

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>JACOBSEN HOLZ CORPORATION,</p> <p style="padding-left: 100px;">Petitioner,</p> <p style="padding-left: 100px;">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-05-5 (C-03-47)</p>
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued December 20, 2007)

On February 17, 2003, the Jacobsen Holz Corporation (JHC) filed a complaint with the Utilities Board (Board) alleging that it was experiencing equipment loss and alarm alerts due to electric power quality issues. Interstate Power and Light Company (IPL), JHC's electric power supplier, investigated the situation and stated that the results of its study showed that the Progressive Foundry Company (Progressive) was generating the harmonic distortion components measured at JHC and that these fluctuations in harmonics exceeded IEEE standard 519-1992 and potentially violated Board standards.

Board staff investigated the complaint and issued three separate proposed resolutions on December 31, 2003, February 20, 2004, and November 18, 2004.

During these informal proceedings, JHC, IPL, and Progressive attempted to find a mutually agreeable solution to the power quality issues, but were unable to do so. In response to the third proposed resolution, Progressive filed a request for a formal complaint proceeding.

On February 8, 2005, the Board issued an order granting the request for a formal complaint proceeding. In its order, the Board stated that "the issues involved in this complaint are very technical and it appears likely that any resolution of the harmonics problems will require significant expenditures. Resolving the harmonics issues could also affect IPL's new distribution system upgrades. Because there appear to be factual disputes over, among other things, how to resolve the harmonics issues and who should pay those costs, there are reasonable grounds to warrant instituting a formal complaint proceeding pursuant to Iowa Code § 476.3 (2007)." The Board assigned the case to the undersigned administrative law judge and directed that a prehearing conference be held to discuss a procedural schedule and encourage the parties to explore potential resolution of the complex issues in the case.

A prehearing conference was held on March 3, 2005, with all parties participating. The parties agreed to gather additional data and perform additional testing, to share information, to meet with each other on May 23, 2005, and to hold another prehearing conference on May 31, 2005.

A second prehearing conference was held on May 31, 2005, with all parties except JHC present. Progressive provided a letter addressed to IPL that contained Progressive's commitment to pursue a possible solution. The parties agreed to file periodic status reports to keep the Board informed of the parties' activities in pursuing a solution.

For the next two and one half years, the parties studied the situation and took various actions to try to achieve a mutually agreeable solution and filed periodic status reports regarding their progress.

However, on October 22, 2007, IPL filed a "Request for Litigation," in which it stated that the parties appeared to be at an impasse and IPL did not believe a settlement was a viable option. IPL summarized the actions it had taken to implement a solution to the harmonics problems at issue in this case, but stated that its solution would not remedy the harmonics issues at their source, which IPL argued is at Progressive. IPL argued that if monitoring revealed further action must be taken, IPL and its ratepayers should not bear the financial burden. Therefore, IPL requested that the Board establish a procedural schedule and set a hearing date.

On November 1, 2007, the undersigned administrative law judge issued an order giving the other parties the opportunity to respond to IPL's motion.

On November 6, 2007, the Consumer Advocate filed a response stating it agreed with IPL that a procedural schedule should be set and that it hoped the parties could reach a settlement during this process.

On November 13, 2007, Progressive Foundry filed a "Response to IPL's Request for Litigation." In its response, Progressive Foundry summarized the history of the case and actions the parties have taken in an attempt to settle the case. According to Progressive Foundry, IPL has installed a capacitor bank and turned it on, which was one of the solutions proposed by IPL's consultant to solve the harmonics problem at issue in this case. Progressive Foundry further stated that IPL offered to pay for the capacitor bank during settlement negotiations and it should not be allowed to renege on its promise. Progressive Foundry stated that IPL refused to give it any test results indicating whether the new capacitor bank was working properly or not and told Progressive Foundry to file a data request. Progressive Foundry stated that the only issue left unapproved during settlement negotiations was not material and that IPL had refused to provide any real guidance as to why it seeks litigation. Therefore, Progressive Foundry argued, IPL's request for litigation should be denied and Progressive asked that the Board require the parties to mediate.

On November 15, 2007, the undersigned issued an order denying the request to order mediation and ordering IPL to file a statement explaining why it believed settlement negotiations were at an impasse and listing the issues that remain to be decided.

On November 27, 2007, IPL filed its "Clarification of Issues and Reply to Progressive Foundry's Response to IPL's Request for Litigation." IPL provided

additional information regarding the parties' negotiations and actions taken in an attempt to solve the harmonics issues. IPL listed the following as issues that require determination by the Board.

- 1) "Is the oral agreement entered into between Progressive and IPL entered into January 26, 2007, and commemorated in a written letter as found in Attachment B, enforceable?"
- 2) Barring the enforceability of an oral agreement, IPL argues that it "should not be bound by said agreement if Progressive is not, and the costs of installation of the 1200 kVAR [capacitor] bank should be subject to determination by the Board, in accordance with IPL's filed tariffs."
- 3) "Because of its harmonics injections into IPL's system, Progressive should be found to be in violation of 199 IAC 20.5(2)"i," which requires compliance with IEEE Standard 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electric Power Systems or its successor standard."
- 4) "The Board should determine that, in accordance with IPL Tariff Section 5.09E, IPL is allowed to make the 'final determination whether equipment or apparatus does or does not adversely affect [IPL's] service to its other customers.' Because Progressive's equipment connections to IPL's lines 'impairs service to other Customers,' IPL should be allowed to require Progressive's 'correction of the condition' by Progressive, in compliance with IPL's General Rules and Regulations

for Electric Service; Customer's Utilization of Electric Service (IPL Tariff), Section 5.09B."

5) "Because Progressive's use of electric service for the 'operation of equipment having intermittent, fluctuating or abnormal load characteristics which adversely affect voltage regulation or impair [IPL's] service to other Customers,' Progressive should be required to 'install and maintain at its own expense suitable apparatus to limit such effect,' in accordance with IPL tariff Section 5.09C."

It now appears that the parties may not be able to settle this case. Therefore, pursuant to the Board's order assigning this docket issued February 8, 2005, and Iowa Code §§ 476.3(1), a procedural schedule will be established and a hearing date set. Because it appears the parties may still make progress if given a short opportunity to attempt settlement, a one-month period for further negotiation will be included in the procedural schedule.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and Board rules at 199 IAC 1.8, 1.9, 20.5, and chapters 6 and 7. The parties may identify other statutes or rules that apply in their prepared testimony and briefs. 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. The undersigned notes that Board rule 199 IAC 20.5 has been amended since the Board issued its order docketing this complaint and assigning it to the undersigned on February 8, 2005. Various IPL tariffs approved by the Board may also apply to this

case. If a party argues that such a tariff is applicable, or argues in response that it is not applicable, the party must clearly identify the tariff and quote the tariff provisions referred to in the argument.

THE ISSUES

The issues in this case generally involve the power quality and harmonics issues in the Perry area that affect the parties in this case, as identified by JHC, IPL, and Progressive in the informal complaint proceeding and this docket. The issues also include the possible solutions to these issues and the allocation of responsibility to solve the issues and to pay for the costs of the solutions. The issues also include those identified by IPL in its November 27, 2007, filing. 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. Due to the technical complexity of the case, the procedural schedule will be somewhat unusual.

IPL and Progressive must file prepared testimony and exhibits prior to the hearing in accordance with the procedural schedule set forth in this order. JHC is encouraged to file prepared testimony and exhibits to support the allegations made in its informal complaint and to explain its current position. At a minimum, IPL's and Progressive's testimony must address the issues listed above. IPL and Progressive must file evidence that answers the following questions.

1. Please explain the problem(s) as you see them and your current position as to the cause(s) of the problem(s). Provide technical evidence to support your position and references to applicable standards such as the National Electrical Code, IEEE Standards, and Board rules. Technical evidence must include actual

measured values, not just statements that a threshold was exceeded, and specific references to applicable code paragraphs and tables.

2. Please explain the actions you have taken to try to solve the problem(s). Include any reports you have that identify the cause(s) and possible solution(s) to the problem(s). Explain the effect(s) of any actions taken to date and your position on the work that must still be done to solve the problem(s). Provide technical evidence to support your position.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

JHC, IPL, Progressive, and the Consumer Advocate are the parties to this proceeding.

Any party who communicates with the Board must 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. 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-03-47, 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.

All parties should examine Iowa Code §§ 476.3 and Board rules at 199 IAC 1.8, 1.9, 20.5, and chapters 6 and 7, for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. A one-month period of time before the active procedural schedule begins is included to provide the parties the opportunity for further negotiation.

2. On or before February 11, 2008, IPL and Progressive and any intervenors must file prepared direct testimony and exhibits. If JHC chooses to file prepared direct testimony and exhibits, they must be filed on or before February 11, 2008. If IPL, Progressive, or JHC choose to file a prehearing brief, it must be filed on or before February 11, 2008. In their prepared direct testimony, the parties 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. IPL should use exhibit numbers one and following. Progressive should use exhibit numbers 100 and following. JHC should use exhibit numbers 200 and following. Each party must provide an index of its exhibits with its filing.

3. If it chooses to file prepared testimony, exhibits, or a prehearing brief, the Consumer Advocate must file them on or before March 3, 2008. The Consumer Advocate 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. The Consumer Advocate should use exhibit numbers 300 and following. The Consumer Advocate must provide an index of its exhibits with its filing.

4. On or before March 3, 2008, IPL and Progressive and any intervenors must file prepared rebuttal testimony and exhibits that address prepared direct testimony filed on or before February 11, 2008. If JHC chooses to file rebuttal testimony that addresses prepared direct testimony filed on or before February 11,

2008, it must be filed on or before March 3, 2008. Each party must provide an updated index of its exhibits with its filing.

5. If the undersigned has additional questions for the parties, she will issue an order asking those questions on or before March 10, 2008.

6. On or before March 24, 2008, the parties must file testimony answering the questions posed in the order. If the Consumer Advocate chooses to file rebuttal testimony, it must be filed on or before March 24, 2008. If IPL, Progressive, or JHC choose to file testimony rebutting the Consumer Advocate's direct testimony, or further rebutting another party's testimony, it must be filed on or before March 24, 2008.

7. 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 Tuesday, April 15, 2008, commencing at 9:00 a.m. The hearing is also scheduled for April 16 and 17, 2008, if additional time is needed. Each party must provide a copy of its prepared testimony, exhibits, and exhibit index 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.

8. In the absence of objection, all data requests and responses referred to in oral 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.

9. 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 20th day of December, 2007.