hesitate to strike testimony that it believes is beyond the fair boundaries of surrebuttal and response. The Board will not set a deadline for discovery because some discovery may be appropriate after the Cities respond to other parties' surrebuttal.

The Board in rescheduling the hearing has reserved five days for cross-examination. If the parties file appropriate testimony, this should be sufficient. If more time is needed, it will be scheduled at a later date but the hearing will not be able to be continued into the next week.

MOTION TO STRIKE AND COMPEL

On June 29, 2007, the Board issued an order requiring the Cities to provide additional information regarding Schedules D and E in the Cities' prefiled testimony. In its order, the Board specifically referred to Schedules D and E in the Cities' prefiled direct testimony and said the Board wanted additional information regarding individual scenarios for each city using various assumptions. The Board then specified five ways it wanted the Cities to modify the schedules. (Order, pp. 2-3).

In support of its motion to strike and compel, IPL said the responses to the Board's order filed by the Cities on July 12, 2007, failed to provide the information requested by the Board. IPL noted that rather than respond to the Board's directive that it modify Schedules D and E (and associated schedules) as contained in its

prefiled direct testimony, the Cities modified the schedules based on their rebuttal testimony, which, IPL claimed, is an entirely different case. IPL, Consumer Advocate, and MidAmerican each urge the Board strike the Cities' responses filed on July 12, 2007, and compel responses in compliance with the Board's order.

In response to the motion to strike, the Cities said it provided responses based on its rebuttal testimony, which had a more realistic starting date for municipalization. The Cities said they attempted to provide the Board with the most up-to-date information available.

The Board asked for additional information based on Schedules D and E (and associated schedules) as filed by the Cities in their direct prefiled cases. This is not the information filed by the Cities, and their explanation, which in essence said the information would no longer be useful to the Board because the Cities changed their case in rebuttal, is not entirely persuasive. Regardless of how the Cities changed their case in rebuttal, the Board wants to examine the results of changes to the individual scenarios in Schedules D and E (and associated schedules) as filed in the Cities' prefiled direct testimony for comparison purposes. The Cities will be required to comply with the Board's June 29, 2007, order within ten days of the date of this order.

The Board will not, however, strike the July 12, 2007, filing. While the Cities did not file the information requested by the Board, the Board understands that the Cities would want to provide information to the Board based on the changes made to their case in rebuttal. The information could have been filed as part of the Cities'

rebuttal so it will not be stricken, particularly because the other parties are being granted an opportunity for surrebuttal in which they can address the Cities' filing.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion for continuance and for leave to file surrebuttal testimony filed by Interstate Power and Light Company on July 19, 2007, is granted.
2. The motion to compel responses filed by Interstate Power and Light Company on July 19, 2007, is granted, but the motion to strike filed on the same date is denied.
3. The Cities shall file responses to the Board's June 29, 2007, order within ten days of the date of this order.
4. The procedural schedule is modified as follows:
 - a. IPL, Consumer Advocate, and MidAmerican shall file any surrebuttal testimony, with underlying workpapers and exhibits, on or before August 31, 2007.
 - b. The Cities may file responses to the surrebuttal testimony, with underlying workpapers and exhibits, on or before October 1, 2007.
 - c. The parties shall file a joint statement of the issues on or before October 12, 2007.
 - d. All parties that choose to file a prehearing brief may do so on or before October 26, 2007.

e. A hearing shall be held beginning at 9 a.m. on November 26, 2007, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the 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. The parties may file simultaneous initial briefs on or before December 21, 2007.

g. All parties who file initial briefs may file reply briefs on or before January 7, 2008.

5. All other aspects of the prior procedural orders remain unchanged.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Krista K. Tanner

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