

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. WRU-08-6-150 (GCU-07-1)
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**ORDER GRANTING WAIVER**

(Issued March 17, 2008)

On February 27, 2008, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) a request for waiver of 199 IAC 7.23(8)"d" which limits the length of a reply brief to 40 pages. IPL's reply brief totaled 63 pages in length, 23 pages longer than the 40-page limit for reply briefs as established by 199 IAC 7.23(8)"d." No objections to the waiver request have been filed.

In support of its request, IPL stated that it has responded to numerous legal and evidentiary assertions of two separate adversarial parties and has not been able to fully respond to the allegations contained in the adversarial parties initial briefs without exceeding the page limitation of 199 IAC 7.23(8)"d." IPL further stated that to hold it to a 40-page limit in its reply brief would pose an undue hardship on IPL, denying it the right to fully respond to all outstanding issues and allegations.

IPL also stated that no parties' substantial legal rights would be prejudiced by IPL being allowed to build a full and complete record in this proceeding and the page limitation of 199 IAC 7.23(8)"d" is not specifically mandated by statute or other

provision of law. IPL further stated that substantially equal protection is available to other parties by their ability to request a waiver of the same regulation.

Board rule 1.3 states:

In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
2. The waiver would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.

The burden of persuasion rests with the filing party, which in this case is IPL, and the Board believes IPL has met its burden and the standards for a waiver contained in 199 IAC 1.3 have been satisfied. Therefore, the Board will grant IPL's request for waiver of 199 IAC 7.23(8)"d" in this limited circumstance.

The Board finds the test in rule 1.3 has been satisfied in this case and a waiver will be granted this time. However, the Board does not approve of IPL's decision to substantially exceed the page limits in the rules and to file a request for waiver simultaneously with the over length brief. If other parties were to adopt this practice, the rules limiting brief length would be meaningless. Here, IPL must have

known it would want additional pages for its brief well in advance of the deadline for filing the brief. It should have filed its request for waiver at that time. Should IPL repeat this course of action, it is likely that the request for waiver will be denied and the over length brief will be rejected.

**IT IS THEREFORE ORDERED:**

Interstate Power and Light Company is granted a waiver of 199 IAC 7.23(8)"d" for the submission of its reply brief, as requested on February 27, 2008.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 17<sup>th</sup> day of March, 2008.