

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="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-07-12 (C-07-147)</p>
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ORDER REGARDING SUBPOENA REQUESTS

(Issued February 18, 2008)

On February 14, 2008, the undersigned administrative law judge issued an "Order Regarding Supplemental Testimony and Letters." The order ruled on requests Mr. Van Fossen made to have three current Interstate Power and Light Company (IPL) employees present at the hearing. Among other things, the order ruled that Mr. Van Fossen had not filed a timely request for subpoenas that complied with the Utilities Board (Board) rules, and that no subpoenas would be issued on the basis of Mr. Van Fossen's letter to IPL dated February 12, 2008, and filed with the Board on February 14, 2008.¹ The order further ruled that IPL was required to make its employees, Mr. Kouba and Mr. Breuer, available by telephone conference call if

¹ Documents are filed with the Board upon receipt by the Board's Executive Secretary in a form that complies with the Board's filing requirements. 199 IAC 7.4(2).

their testimony was needed during the hearing, and that Mr. Aller's presence at the hearing was not required. The order ruled that, due to the late notice of the requirement, if the presence of Mr. Kouba and Mr. Breuer at the hearing by telephone conference call was impossible or presented extreme difficulty, IPL was required to immediately file notice with the Board so appropriate alternative arrangements could be made.

On February 14, 2008, Mr. Van Fossen filed a "Request for Subpoenas" with the Board. This request was filed after the above order was issued, and the undersigned was not aware of its existence at the time of the issuance of the order. Although the filing was captioned "Request for Subpoenas," Mr. Van Fossen did not ask the Board to issue subpoenas in the request. Rather, Mr. Van Fossen requested that the Board compel the following IPL employees to appear for cross-examination at the hearing: Mr. Thomas L. Aller, Mr. Terry L. Kouba, and Mr. Joe Breuer. The reasons Mr. Van Fossen gave regarding the need for the presence of these witnesses at the hearing were the same or similar to the reasons previously given in his letter filed with the Board. This request was not timely and good cause does not exist for the late filing. 199 IAC 7.16.

On February 15, 2008, IPL filed a "Motion to Deny Mr. Van Fossen's Request for Subpoenas and/or Motion to Quash Subpoenas." IPL argued Mr. Van Fossen's request for subpoenas was untimely and did not comply with the Board's rules and a previous order issued December 20, 2007. IPL also argued Mr. Aller's testimony

would be irrelevant. IPL stated that Mr. Aller would not be in the state on the day of the hearing and that Mr. Kouba and Mr. Breuer already had existing obligations scheduled for the day of the hearing. IPL moved the Board to quash the subpoenas for these witnesses if they had already been issued. As stated in the February 14, 2008, order, it is unclear at this point whether Mr. Kouba and Mr. Breuer could provide relevant testimony on the issues in this case, and it does not appear that Mr. Aller could provide any relevant testimony.

On February 15, 2008, Mr. Van Fossen sent an electronic mail message to the undersigned explaining why his "Request for Subpoenas" had not been filed sooner. As stated in the above order issued February 14, 2008, 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 electronic message sent on February 15, 2008, has not been filed in this case. It could therefore be disregarded. Even if it is considered, the electronic message does not provide good cause for the late filing. Mr. Van Fossen knew of the existence of these potential witnesses long before the deadline for filing a subpoena request.

The filings by the parties and electronic message from Mr. Van Fossen do not provide any persuasive reason to change the rationale or requirements contained in the "Order Regarding Supplemental Testimony and Letters" issued February 14,

2008. It therefore remains in full force and effect. At the beginning of the hearing, the parties and the undersigned will discuss the need for and possible availability of Mr. Kouba and Mr. Breuer to be connected to portions of the hearing by telephone conference call. If needed, alternative arrangements will be discussed.

IT IS THEREFORE ORDERED:

The "Order Regarding Supplemental Testimony and Letters" issued on February 14, 2008, 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 18th day of February, 2008.