

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>MIDWEST RENEWABLE ENERGY PROJECTS LLC,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NOS. AEP-05-2 AEP-05-3 AEP-05-4</p>
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**ORDER REGARDING MOTIONS AND
SETTING PROCEDURAL SCHEDULE AND HEARING DATE**

(Issued January 24, 2008)

On October 3, 2007, the undersigned administrative law judge issued an "Order Denying Motion for Partial Summary Judgment and Setting Deadline for Submission of Proposed Schedule." On October 17, 2007, Interstate Power and Light Company (IPL) filed a "Proposed Procedural Schedule." Midwest Renewable Energy Projects II, LLC (MREP) filed a "Clarifying Statement and Proposed Procedural Schedule" on October 17, 2007.

On October 25, 2007, IPL filed a "Response to Clarifying Statement of Midwest Renewable Energy Projects II, LLC and Request for Issue Preclusion Determination." On December 17, 2007, MREP filed a "Resistance to IPL's

Response to Clarifying Statement and IPL's Request for Issue Preclusion Determination." Also on December 17, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a "Response of the Office of Consumer Advocate to IPL's Response and Request for Issue Preclusion Determination." On January 7, 2008, IPL filed its "Reply to Resistance of MREP Regarding Issue Preclusion." Also on January 7, 2008, MREP filed a "Reply to OCA's Response to IPL's Request for Issue Preclusion Determination."

On December 27, 2007, MREP filed a "Motion to Compel Discovery." On January 7, 2008, IPL filed a "Response to Motion to Compel Discovery."

This order denies IPL's and the Consumer Advocate's arguments based on the EPCRA 2005 PURPA § 210(m)(6) savings clause, denies IPL's request for an issue preclusion determination, grants MREP's motion to compel, and grants IPL's request for a delay in turning over the requested information until the parties meet to discuss settlement. This order also sets a procedural schedule and hearing date in the event the parties are unable to settle the case.

Board rule 199 IAC 15.5(5) sets forth the following three optional methods of calculating avoided cost rates for purchases of electric energy and/or capacity from qualifying facilities.

1. On an as-available basis, as the qualifying facility determines the energy to be available for purchase, based on the purchasing utility's avoided costs calculated at the time of delivery. This method is set forth in Board subrule 15.5(5)"a," and is

called the "As-Available/Delivery Rate Option" by MREP in its resistance to the request for issue preclusion. This will be referred to as the First Method in this order.

2. Pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, based on the purchasing utility's avoided costs calculated at the time of delivery. This method is set forth in subrule 15.5(5)"b," and is called the "Contract/Delivery Rate Option" by MREP in its resistance. This will be referred to as the Second Method in this order.

3. Pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, based on the purchasing utility's avoided costs calculated at the time the obligation is incurred. This method is also set forth in subrule 15.5(5)"b," and is called the "Contract/Levelized Rate Option" by MREP in its resistance. This will be referred to as the Third Method in this order.

In its petition filed in Docket No. AEP-05-1 on January 12, 2005, MREP requested that the avoided cost rate for purchases from its qualifying facility in the docket be based on the Third Method. This was the only method for calculating avoided cost rates litigated and decided in Docket No. AEP-05-1.

In its original petitions filed in Docket Nos. AEP-05-2, 3, and 4, on July 26, 2005, MREP requested that the avoided cost rate for purchases from its qualifying facilities in the three dockets be based on the Third Method. The three dockets were later consolidated. On January 3, 2007, MREP filed an amendment to its petitions in the consolidated docket. MREP requested that, if it determined the avoided cost

rates calculated according to the Third Method were insufficient to ensure the viability of the project, it wished to have the avoided cost rates be calculated according to the Second Method. In its amendment, MREP also requested that, if it determined the avoided cost rates calculated according to the Second Method were insufficient to ensure the viability of the project, it wished to have the avoided cost rates be calculated according to the First Method.

EPACT 2005 PURPA § 210(m)(6) SAVINGS CLAUSE ARGUMENT

Section 210(m) of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA), was enacted on August 8, 2005, as part of the Energy Policy Act of 2005 (EPACT 2005). Section 210(m) provides that an electric utility's obligation to purchase electric energy from a qualifying facility after the date of enactment will be terminated if the Federal Energy Regulatory Commission (FERC) determines that the qualifying facility has nondiscriminatory access to a competitive energy market as described in the statute. However, section 210(m) contains a savings clause at paragraph 210(m)(6), which provides that:

Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from ... a qualifying ... small power production facility.

IPL's position

IPL argues that when MREP modified its petitions on January 3, 2007, to add its request for an avoided cost determination pursuant to the First Method, such

determination was not subject to a legally enforceable obligation. Therefore, IPL argues, if no legally enforceable obligation exists, then MREP cannot continue to pursue an avoided cost determination using this method, because it is no longer subject to the savings clause of PURPA 210(m)(6). IPL argues that FERC determined in its declaratory order involving MREP and these dockets¹ that "the statute protects avoided cost proceedings if they result in a legally enforceable obligation." IPL argues that any request for an avoided cost determination under the First Method is not made pursuant to a legally enforceable obligation, and therefore does not fall under the savings clause. Therefore, argues IPL, this request by MREP should be denied and removed from consideration in the case.

In addition, IPL argues, MREP did not amend its petitions to add the Second and First Methods of calculating avoided costs until January 3, 2007, after the enactment of the savings clause. IPL argues since the savings clause only protects proceedings pending before State authorities at the time of enactment on August 8, 2005, MREP's petition amendment falls outside the savings clause by virtue of its timing.

The Consumer Advocate's position

The Consumer Advocate agrees with IPL that the basis for the avoided cost determination in the First Method does not contemplate a legally enforceable obligation and is thus distinguishable from the avoided cost bases under the Second

¹ Midwest Renewable Energy Projects, LLC, FERC Docket No. EL06-9-000, "Order Granting Petition for Declaratory Order" (Issued July 7, 2006).

and Third Methods. The Consumer Advocate argues that this would seem to preclude MREP's request under the First Method from qualifying for the section 210(m)(6) savings clause. In addition, the Consumer Advocate argues, the savings clause would only apply to the legally enforceable obligations in effect or pending approval before the Board on the date of enactment of EPACT 2005. It argues that on August 8, 2005, MREP's petitions only requested a determination of avoided cost rates pursuant to the Third Method. Therefore, argues the Consumer Advocate, the additional alternative avoided cost methods proposed in MREP's January 3, 2007, amendment would not be subject to the section 210(m) savings clause.

MREP's position

MREP argues that IPL's prayer for relief should be denied. It argues the fundamental premise underlying this argument is that IPL does not have a legal obligation to purchase energy/capacity from its qualifying facilities unless the avoided cost option elected by MREP falls under the savings clause. However, MREP argues, IPL has an obligation to purchase the qualifying facility energy/capacity at issue in this consolidated docket regardless of whether the savings clause does or does not apply to such purchase. MREP argues that the regulations enacted by FERC pursuant to PURPA § 210(m) establish certain rebuttable presumptions with respect to an electric utility's exemption from the mandatory purchase obligations under PURPA, but do not in themselves eliminate the mandatory purchase

obligation. MREP argues that the regulations require electric utilities to file applications for relief from the mandatory purchase obligation with FERC and FERC must grant the applications before the utilities can claim entitlement to an exemption. 18 CFR §§ 292.309, 292.310. MREP argues that FERC has not exempted IPL from its mandatory PURPA purchase obligation. Therefore, argues MREP, IPL has a clear and present legal obligation under PURPA to purchase the energy/capacity from its qualifying facilities at issue in this case. MREP argues that since IPL still has a mandatory PURPA purchase obligation, it is entitled to have the Board determine the avoided cost rates pursuant to the Board's rules.

MREP argues that the Consumer Advocate's similar argument, that the avoided cost claims raised by MREP after August 8, 2005, should be removed from consideration because they are not subject to the savings clause, fails for the same reason: it fails to recognize that EPACT 2005 does not in itself exempt IPL from the mandatory purchase obligation. Instead, argues MREP, FERC action is necessary for such exemption and FERC has not acted to exempt IPL from the mandatory purchase obligation. Therefore, argues MREP, IPL has an obligation to purchase the energy/capacity from MREP's wind facilities at issue in these dockets and MREP has a right to have the Board determine the purchase rates in these dockets pursuant to 199 IAC 15.5(4).

IPL's response

IPL argues that it was only on September 6, 2007, that FERC denied IPL's request for rehearing on the issue of whether it was exempt from the PURPA mandatory purchase obligation. IPL argues that before September 6, 2007, and on the date MREP filed its petition amendment, no 18 CFR § 292.310 relief was yet necessary because the issue remained open at FERC with regard to IPL. IPL argues that MREP faults IPL for not responding to the FERC order expeditiously enough to have already filed an application pursuant to 18 CFR § 292.310. IPL argues that MREP would force the issue before IPL had enough time and resources to file the application. IPL states it is drafting the application in light of the FERC ruling. IPL argues that in Order 688,² FERC has already determined that if a qualifying facility has nondiscriminatory access to the Midwest Independent System Operator (MISO) market, the requirement that the electric utility enter into new contracts or obligations is terminated. IPL argues this rebuttable presumption makes it clear that once IPL is able to make this filing, it will likely prevail in gaining the requested relief. Therefore, IPL argues, MREP's request for avoided cost rates pursuant to the First Method should be denied and removed from consideration in this consolidated docket.

Analysis

Pursuant to PURPA § 210(a) and implementing federal and Board regulations, IPL currently has a mandatory purchase obligation with respect to the MREP facilities

² New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities, FERC Docket No. RM06-10-000, Order No. 688, Final Rule (Issued October 20, 2006).

at issue in this consolidated docket. Since IPL has not yet filed its application for relief from this obligation with FERC under the FERC rules,³ and since FERC has not granted IPL (or Alliant Energy Corporation) relief from this obligation, the obligation remains in effect. 18 CFR §§ 292.309 and 292.310. Therefore, IPL's request for relief pursuant to this argument should be denied. The Consumer Advocate's argument, that MREP's request for avoided cost determinations pursuant to the First and Second Methods is not subject to the savings clause because it was filed after August 8, 2005, is denied for the same reason.

IPL'S REQUEST FOR AN ISSUE PRECLUSION DETERMINATION

IPL's position

IPL argues that the issue of a calculation of avoided cost pursuant to the Third Method was specifically addressed in detail in Docket No. AEP-05-1. IPL argues this avoided cost issue meets the four-part test for issue preclusion set forth in Israel v. Farmers Mutual Insurance Association of Iowa, 339 N.W.2d 143, 146 (Iowa 1983) (Israel). It argues that the determination of avoided cost as calculated according to the Third Method is the same issue in Docket No. AEP-05-1 and these consolidated dockets. IPL argues that in Docket No. AEP-05-1, the Board determined that the EGEAS analysis is appropriate for such a calculation and has already updated the

³ IPL's previous application for exemption was filed pursuant to the statute itself and prior to FERC's adoption of the implementing rules.

information in the analysis beyond the actual creation of the legally enforceable obligation. IPL argues that a method to adjust the avoided cost purchase rate for various levels of capacity, a \$0.60 per megawatt-hour (MWh) reduction for every 50 megawatts (MW) of additional output capacity, was included in its testimony and was unrebutted by MREP. IPL argues that since the four dockets were filed nearly contemporaneously and would be subject to the same time period for calculation of the avoided cost when using the Board-approved EGEAS methodology, use of the same calculation and base information for the calculation is appropriate. IPL argues that since Docket Nos. AEP-05-2, 3, and 4 were filed only six and one-half months after Docket No. AEP-05-1, any legally enforceable obligation associated with these four dockets was created nearly contemporaneously.

IPL therefore argues it is appropriate to use its unrebutted calculation to adjust the Board-ordered 30 MW avoided cost figure of \$37.05 to \$36.45 for an 80 MW wind facility. IPL argues that even if the Board determines the testimony regarding this adjustment calculation is inadequate by itself, issue preclusion could still be implemented to limit this proceeding strictly to adjust the previously-filed EGEAS run to account for 80 MW of wind rather than 30 MW of wind. IPL argues that full litigation of any adjustments to the existing EGEAS analysis would be unnecessarily duplicative of the prior proceedings since they were thoroughly vetted in Docket No. AEP-05-1. IPL argues the second part of the test is met because the avoided cost issue was raised and litigated in the prior action. IPL argues because the petitions

were filed closely in time, which makes them subject to the same method and base assumptions for the avoided cost calculation, there is no need to re-litigate the issues here. IPL argues the third part of the test is met because the issue was certainly material and relevant to the disposition of the prior action. It argues the fourth part of the test is met because the Board's avoided cost determination in the prior action was necessary and essential to the resulting judgment.

Therefore, IPL argues, the Israel four-part test for issue preclusion has been met, and the avoided cost determination pursuant to the Third Method has already been decided and does not merit re-litigation. If the Board determines the \$0.60 adjustment is not appropriate, IPL argues in the alternative that issue preclusion be implemented to narrow the calculation to a simple calculation using the same figures and circumstances, adjusted only for an 80 MW EGEAS run rather than a 30 MW EGEAS run, without the need to re-litigate a thoroughly vetted issue.

The Consumer Advocate's position

The Consumer Advocate states it does not disagree with IPL's assertion that the avoided cost determination using the Third Method was litigated in Docket No. AEP-05-1 and generally satisfies the issue preclusion standards, particularly if the Board remains committed to an EGEAS derived cost. However, the Consumer Advocate argues, while the Board found the EGEAS analysis to be the most persuasive in Docket No. AEP-05-1, it did not find that the EGEAS analysis was the only method that can be used to determine avoided cost. In addition, argues the

Consumer Advocate, there have been changes in circumstances since the filing of the original petitions that justify further review of the issues decided in Docket No. AEP-05-1. The Consumer Advocate notes that IPL filed an Application for Ratemaking Principles for up to 200 MW of wind in Board Docket No. RPU-07-5. It argues that wind generation costs have increased during the pendency of these dockets and IPL has not implemented planned wind additions. In addition, it argues, MREP has been selling large portions of its proposed wind facilities to other utilities. Therefore, argues the Consumer Advocate, it makes sense to review whether the avoided cost methodology and determination in Docket No. AEP-05-1 remains adequate and consistent with state and federal policies encouraging wind generation.

The Consumer Advocate also argues the possibility of future renewable portfolio standards (RPS) heightens the importance of requiring qualifying facility contracts to include associated environmental attributes. It argues the addition of substantial wind generation to IPL's system without the ability to count this wind toward future RPS could produce adverse impacts on IPL and its customers. Therefore, argues the Consumer Advocate, it makes sense to review the Board's previous determination that the contract with MREP need not include environmental attributes associated with the wind generation.

MREP's position

MREP argues that issue preclusion does not apply to these dockets because they are ratemaking proceedings before an administrative agency. MREP argues in

the context of this PURPA ratemaking proceeding where purchase rates are based on the utility's avoided costs, mandatory purchase rates must be allowed to change as the utility's avoided costs change.

In addition, MREP argues, the four-part Israel test for issue preclusion is not satisfied. MREP argues the specific issue in these consolidated dockets that IPL seeks to preclude is not identical to any issue in Docket No. AEP-05-1 and was not raised or litigated in the prior docket. MREP argues the Board explicitly stated in its order in Docket No. AEP-05-1 that its determination of avoided cost in that docket related solely and exclusively to the output from the specific 30 MW facility at issue in the docket. MREP argues that in contrast, these consolidated dockets involve three different facilities with a total capacity of 190 MW. Therefore, argues MREP, the issue of determining legal and reasonable purchase rates based on the Third Method for the three facilities in these dockets is not the same issue decided in Docket No. AEP-05-1.

In addition, argues MREP, circumstances have changed from those reflected in the record in Docket No. AEP-05-1. MREP cites to an article quoting Alliant Energy vice-president Kim Zuhlke as saying Alliant is looking at ownership of wind power itself and that there is little difference in cost per MWh between contracts for purchase of wind power and IPL's construction of the facilities itself. MREP also notes IPL's filing of the Application for Ratemaking Principles in Board Docket No. RPU-07-5. MREP argues that in light of these recent developments, it expects to

argue that the per-MWh costs associated with IPL's planned wind generation are directly relevant to a determination of the avoided cost purchase rates in these consolidated dockets. MREP argues this information was not available in Docket No. AEP-05-1 and was not considered by the Board, and therefore it is entitled to present this argument in this proceeding.

MREP further argues that the inputs and assumptions used in the EGEAS analysis in Docket No. AEP-05-1 were outdated. MREP argues that IPL's issue preclusion argument asks the Board to set the avoided cost rate in this proceeding on the basis of an EGEAS analysis that uses outdated data. MREP argues this EGEAS analysis does not reflect IPL's real avoided costs at the present time. MREP argues this would violate FERC and Board rules⁴ that require avoided cost be calculated as of the time the contract obligations are incurred at the beginning of the specified term of the purchase contract MREP is pursuing with IPL.

MREP argues that IPL's alternative argument that the Board should determine avoided cost by a simple calculation that only adjusts the Docket No. AEP-05-1 avoided cost rate to reflect the output capacity difference between a 30 MW and an 80 MW wind facility should be denied. MREP argues this issue was not material, necessary, or essential to the Board's decision in Docket No. AEP-05-1 and was not litigated in that case.

⁴ 18 CFR § 292.304(d) and 199 IAC 15.5(5).

In its reply to the Consumer Advocate's filing, MREP argues that the Board should reject the Consumer Advocate's argument that the Board should reconsider its previous determination that MREP is not required to transfer environmental attributes to IPL as part of the avoided cost rates set by the Board. MREP argues that the governing law has not changed and the Board's determination that the PURPA avoided cost rate does not include environmental attributes, made as a matter of law, is correct.

IPL's reply

IPL argues the Board's limitation of applicability of its decision in Docket No. AEP-05-1 was due to MREP's lack of a firm guarantee that it would sell its full energy output from the facility to IPL, not the unique nature of the avoided cost determination. Therefore, argues IPL, the Board is not prohibited from extending the avoided cost determination made in Docket No. AEP-05-1 to these consolidated dockets.

IPL argues whether 30 MW or 190 MW of output capacity are at issue is immaterial. IPL argues that MREP's characterization of the three separate and distinct projects in this case as a 190 MW project is misleading. IPL argues that because MREP has sold a 50 MW share of the output capacity from the wind farm in Docket No. AEP-05-3 to another utility,⁵ the remaining 30 MW from that wind farm is explicitly analogous to the already litigated wind farm in Docket No. AEP-05-1.

⁵ MREP filed notice of this sale with the Board on December 7, 2007.

IPL argues that the determination of avoided cost in Docket No. AEP-05-1 and this case both involve the determination of avoided cost as calculated at the time of the creation of the legally enforceable obligation. IPL argues the Board determined the EGEAS analysis was appropriate for this calculation in Docket No. AEP-05-1 and already updated the information in that analysis to an extent beyond the actual creation of the legally enforceable obligation. IPL argues that since the four dockets were filed nearly contemporaneously and would be subject to the same time period for calculation of the avoided cost when using the EGEAS methodology, use of the same calculation and base information is appropriate.

IPL argues the information MREP asserts is new and not available in Docket No. AEP-05-1 is not new and was available in that docket. IPL argues the information in the article quoting Mr. Zuhlke is not new and is a culmination of analysis over time. It argues that the wind facilities proposed in the Application for Ratemaking Principles were also described as "placeholders" in the EGEAS runs in Docket No. AEP-05-1, and are therefore not new. IPL argues the only new information is more detailed cost information regarding its proposed wind farm. IPL argues that MREP would use this information to artificially inflate its avoided cost requests and would not account for the benefits of ownership. Furthermore, argues IPL, this late information is irrelevant to an avoided cost determination based on the creation of the legally enforceable obligation.

IPL argues the Board is not prohibited from relying on its prior decisions, particularly when they involve the same issues and analysis. IPL argues that while the Board is not obligated to rely on its past decisions, it is not prohibited from looking to its past decisions for guidance, and in this case, for evidence and material facts already on record in the prior case in order to issue a decision in this case.

In the alternative, IPL argues that even if the Board determines issue preclusion is not appropriate for wind facilities with a different output capacity, Docket No. AEP-05-3 clearly qualifies for issue preclusion because its available output capacity is now limited to 30 MW.

Analysis

In order to accept IPL's argument that the determination of avoided cost as calculated according to the Third Method is the same in Docket No. AEP-05-1 and these consolidated dockets, and that the same time period for calculation and same inputs should be used in any EGEAS analysis, the undersigned would have to accept IPL's argument that the legally enforceable obligation to purchase the output from MREP's wind facilities was created at the time the dockets were filed. When the legally enforceable obligation in these consolidated dockets was incurred, or is considered to have been incurred, within the meaning of Board subrule 15.5(5)"b," is still unclear and is an issue to be litigated and decided in this case. Possible dates include, but are not necessarily limited to, the date on which the petitions were filed, the date the Board issues its decision determining the avoided cost rate, or the

beginning of the specified term of the power purchase contract. The undersigned expects that the parties will argue and brief this issue as the case is being litigated.

In addition, it is important to remember that the Board did not find that the EGEAS analysis was the only method that can be used to determine avoided cost. The parties should be given the opportunity to litigate the determination of avoided cost in these consolidated dockets. The use of issue preclusion under these circumstances would be inappropriate and IPL's request for an issue preclusion determination should be denied.

In its petitions, MREP asks the Board to require IPL to purchase energy and capacity from MREP's wind facilities and to order that such purchases be made without conveying the associated environmental attributes to IPL. In Docket No. AEP-05-1, the Board held that if the parties were unable to agree on terms for the sale of environmental attributes, IPL was required to make the energy and/or capacity purchases regardless of whether the agreement conveys any associated environmental attributes to IPL. The Consumer Advocate argues it makes sense to review the Board's previous determination that a qualifying facility contract need not include environmental attributes. MREP argues that the Board's decision, made as a matter of law, was correct and the law has not changed since the Board's decision. No party has asked for issue preclusion on this issue. At this point in this proceeding, before the parties have filed any evidence or briefs regarding the merits of the case, it

would be inappropriate to determine the issue. It remains an issue to be litigated and decided in this proceeding.

MOTION TO COMPEL

MREP's position

MREP states that it served IPL with Data Request No. 31 asking IPL to produce a complete copy of all documents IPL filed with the Board in Docket No. RPU-07-5, including all documents filed on a confidential basis. MREP states that IPL has provided MREP with all public information filed in the docket, but has refused to provide the confidential information. The requested information generally relates to costs of IPL's proposed wind project. MREP slightly narrowed its request in its motion to compel. MREP states that it and IPL have a protective agreement in place that governs the production of confidential information. MREP argues the requested information is directly relevant to the subject matter involved in this proceeding and it is entitled to the information pursuant to 199 IAC 7.15(1) and Iowa R. Civ. P. 1.503(1). It argues that none of the grounds for IPL's refusal to produce the requested documents, which are listed in Appendix B to the motion, are valid.

IPL's position

IPL objects to the data request on a number of grounds set forth in Appendix B of MREP's motion to compel. These include: 1) that the information was filed confidentially with the Board because it contains trade secrets or other confidential research, development, or commercial information; 2) release of the commercially

sensitive information could unduly influence any potential settlement between MREP and IPL and could result in a higher bid and less favorable contract terms; 3) the information is in a docket separate and distinct from this case and cross-use of the information is improper; 4) the parties' protective agreement was not designed to cover information in other dockets; 5) the information is irrelevant to this proceeding because it involves the cost of owned generation as opposed to purchased generation; and 6) Iowa R. Civ. P. 1.504(1) allows the limitation of discovery of trade secrets or other confidential research, development, or commercial information. IPL argues the protective agreement between the parties is outdated and all-but-obsolete and would be very different if drafted today. IPL argues, as discussed above, that IPL's avoided costs are tied to the creation of the legally enforceable obligation, the legally enforceable obligation was created upon the filing of the petitions, it is not appropriate to update with current costs, and therefore, the current costs contained in IPL's filing in Docket No. RPU-07-5 are irrelevant to this proceeding. IPL argues that MREP, as a wind farm developer, is a competitor with IPL that could unfairly gain access to the construction and component costs and other information contained in Docket No. RPU-07-5. IPL argues it intends to try to negotiate a settlement with MREP, and the negotiations could be unfairly and unreasonably influenced by release of the confidential information.

IPL argues that due to the press of other dockets, it has not had time to meet with MREP to discuss settlement and will not be able to meet until February. IPL

asks the Board to deny the motion to compel, or in the alternative, to delay the release of confidential information from Docket No. RPU-07-5 until the parties have a reasonable opportunity to meet and attempt settlement. IPL states it expects it should be able to meet in mid-to-late February.

Analysis

Discovery procedures applicable to civil actions are available to parties in contested cases. Iowa Code § 17A.13; 199 IAC 7.15(1). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Iowa R. Civ. P. 1.503(1).

IPL's position that the requested information is not relevant only relates to the calculation of avoided costs under the Third Method. IPL's position that the requested information is not relevant to the calculation of avoided costs under the Third Method depends on acceptance of its position that the legally enforceable obligation to purchase was incurred as of the date MREP filed its petitions. As discussed above, this is an issue still to be litigated and decided in this case. Therefore, the requested information is, or may be, relevant to the subject matter of this case.

None of the other arguments made by IPL for the refusal to provide the requested information provides a valid basis to deny discovery of the information, particularly when the parties have an executed protective agreement in place. IPL's argument that the existing protective agreement is not sufficient because it would be

different if the parties negotiated it today is not persuasive. Therefore, MREP's motion to compel should be granted.

The undersigned notes IPL's request for a delay in turning over the requested information until the parties have a reasonable opportunity to settle the case. Voluntary settlement of this case is encouraged. The parties have had years to settle the case, and it is unclear whether one more face-to-face meeting could produce a settlement. The undersigned will not order the parties to attempt settlement. However, in the spirit of possibly unjustified optimism, the undersigned will grant IPL until the end of February to attempt to settle the case before it must turn over the requested information.

The undersigned will set a procedural schedule and date for hearing in the event the parties are unable to settle the case.

IT IS THEREFORE ORDERED:

1. Since IPL has not filed an application and has not been granted an exemption by FERC pursuant to 18 CFR §§ 292.309 and 292.310, IPL has a mandatory purchase obligation with respect to the MREP facilities at issue in this docket. IPL's argument that MREP's request for an avoided cost determination pursuant to the First and Second Methods is not subject to the PURPA section 210(m)(6) savings clause, and should therefore be removed from consideration in this case, is therefore denied. The Consumer Advocate's argument that MREP's request for avoided cost determinations pursuant to the First and Second Methods is

not subject to the savings clause because it was filed after August 8, 2005, is denied for the same reason. Therefore, determination of avoided costs according to the First and Second Methods remains at issue in this proceeding.

2. IPL's request for an issue preclusion determination is hereby denied.

3. MREP's motion to compel is hereby granted, although the date for compliance is delayed to provide the parties with an opportunity to negotiate a settlement. If the parties have not reached settlement by February 29, 2008, IPL must provide the requested information to MREP on that date.

4. In the event the parties are unable to settle this case, the following procedural schedule is established:

a. On or before March 14, 2008, MREP shall file prepared direct testimony and exhibits, with underlying workpapers, and a prehearing brief. When it files exhibits, MREP should use exhibit numbers one and following. MREP shall file an index of its exhibits with its filing.

b. On or before April 4, 2008, IPL shall file prepared rebuttal testimony and exhibits, with underlying workpapers, and a prehearing brief. IPL should use exhibit numbers 100 and following. IPL shall file an index of its exhibits with its filing.

c. On or before April 4, 2008, the Consumer Advocate and any intervenor shall file prepared testimony and exhibits, with underlying workpapers, and a prehearing brief. The Consumer Advocate should use

exhibit numbers 200 and following. If any intervenor files exhibits, it should use exhibit numbers starting with the intervenor's initials and numbers 300 and following. The Consumer Advocate and any intervenor shall file an index of its exhibits with its filing.

d. On or before April 18, 2008, MREP shall file prepared surrebuttal testimony and exhibits. MREP shall update its index of its exhibits and file it with its filing. If MREP chooses to file a prehearing rebuttal brief, it must be filed on or before April 18, 2008.

e. The parties shall file a joint statement of the issues on or before April 25, 2008.

f. A public hearing for the presentation of evidence and the cross-examination of witnesses shall be held beginning at 9:30 a.m. on Monday, May 5, 2008, and continuing each day that week until the conclusion of the hearing. The hearing will be held in the Board's Hearing Room, 350 Maple Street, Des Moines, Iowa 50319. Each party must provide a copy of its prepared testimony and its exhibits to the court reporter at the hearing or make arrangements for such provision. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at 515-281-5256 at least five days prior to hearing to request that appropriate arrangements be made.

g. A briefing schedule will be established at the conclusion of the hearing.

5. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination that have not been previously filed shall become a part of the evidentiary record of these proceedings. The party making reference to the data request shall file an original and three copies of the data request and response with the Board at the earliest possible time.

7. On January 18, 2008, MREP filed a "Supplement to Motion to Compel Discovery." Pursuant to 199 IAC 7.15, IPL shall file its response on or before January 28, 2008.

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 24th day of January, 2008.