

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. RPU-08-1
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**ORDER DENYING MOTION TO DISMISS**

(Issued June 9, 2008)

On April 25, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a "Motion to Dismiss, or Alternatively, to Compel Discovery" in Docket No. RPU-08-1. This docket involves Interstate Power and Light Company's (IPL) application for determination of ratemaking principles for up to 432.5 MW of the proposed Sutherland Generating Station Unit 4, a coal-fired generating facility located at IPL's Sutherland Generating Station in Marshalltown, Iowa. IPL asked for expedited treatment of its application.

In support of its motion to dismiss, Consumer Advocate said that one of the ratemaking principles requested by IPL is for a cost cap; if costs of the plant fall within the cost cap, IPL would not have to establish the prudence or reasonableness of the costs. Consumer Advocate noted that IPL's application had little supporting information and documentation for this principle and that a data request was mailed to IPL on April 8, 2008, requesting additional information. A copy of the data request was attached to Consumer Advocate's motion.

Consumer Advocate said IPL responded to its data request on April 16, 2008, but that the response was inadequate and IPL indicated some additional information would be provided when it was available. Consumer Advocate said this was problematic given the procedural schedule and that IPL also claimed some of the data was proprietary and could not be provided. Consumer Advocate asked that IPL's ratemaking principles application be dismissed or, alternatively, that IPL be compelled to respond to the discovery request and appropriate adjustments made to the procedural schedule.

On May 9, 2008, IPL filed a response to Consumer Advocate's motion. IPL cited authority indicating that its petition for ratemaking principles cannot be dismissed unless Consumer Advocate can demonstrate that IPL's application, taken as true, cannot meet the requirements for a ratemaking principles decision. With respect to the motion to compel, IPL said that it was in the process of making a good-faith effort to resolve the dispute (199 IAC 7.15(4)) and that additional information was provided to Consumer Advocate on May 2, 2008.

Consumer Advocate filed a reply to IPL's response on May 14, 2008. Consumer Advocate said its motion to dismiss was not based on the fact that IPL did not set forth a valid claim for relief but on the Board's inherent authority to control discovery and impose sanctions, citing Iowa R.Civ.P. 1.517(2)b(3). Consumer Advocate said that IPL failed to provide information and documentation on the cost estimates in its initial filing and failed to provide any meaningful information until

May 2, 2008. Consumer Advocate said that additional information was based on information not supplied to Consumer Advocate and that a further response was not provided until May 12, 2008.

It appears from IPL's response and Consumer Advocate's reply that the data request that initiated the dispute has been responded to by IPL and that it is not necessary for the Board to rule on Consumer Advocate's alternative request for an order compelling IPL to respond to the data request. Because of the failure to include adequate cost cap information in the initial ratemaking principles application and the lapse of time in responding to the data request, however, Consumer Advocate maintains that dismissal of the application remains an appropriate remedy.

The cost cap is one of several ratemaking principles requested and there is nothing in the pleadings to indicate that there have been discovery delays regarding the other ratemaking principles. Dismissing the application is too severe a sanction for delay in responding to one data request in most cases, particularly when the information was ultimately provided well in advance of the due date of Consumer Advocate's initial testimony.

However, IPL's one-month delay in providing a complete response to the data request is unacceptable and the schedule established in this docket does not have room for any more delays of this sort. An expedited schedule was set in this proceeding in an attempt to accommodate IPL's proposed construction schedule. The Board expects IPL to provide much more timely responses in the future and the

Board will entertain a motion to modify the procedural schedule if similar delays occur again.

**IT IS THEREFORE ORDERED:**

The motion to dismiss filed by the Consumer Advocate Division of the Department of Justice on April 25, 2008, is denied.

**UTILITIES BOARD**

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/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 9<sup>th</sup> day of June, 2008.