

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>RALPH VAN FOSSEN,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-07-12</p>
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ORDER DENYING REQUEST FOR DETERMINATION

(Issued December 7, 2007)

On November 6, 2007, the undersigned administrative law judge issued a "Procedural Order and Notice of Hearing" in this proceeding. The order stated that the issues in this case generally involve whether Interstate Power and Light Company (IPL) complied with applicable statutes and rules in its billings of Mr. Van Fossen for his electric service.

On November 14, 2007, IPL filed a "Request for Determination."¹ In the request, IPL noted the cost of litigation versus the amount in dispute and essentially made a settlement offer to Mr. Van Fossen. IPL offered to acquiesce to certain allegations made by Mr. Van Fossen in the informal complaint and offered to pay him

¹ IPL also filed an application for confidential treatment, which the Board, not the undersigned administrative law judge, will handle.

an amount in settlement. IPL attached certain records showing its calculation of the settlement amount and the underlying billings that formed the basis of the calculation.² IPL stated it had already adjusted Mr. Van Fossen's billing due date to the 5th of each month to settle that part of the dispute. IPL requests the Board to accept its proposal, find this resolves all issues in the docket appropriate for a complaint proceeding, and dismiss the docket with prejudice. If the Board denies this request, IPL states it will withdraw its acquiescence to the charges and fully dispute them in the contested case.

On November 19, 2007, Mr. Van Fossen filed a request that the Board deny IPL's request for determination.³ In his resistance, Mr. Van Fossen stated that he could not respond to IPL's calculations of the amount due to him because IPL had not provided him with any calculations or support for its summary amounts. Mr. Van Fossen also reiterated his arguments that IPL had consistently erred in billing him in a number of listed ways and threatened to disconnect his service. Mr. Van Fossen urged the Board to deny IPL's request for determination.

On November 20, 2007, the Consumer Advocate filed a "Response to Request for Determination." The Consumer Advocate stated that it had supported Mr. Van Fossen's request for formal proceedings due to the alleged volume of estimated meter readings, the alleged doubling of his estimated bills, and the

² The undersigned assumes that IPL provided this information to Mr. Van Fossen and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) as well as filing it with the Board. If this is not the case, IPL must immediately serve the information on the other parties.

³ Mr. Van Fossen also filed a resistance to IPL's request for confidentiality.

potentially wrongly assessed late payment charges. The Consumer Advocate stated it did not join in many of Mr. Van Fossen's other allegations. In its response, the Consumer Advocate stated that IPL's request for determination had appeared to resolve most, if not all, of its concerns regarding the billings to Mr. Van Fossen. The Consumer Advocate noted that Mr. Van Fossen stated he had not received the calculations and support for IPL's summary accounts and confidential billing records, and stated they should be provided to Mr. Van Fossen. The Consumer Advocate stated that Mr. Van Fossen should then be given a reasonable amount of time to confirm the accuracy of IPL's filing or specifically state and document any disagreement. The Consumer Advocate argues that if there are no material facts in dispute, a hearing is not required or warranted. The Consumer Advocate argued the administrative law judge could take appropriate lawful action with regard to Mr. Van Fossen's claims of abusive practices by IPL if they are found to be true. The Consumer Advocate noted Board staff's statement in the Proposed Resolution that estimated bills had been excessive and IPL should have made a more diligent effort to get an actual read. The Consumer Advocate argued that Board statutes, rules, and precedents do not allow the Board to award many of the types of relief and damages requested by Mr. Van Fossen, and that the Board is generally limited to correcting wrongful applications of its specific rules, approved tariffs, and statutes. The Consumer Advocate stated that once Mr. Van Fossen agrees or disagrees with IPL's summary accounts, the administrative law judge will be in a position to consider suspending the procedural schedule or taking any other action deemed appropriate.

On November 29, 2007, Mr. Van Fossen filed a "Supplementary Response to the Request for Determination." Mr. Van Fossen stated that the Board needed to hear fully the experiences of residential customers who have not received fair treatment to carry out its rule making and oversight responsibilities. Mr. Van Fossen argued that the monopoly power of IPL far exceeds that of its residential customers so that the unfair treatment is unlikely to reach the hearing stage. He further argued that the Consumer Advocate cannot fulfill its statutory responsibilities if the unfair and unlawful treatment is not fully disclosed and that it does not know the extent to which such practices exist. Mr. Van Fossen argued that he is prepared to show that IPL has lied to the Board and the Consumer Advocate, and that its consumer-abusing practices may be inconsistent with the Iowa Consumer Fraud Act (notably concerning the elderly), the Consumer Credit Code, and the Debt Collection Practices Act. Mr. Van Fossen argued that it would be in the public interest for the Board, in carrying out its oversight and rulemaking responsibilities, to fully hear the complaint so that the Board and the Consumer Advocate may consider the extent of such experience, the lawfulness of IPL's business practices, and the relevance to future rulemaking. He therefore requested the denial of IPL's request for determination.

It does not appear that Mr. Van Fossen is willing to accept IPL's offer at this time, and the undersigned does not believe it is appropriate to approve IPL's request over Mr. Van Fossen's objections at this time. A procedural schedule has been established and it should be followed. Of course, this does not prevent the parties

from attempting to settle the case during the course of continuing the formal proceeding.

Mr. Van Fossen is unrepresented by counsel. This is a contested case proceeding brought under Iowa Code chapters 17A and 476 and the Board's rules. The applicable statutes and rules are set forth in the "Procedural Order and Notice of Hearing" issued November 6, 2007. The Board does not have jurisdiction over the Iowa Consumer Fraud Act, the Consumer Credit Code, and the Debt Collection Practices Act. Therefore, Mr. Van Fossen may not make arguments regarding those statutes. Mr. Van Fossen should carefully review the "Procedural Order and Notice of Hearing" and follow the requirements and directions in that order. The purpose of a contested case is to allow the parties to present evidence and argument in support of their positions related to the particular facts of the case and the applicable statutes and rules over which the Board has jurisdiction. This is not a rulemaking proceeding. This is not a proceeding examining IPL's practices in general. This is a contested case that relates specifically to what happened regarding Mr. Van Fossen's billings by IPL as stated in the "Procedural Order and Notice of Hearing." If Mr. Van Fossen wishes to raise other issues, they must be related to his case and to why he believes IPL violated the Board's statutes or rules or approved IPL tariffs with respect to his case. Because this is a contested case before the Board with particular legal requirements, the advice of legal counsel would benefit Mr. Van Fossen.

On November 29, 2007, Mr. Van Fossen also filed a copy of several data requests directed to IPL with a letter stating he expected to receive answers in five days, or at least by December 5, 2007. Mr. Van Fossen should not file a copy of his data requests when he directs them to another party. Board rule 199 IAC 7.15 provides that parties have seven days to respond or object to data requests. This is not a case in which the Board has six months or less to issue a decision. Ordinarily, if parties find it difficult to provide answers to data requests within the time period set forth in the rule, they will work out a schedule that works for both parties without the involvement of the Board. Board rule 7.15 requires the parties to make a good faith effort to resolve discovery disputes without the involvement of the Board.

IT IS THEREFORE ORDERED:

1. The "Request for Determination" filed by Interstate Power and Light Company on November 14, 2007, is hereby denied.
2. The "Procedural Order and Notice of Hearing" issued on November 6, 2007, remains in full force and effect.

UTILITIES BOARD

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

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 7th day of December, 2007.