

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="text-align:center">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-12 (C-07-147)</p>
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ORDER REGARDING SUPPLEMENTAL TESTIMONY AND LETTERS

(Issued February 14, 2008)

On February 11, 2008, Mr. Van Fossen filed a supplement to the rebuttal testimony he filed on February 1, 2008. The "Order Granting Requests," issued January 31, 2008, set a deadline of February 7, 2008, for Mr. Van Fossen to file his rebuttal testimony and exhibits. Since the supplement was filed after the deadline, it could be excluded from consideration. However, the supplement was filed only four days late, and allowing its admission would still give the other parties in the case sufficient time to consider it in preparation for the hearing. Therefore, the filing will be accepted and it will be considered in reaching a decision in this case. However, no additional prepared testimony or exhibits will be accepted or considered.

On Tuesday, February 12, 2008, Mr. Van Fossen copied the undersigned administrative law judge and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) on an electronic mail message (e-mail) he sent to Ms.

Paula Johnson, the attorney for Interstate Power and Light Company (IPL). Evidently, Mr. Van Fossen was responding to a letter IPL had sent him, although he did not attach the IPL letter to his e-mail. Mr. Van Fossen attached a letter he wrote in response to IPL to the e-mail. Also on February 12, 2008, IPL sent an e-mail to the undersigned enclosing a copy of the letter from IPL to Mr. Van Fossen to which Mr. Van Fossen was responding. On February 13, 2008, IPL filed a copy of its letter with the Utilities Board (Board). On February 14, 2008, Mr. Van Fossen filed a copy of his letter with the Board.

Although the letter from IPL to Mr. Van Fossen references a letter dated February 8, 2008, that Mr. Van Fossen evidently sent to IPL, neither party has filed a copy of this letter with the Board. A copy of it was not included in the letters attached to the e-mail messages.

The undersigned does not know what Mr. Van Fossen requested in his February 8, 2008, letter to IPL. However, the letters attached to the e-mail correspondence and dated February 12, 2008, between Mr. Van Fossen and IPL indicate that Mr. Van Fossen wishes IPL to make its employees Mr. Aller, Mr. Kouba, and Mr. Breuer available for cross-examination by Mr. Van Fossen at the hearing. In its letter, IPL states that it will not voluntarily make these witnesses available at the hearing, and that Mr. Van Fossen will have to subpoena them if he wishes them to be present at the hearing. IPL stated that, although it had offered to make two IPL employee meter readers available at the hearing, neither this offer nor the Board order "contemplated a subpoena-less process for IPL personnel beyond the referenced meter readers." IPL referred Mr. Van Fossen to a prior order issued

December 20, 2007, by the undersigned regarding previous subpoena requests by Mr. Van Fossen. IPL noted that the Board order required that any subpoena requests be filed with the Board in accordance with applicable law and no later than February 8, 2008.

In his responsive letter dated February 12, 2008, Mr. Van Fossen states that:

By copy of this letter, I will let Mr. Ragsdale and the IUB know that I will be seeking subpoenas for Messrs. Aller, Kouba, and Breuer. In his various affidavits, Mr. Aller claims responsibility for IPL's electric operations, and he makes representations about my contacts with Alliant employees. Alliant also makes representations about the meeting I attended in the company's offices on November 1, 2007, at which only company employees Messrs. Kouba and Breuer were present. It is necessary for me to question these men about those representations, and other materials provided by them in the company's testimony.

Also, I note that the sections of the IUB Order of December 20 to which you directed me specifically reference FORMER employees of Alliant Energy Company IPL, not present employees which the company is able to make available for cross-examination.

The use of electronic mail is not an acceptable method of filing documents with the Board unless specifically allowed by Board order or other official statement authorizing such filings in a particular case for a particular purpose. 199 IAC 7.4. No such order has been issued in this case. Therefore, the e-mail messages and attached letters have not been filed in this case. No subpoenas will be issued based on Mr. Van Fossen's letter attached to his e-mail.

The only items properly filed are the letters dated February 12, 2008, from IPL to Mr. Van Fossen, which IPL filed on February 13, 2008, and the letter dated February 12, 2008, from Mr. Van Fossen to IPL, which Mr. Van Fossen filed on February 14, 2008.

The undersigned notes that the orders issued on December 13 and December 20, 2007, gave Mr. Van Fossen instructions regarding subpoenas and references to the Board's rules. The undersigned further notes that even if the February 8, 2008, deadline for filing subpoena requests with the Board contained in the December 20, 2007, order is interpreted to apply only to former IPL employees, the Board's subpoena rule requires subpoena requests to be submitted to the Board at least seven days before the scheduled hearing, unless good cause is shown for permitting later action. Mr. Van Fossen's letter to IPL is not a request for subpoenas from the Board that complies with the requirements of 199 IAC 7.16. However, even if Mr. Van Fossen's letter is deemed to be a compliant request for subpoenas, it was not filed in a timely manner. Mr. Van Fossen does not provide any statements regarding good cause to allow a late filing of the subpoena request. It does not appear that good cause exists for the late filing. Mr. Van Fossen knew of the existence of these potential witnesses and could have filed a timely subpoena request.

IPL is correct that it is not required to make its current employees who have not filed prepared testimony in the case available at the hearing without a subpoena.

However, the undersigned notes again that Mr. Van Fossen is unrepresented by legal counsel. In addition, it appears that IPL employees Mr. Kouba and Mr. Breuer were at a meeting with Mr. Van Fossen on November 1, 2007, in which this case was discussed. This meeting has been referred to in prepared testimony. Although it is unclear at this time whether Mr. Kouba's and Mr. Breuer's testimony will be required, it does appear their testimony could be helpful in clarifying what

happened at the meeting. However, it is unclear at this point whether the details of what happened at the meeting would be relevant to the issues in this case. Requiring Mr. Kouba's and Mr. Breuer's attendance at the hearing would be unduly burdensome. Mr. Van Fossen has not stated he is willing to pay witness and mileage fees for their attendance. Therefore, Mr. Kouba's and Mr. Breuer's in person attendance at the hearing will not be required. However, it does not appear that it would be overly burdensome to require their attendance by telephone conference call if their testimony is needed. IPL must make Mr. Kouba and Mr. Breuer available to be connected to the hearing by telephone conference call if their testimony is needed during the hearing. The decision of whether their testimony is needed, and the arrangements for such testimony, if needed, can be made during the hearing. The undersigned recognizes the late notice of this requirement. Therefore, if the presence of Mr. Kouba and/or Mr. Breuer by telephone conference call is impossible or presents extreme difficulty, IPL must immediately file notice with the Board so appropriate alternative arrangements may be made.

Mr. Van Fossen would also like Mr. Aller to be present at the hearing. Mr. Aller's only connection to this case is that he signed affidavits related to IPL's request to hold certain information confidential. Board rules regarding requests for confidentiality require that a corporate officer sign the supporting affidavit. 199 IAC 1.9(6). Mr. Aller signed the affidavits as a corporate officer. It does not appear that he could provide any relevant testimony. Therefore, his presence will not be required, either by telephone or in person.

IT IS THEREFORE ORDERED:

1. The "Rebuttal Supplement" filed by Mr. Van Fossen on February 11, 2008, is accepted.
2. No additional prepared testimony or exhibits will be accepted or considered.
3. As discussed in this order, Mr. Van Fossen has not filed a timely request for subpoenas that complies with the requirements of Board rules, and no subpoenas will be issued on the basis of Mr. Van Fossen's letter to IPL dated February 12, 2008.
4. As discussed in this order, IPL shall make its employees, Mr. Kouba and Mr. Breuer, available by telephone conference call if their testimony is needed during the hearing. Mr. Aller's presence at the hearing will not be required.
5. If the presence of Mr. Kouba and/or Mr. Breuer at the hearing by telephone conference call is impossible or presents extreme difficulty, IPL must immediately file notice with the Board so appropriate alternative arrangements may be made.

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 14th day of February, 2008.