

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>RALPH VAN FOSSEN,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align:center">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-12 (C-07-147)</p>
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**PROCEDURAL ORDER AND NOTICE OF HEARING**

(Issued November 6, 2007)

On March 14, 2007, Mr. Ralph Van Fossen filed a complaint with the Utilities Board (Board) against his electric service provider, Interstate Power and Light Company (IPL), alleging that IPL engaged in deceptive billing practices by shifting his billings from lower rate periods to higher rate periods through the use of estimated meter readings. Mr. Van Fossen also alleged that IPL advanced his payment due date gradually by three weeks to cause excessive late fees. He alleged that IPL threatened to disconnect his electric service over a small past due balance during several weeks of sub-zero temperatures. Board staff investigated the complaint and forwarded it to IPL for response. IPL filed a response to the complaint on March 28, 2007. The Consumer Advocate Division of the Department of Justice (Consumer

Advocate) sent a data request regarding the complaint to IPL on March 14, 2007, and IPL also responded to the data request. Mr. Van Fossen filed nine additional letters with more information regarding his prior complaints and additional complaints against IPL on March 29 (2 letters), April 2 (2 letters), April 11, April 23, May 14, June 14, and August 2, 2007. IPL filed an additional response to the complaints on April 19, 2007.

On August 7, 2007, Board staff issued a proposed resolution with findings on the six issues raised by Mr. Van Fossen. In the proposed resolution, Board staff stated that IPL's use of estimated bills had been excessive and IPL should have more diligently attempted to obtain actual meter readings. However, the proposed resolution found that IPL had not violated Board rules on estimated meter readings, that IPL was within the rules for billing customers and its calculations were correct, that IPL had not violated the rules for calculating late fees, that IPL was within the rules when it issued the disconnection notice, that the due date issue had been resolved, and that IPL had not misapplied the credit for the appliance cycling program. Staff found that no additional action was required and notified Mr. Van Fossen of his right to request a formal proceeding if he disagreed with the proposed resolution.

Mr. Van Fossen filed a request for formal proceedings on August 13, 2007, in which he disagreed with the proposed resolution. IPL filed a response to the request for formal proceedings on August 28, 2007, in which it stated its belief that the

request for formal proceedings should be denied. The Consumer Advocate filed a letter on August 29, 2007, stating that Mr. Van Fossen's request for formal proceedings should be granted. IPL filed a response to the Consumer Advocate's letter on September 11, 2007, reiterating its position that formal proceedings should be denied. Mr. Van Fossen filed additional letters in support of his request for formal proceedings on August 31 and September 17, 2007.

The details of the informal complaint case are contained in informal complaint file number C-07-147, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

On October 15, 2007, the Board issued an order finding that there are reasonable grounds to warrant instituting a formal complaint proceeding pursuant to Iowa Code § 476.3, docketing the case for formal proceeding, and assigning it to the undersigned administrative law judge. In the order, the Board directed the undersigned to conduct a prehearing conference to discuss a procedural schedule with the parties. The prehearing conference was held on October 31, 2007, by telephone conference call.

Pursuant to the Board's order, Iowa Code § 476.3, and 199 IAC 6.5, a procedural schedule will be established and a hearing date set. The parties agreed to the procedural schedule set forth in this order at the prehearing conference.

The statutes and rules involved in this case include Iowa Code §§ 476.3, 476.20, and 476.54, and Board rules at 199 IAC 1.8, 20.3(6), 20.4(15), and chapters

6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's Web site at [www.state.ia.us/iub](http://www.state.ia.us/iub).

### **THE ISSUES**

The issues in this case generally involve whether IPL complied with applicable Board statutes and rules in its billings of Mr. Van Fossen for electric service. More specifically, the issues involve the complaint by Mr. Van Fossen that IPL used estimated meter readings for eight out of ten months during a period from 2005-2007, whether IPL had valid reasons for using estimated meter readings, whether the estimated meter readings caused Mr. Van Fossen to be charged at higher rates, whether adjustments IPL made to Mr. Van Fossen's bills were sufficient, whether IPL correctly calculated Mr. Van Fossen's bills, whether IPL complied with Board statutes and rules regarding late fees and disconnection notices, whether IPL revised Mr. Van Fossen's payment due dates, and if so, whether this was done in compliance with applicable requirements, and whether IPL complied with applicable requirements with respect to an appliance cycling program. It is unclear at this time whether the issues regarding the bill due date and the appliance cycling program have been resolved. The parties may raise other issues prior to and during the hearing.

### **PREPARED TESTIMONY AND EXHIBITS**

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3); 199 IAC 7.10.

### **PARTY STATUS AND COMMUNICATION WITH THE BOARD**

Mr. Van Fossen, the Consumer Advocate, and IPL are currently the only parties to this proceeding. IPL's attorney must file an appearance pursuant to 199 IAC 7.4(7). If Mr. Van Fossen chooses to have an attorney represent him in

these proceedings, which is encouraged, his attorney must also file an appearance. Counsel for the Consumer Advocate filed sufficient information with his request for formal proceedings to comply with 199 IAC 7.4(7) and does not need to file an appearance.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa 50319-0069, accompanied by a certificate of service. 199 IAC 7.4. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 7.4(6)"c." These requirements apply, for example, to the filing of prepared testimony and exhibits with the Board.

These procedures are necessary to comply with Iowa Code § 17A.17 and 199 IAC 7.22, which prohibit ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless

the other parties are provided with a copy of the written documents filed with the Board.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceeding, identified as informal complaint file C-07-147, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's Web site at [www.state.ia.us/iub](http://www.state.ia.us/iub).

All parties should examine Iowa Code §§ 476.3, 476.20, and 476.54, and Board rules at 199 IAC 1.8, 20.3(6), 20.4(15), and chapters 6 and 7, for substantive and procedural rules that apply to this case.

**IT IS THEREFORE ORDERED:**

1. On or before December 14, 2007, Mr. Van Fossen, the Consumer Advocate, and any intervenors must file prepared direct testimony and exhibits. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, Mr. Van Fossen and the Consumer Advocate must address the issues discussed above and file any other evidence not previously filed. Mr. Van Fossen should clarify whether

any of the issues, including the bill due date and appliance cycling program issues, have been resolved. Mr. Van Fossen should use exhibit numbers one and following. The Consumer Advocate should use exhibit numbers 100 and following. If Mr. Van Fossen and the Consumer Advocate choose to file prehearing briefs, the briefs must be filed on or before December 14, 2007.

2. On or before January 14, 2008, IPL must file prepared testimony and exhibits. IPL may refer to any document in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, IPL must address the issues discussed above and file any other evidence not previously filed. IPL should use exhibit numbers 200 and following. If it chooses to file a prehearing brief, IPL must file its brief on or before January 14, 2008.

3. If Mr. Van Fossen, the Consumer Advocate, or any intervenor chooses to file rebuttal testimony and exhibits, the rebuttal testimony and exhibits must be filed on or before January 31, 2008.

4. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must file written notification with the Board no later than January 31, 2008.

5. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Wednesday, February 20, 2008, commencing at 9:30 a.m. Each party must

provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 1-515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

6. In the absence of objection, all data requests and responses referred to in testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

7. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13. The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.13(1).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 6<sup>th</sup> day of November, 2007.