

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>RALPH VAN FOSSEN,                      Complainant,</p> <p style="text-align:center">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,                      Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-12                     (C-07-147)</p>
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**ORDER REGARDING DISCOVERY AND GRANTING REQUEST FOR EXTENSION**

(Issued December 20, 2007)

On December 10, 2007, Mr. Van Fossen filed a "Motion to Compel; and Request for Extension to File Direct Testimony" (Motion to Compel). On the same date, he also filed a "Filing Alliant Energy IPL's Data Response; and Van Fossen Request for Subpoenas" (Request for Subpoenas). With this filing, he included copies of three data requests he had submitted to Interstate Power and Light Company (IPL), with IPL's responses to the data requests. Mr. Van Fossen attached electronic mail correspondence dated December 6, 2007, between himself and counsel for IPL to his Motion to Compel.

In his Motion to Compel, Mr. Van Fossen argued that IPL's responses to his data requests were deficient and that the electronic mail response from IPL's attorney

showed that IPL refused to remedy the deficiencies. Mr. Van Fossen argued that IPL's objections to his data requests were without merit and not credible. He argued that the answers to the data requests are a fundamental part of his case.

On December 14, 2007, IPL filed a "Response of Interstate Power and Light Company to the December 10, 2007, Filing Entitled, 'Alliant Energy IPL's Data Response and Van Fossen Request for Subpoenas,' " IPL's answers to the three data requests that are the subject of Mr. Van Fossen's motions, and an "Application for Confidential Treatment."<sup>1</sup> In its response, IPL stated that it was unable to provide aggregated information regarding all late charges assessed against its Iowa residential electricity customers because it does not currently exist by customer class and that to provide it would be cumbersome and excessively time consuming. IPL further stated it could not provide the total number of service disconnection notices sent to its Iowa residential electricity customers because IPL does not maintain that information. IPL stated it had answered Mr. Van Fossen's Data Request No. 3C. In response to Mr. Van Fossen's request for the names and contact information for current and former IPL employees who read his meters, IPL provided the names and employee numbers of current employees and stated Mr. Van Fossen could contact them through IPL counsel. IPL did not provide the names or any identifying information for former IPL employees. IPL further argued it would be a violation of its

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<sup>1</sup> In its response, IPL stated that it had attached Attachment A, which was electronic mail correspondence between counsel for IPL and Mr. Van Fossen dated December 6, 2007, in which IPL explained why certain requested information was not available. IPL did not attach Attachment A to its filing. The Board, not the undersigned, will rule on the application for confidential treatment.

corporate policy to provide Mr. Van Fossen with further information regarding the employees' names and contact information. IPL argued that it had demonstrated that it had provided Mr. Van Fossen with the information he requested to the extent possible. It further argued that when this was not possible, it had timely informed Mr. Van Fossen. It argued that with regard to IPL's personnel, it had appropriately provided a means of communicating with those employees still employed by IPL.

With regard to Mr. Van Fossen's request for subpoenas, IPL noted that 199 IAC 7.16(1)"a" states that agency subpoenas shall be issued upon request. It also noted that 199 IAC 7.16(1)"b" states that parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses. IPL requested that if subpoenas for its current and former employees are issued, that Mr. Van Fossen be properly assessed the appropriate costs and arrange for proper service in accordance with state law. IPL asked the Board to consider its good faith efforts to resolve the outstanding data request disputes.

On December 17, 2007, Mr. Van Fossen filed a "Response of R.H. Van Fossen, Jr. to the Undated Filing Entitled: 'Response of Interstate Power and Light Company to the December 10, 2007, Filing Entitled, 'Alliant Energy IPL's Data Response and Van Fossen Request for Subpoenas' "(Response).<sup>2</sup> Mr. Van Fossen also filed a "Response to Order Regarding Motions (Response to Order)." In his

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<sup>2</sup> The undersigned notes that the titles on the parties' filings are becoming overly long and complex by referring to previous filings. This is not needed. Therefore, the undersigned suggests the parties provide a short identification of what the filing is, such as a "Motion to Compel" or "Response" in the title and provide the additional detail in the body of the filing.

Response, Mr. Van Fossen noted that IPL had not provided him with the referenced Attachment A. Mr. Van Fossen objected to IPL's request that he be assessed for any subpoena costs and properly arrange for service of requested subpoenas. He argued that IPL had made false claims about meter reads and access to his property, presumably on the basis of internal company records by meter readers. Mr. Van Fossen argued IPL has financial incentives to advance customer payment due dates, to grossly over-estimate electricity usage, to charge usurious interest rates, and to use its great resources and service shut-off power to squelch customer complaints. He argued that residential consumers have no incentives to incur significant costs to oppose IPL and additional roadblocks to justice should not be added. Mr. Van Fossen argued that IPL has falsely claimed he told IPL to estimate his meter readings and prevented access to their property and has claimed to make actual meter reads when it has not. He argued that without the opportunity to cross-examine all current and former meter readers assigned to read his meter, such false statements should be dismissed as hearsay. Mr. Van Fossen argued that IPL has merely repeated its refusal to remedy the deficiencies in its responses to Data Request Nos. 1, 2, and 3. Therefore, Mr. Van Fossen asked the Board to compel IPL to make the meter readers available for cross-examination and to remedy IPL's deficiencies in the answers to the data requests.

In his Response to Order, Mr. Van Fossen stated he did not know the number of meter readers. He also argued that IPL failed to indicate any meter reading was

taken on March 16, 2007, but had mentioned that crucial meter reading in other filings. He stated he knew that that meter reading was taken by a company manager, rather than by the usual meter reader.

On December 19, 2007, IPL filed the Attachment A that it had inadvertently left off its December 14, 2007, filing. Attachment A is the same December 6, 2007, electronic mail correspondence that Mr. Van Fossen attached to his Motion to Compel. IPL also filed a "Response of Interstate Power and Light Company to the December 13, 2007, Order Regarding Motions, and Request for Extension" (IPL Response). IPL stated it would be willing to make the current IPL employee meter readers named in the data responses available at the hearing. It stated it did not plan to use them as witnesses itself, but that Mr. Van Fossen could call them as hostile witnesses. IPL stated it would not, and could not, require former employees to testify at the hearing. It argued that if Mr. Van Fossen required former employees at the hearing, he would have to follow the laws regarding subpoenas issued by the Board, including payment of witness and service fees. IPL stated its willingness to receive data requests directed toward current meter readers through IPL's counsel, and it encouraged Mr. Van Fossen to do so in order to determine whether there would be any value to their testimony at hearing. IPL continued its objection to providing meter readers' personal information because it violates corporate policy and because Mr. Van Fossen may contact these individuals through IPL's counsel. IPL argued it had explained to Mr. Van Fossen why certain information was not

available. It argued that it would violate company policy to provide Mr. Van Fossen with employee information in addition to that already provided (Data Request Nos. 1A, 1B, and 1C); that the rules of evidence do not require it to undertake time-consuming and costly studies (Data Request Nos. 2B and 2D); and that it has no basis for comparison other than to say IPL's tariffs are consistently applied (Data Request No. 3C). IPL argued it cannot respond to Mr. Van Fossen's data requests any more fully than it already has. IPL stated it had inadvertently omitted the March 16, 2007, meter read because it was not part of the monthly meter reading data. Instead, it stated, the read was a manual reading taken at the request of IPL's billing department. IPL stated it would submit a revised response to Data Request No. 1 that included this meter reading to Mr. Van Fossen and the Consumer Advocate. Finally, IPL requested a one-week extension of the time to file its prepared testimony.

The undersigned again reminds the parties of the requirement to make good faith efforts to resolve discovery disputes without the involvement of the undersigned administrative law judge. 199 IAC 7.15.

IPL is correct that it is not required by the Iowa Rules of Civil Procedure or Board rules to undertake time-consuming and costly studies to create records that do not currently exist in order to answer Mr. Van Fossen's data requests. IPL has sufficiently answered Data Request Nos. 1, 2, and 3, with the following exception. Therefore, Mr. Van Fossen's Motion to Compel should be denied, with the following

exception. IPL must do one of the following with respect to meter readers who read Mr. Van Fossen's meter between January 1, 2003, and February 2006, and who are no longer employed by IPL: 1) identify the former employees by first name and former employee number and allow Mr. Van Fossen to submit data requests to those individuals through IPL's counsel; or, if that is not possible, 2) to the extent it knows the information, provide Mr. Van Fossen with the individuals' names and contact information and the month(s) the individuals read Mr. Van Fossen's meter between January 1, 2003, and February 2006. In addition, IPL must explain to Mr. Van Fossen why the meter reader name is "not available" for the October 4, 2006, meter reading, as listed in the answer to Data Request No. 1, Attachment B, page 4 of 46.

Mr. Van Fossen must submit any data requests directed to current IPL employee meter readers through IPL's counsel. If Mr. Van Fossen wishes the employees to be available for cross-examination at the hearing, he must notify IPL's counsel no later than February 8, 2008, and IPL must make the employees available, as it stated it would in its December 19, 2007, filing. Therefore, there is no need for subpoenas for these employees.

IPL is correct that it does not have the ability to require former employees to be present at the hearing. If Mr. Van Fossen wishes those meter readers to be present at the hearing, he will have to subpoena them unless they agree voluntarily to be present. If Mr. Van Fossen wishes the Board to issue subpoenas, he must file such request no later than February 8, 2008, and he must provide as much

identifying information as he can with respect to the meter readers. At a minimum, Mr. Van Fossen must identify the number of subpoenas he requests the Board to issue. Mr. Van Fossen must comply with applicable Iowa Rules of Civil Procedure, Iowa statutes, and the Board's rules regarding subpoenas, including the requirement that he serve the subpoenas and pay witness fees and mileage expenses. 199 IAC 7.16. If Mr. Van Fossen does not know how to comply with legal requirements regarding service of subpoenas and payment of witness fees and mileage expenses, he must seek the advice of legal counsel.

IPL's request for a one-week extension to file its prepared testimony should be granted.

**IT IS THEREFORE ORDERED:**

1. The Motion to Compel filed by Mr. Van Fossen on December 10, 2007, is hereby denied with the exception stated in the body of this order.
2. With respect to current IPL employee meter readers, the "Request for Subpoenas" filed by Mr. Van Fossen on December 10, 2007, is denied as unnecessary, as discussed in the body of this order.
3. If Mr. Van Fossen chooses to subpoena former IPL employees, as discussed in the body of this order, he must comply with the requirements set forth in this order regarding such subpoenas, including the requirement to file the request for subpoenas from the Board on or before February 8, 2008.

4. The parties must comply with the requirements set forth in the body of this order.

5. On or before January 21, 2008, IPL must file its prepared testimony and exhibits. If it chooses to file a prehearing brief, IPL must file it on or before January 21, 2008.

6. Unless specifically modified in this order, 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/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 20<sup>th</sup> day of December, 2007.