

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>JACOBSEN HOLZ CORPORATION, Petitioner,</p> <p style="text-align:center">v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY, Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-05-5 (C-03-47)</p>
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ORDER GRANTING LIMITED INTERVENTION

(Issued February 5, 2008)

For the past three years, the parties in this case, Progressive Foundry, Inc. (Progressive), Interstate Power and Light Company (IPL), Jacobsen Holz Corporation (Jacobsen Holz), and the Consumer Advocate Division of the Department of Justice (Consumer Advocate), have been pursuing a joint solution to resolve the issues in this case and have been filing status reports regarding their progress. Although it appears the parties have made considerable progress in implementing a solution, it also appears they may not be able to settle the case. Therefore, the undersigned administrative law judge issued a "Procedural Order and Notice of Hearing" on December 20, 2007. Because it appeared the parties could still make progress if given additional time to attempt settlement, the procedural order included a one-

month period for further negotiations prior to the beginning of the active procedural schedule.

On January 9, 2008, MidAmerican Energy Company (MidAmerican) filed a "Petition to Intervene" in the case. MidAmerican states it is interested in the issues in the case and that this proceeding may establish new policy concerning electric power quality issues and their resolution. MidAmerican states it is a rate-regulated supplier of electric public utility service with Utilities Board (Board)-assigned exclusive service areas like IPL, and as such, may be affected by any policy developments in this proceeding. Therefore, in order to be involved in policy matters that could impact MidAmerican and its electric customers, MidAmerican requests permission to intervene in this proceeding. MidAmerican states that since its interest is primarily in general policy issues, its level of participation will depend on whether general policy issues are raised or whether the proceeding is resolved based on the specific situation involved.

On January 22, 2008, Progressive filed "Progressive Foundry's Resistance to MidAmerican Energy Company's Petition to Intervene."¹ Progressive argues that MidAmerican's petition should be denied because MidAmerican's interests in the proceeding are indirect, remote, and adequately represented by IPL. Progressive argues that one is "interested" in a proceeding if it has a legal right that the proceeding will directly affect. Progressive notes that MidAmerican stated its

¹ Progressive Foundry acknowledged that its filing was untimely and requested that it be considered in spite of this because no party would be prejudiced by the untimeliness of the filing. The request is granted and the resistance will be considered.

interests were limited to general policy issues. Progressive argues this proceeding is before an administrative law judge and administrative law judges do not create policy nor develop existing policy. Therefore, argues Progressive, this proceeding does not impact any interests of MidAmerican and its intervention would be improper.

Progressive argues that MidAmerican could intervene if and when the case goes before the Board, which is empowered to make policy decisions. In addition, argues Progressive, policy matters are supposed to go through rulemaking even if initiated by the Board.

Progressive argues that the parties are attempting to settle the case and to allow MidAmerican to intervene at this stage will needlessly complicate the proceeding, hamper the parties' settlement attempts, and decrease the likelihood that the case can be amicably resolved before the April hearing. If MidAmerican's petition to intervene is not denied, Progressive requests that the undersigned require MidAmerican and IPL to consolidate their petitions and briefs and limit the number of attorneys allowed to actively participate in the case.

Although the undersigned agrees that the major purpose of administrative contested cases is to determine the facts of the case and apply applicable law to those facts to reach a reasoned decision with respect to the particular parties and facts involved in the case, it is also true that some contested case decisions may have some impact on persons or companies who are not parties or may have broader policy implications. Agencies of state government may set policy through rulemaking or through contested case decisions. In addition, agencies of state

government may assign any contested case to an administrative law judge. Although the Board has traditionally reserved cases involving major policy decisions and implications to itself, there is no legal requirement that it do so. Some agencies in Iowa first assign all contested cases to administrative law judges, and only hear appeals of those cases. Some public utility commissions in other states also assign all contested cases to administrative law judges.

This proceeding involves the specific electric power quality issues that exist with respect to the parties to this case in Perry, Iowa, and how these issues should be resolved. However, the particular resolution chosen may impact IPL customers other than these particular parties. The parties have not yet begun to file prepared testimony or briefs. It is unclear at this stage of the proceeding whether there will be any policy questions involving electric power quality issues and their resolution litigated in this case that could impact MidAmerican's interests or the interests of its customers. Granting MidAmerican's petition would allow MidAmerican to more easily follow the progress of the case and determine whether and how its and its customers' interests could be affected. Although IPL and MidAmerican are both rate-regulated electric utilities, their interests may not be aligned in this proceeding. If the litigation and resolution of the case may impact MidAmerican and its customers, MidAmerican's participation will help to identify and clarify what the impact may be.

However, the undersigned is concerned that intervention at this point will adversely complicate settlement negotiations between the parties. The parties have been attempting to resolve the power quality issues involved for several years and

have apparently made significant progress. Adding another party who has not been involved will make settlement more complicated just by the addition of another party. MidAmerican implies in its petition that if the case is resolved based on the specifics of the situation, its level of participation will not be great.

Therefore, pursuant to 199 IAC 7.13, MidAmerican's petition will be granted, but its participation will be limited in the following ways. If the existing parties are able to settle this case, they may do so without the participation and approval of MidAmerican. MidAmerican's participation will be limited to its identification and argument regarding how the litigation and resolution of the particular facts of the case could impact MidAmerican's interests and those of its customers. MidAmerican must comply with the procedural schedule set forth in the "Procedural Order and Notice of Hearing" issued on December 20, 2007. In addition, on or before March 3, 2008, MidAmerican must file a brief clearly identifying and arguing how the litigation and resolution of the particular facts in this case could impact MidAmerican's interests, as known as of that date, based on the filings of the other parties. On or before March 24, 2008, MidAmerican must update its brief based on the filings of the other parties, and must state whether and how it wishes to participate in the hearing. The other parties may file a response to MidAmerican's brief and statement on or before March 31, 2008.

IT IS THEREFORE ORDERED:

1. The "Petition to Intervene" filed by MidAmerican on January 9, 2008, is hereby granted, but is limited as discussed in the body of this order.

2. On or before March 3, 2008, MidAmerican must file a brief clearly identifying and arguing how the litigation and resolution of the particular facts in this case could impact MidAmerican's interests, as known as of that date, based on the filings of the other parties.

3. On or before March 24, 2008, MidAmerican must update its brief based on the filings of the other parties, and must state whether and how it wishes to participate in the hearing.

4. If any other party wishes to file a response to MidAmerican's brief and statement, it must do so on or before March 31, 2008.

5. All provisions of the "Procedural Order and Notice of Hearing" issued December 20, 2007, not specifically modified by this order remain in 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 5th day of February, 2008.