

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>CITY OF EVERLY, IOWA,<br>Petitioner,<br><br>v.<br>INTERSTATE POWER AND LIGHT<br>COMPANY,<br>Respondent; | DOCKET NO. SPU-06-5  |
| CITY OF KALONA, IOWA,<br>Petitioner,<br><br>v.<br>INTERSTATE POWER AND LIGHT<br>COMPANY,<br>Respondent;               | DOCKET NO. SPU-06-6  |
| CITY OF ROLFE, IOWA,<br>Petitioner,<br><br>v.<br>INTERSTATE POWER AND LIGHT<br>COMPANY,<br>Respondent;                | DOCKET NO. SPU-06-7  |
| CITY OF TERRIL, IOWA,<br>Petitioner,<br><br>v.<br>INTERSTATE POWER AND LIGHT<br>COMPANY,<br>Respondent;               | DOCKET NO. SPU-06-8  |
| CITY OF WELLMAN, IOWA,<br>Petitioner,<br><br>v.<br>INTERSTATE POWER AND LIGHT<br>COMPANY,<br>Respondent.              | DOCKET NO. SPU-06-10 |

**ORDER DENYING APPLICATION FOR RECONSIDERATION**

(Issued August 25, 2008)

On July 11, 2008, the Utilities Board (Board) issued its "Final Decision and Order" (Final Order) in five municipalization dockets, identified as Docket Nos. SPU-06-5, 6, 7, 8, and 10. On July 30, 2008, the cities involved in the five

municipalization dockets, Everly, Kalona, Rolfe, Terril, and Wellman, Iowa (collectively, Cities), filed a timely application for reconsideration of the Board's decision. Objections to the application for reconsideration were filed on August 13, 2008, by Interstate Power and Light Company (IPL) and MidAmerican Energy Company (MidAmerican).

The Cities asked for reconsideration of all of the Board's findings of fact. First, the Cities ask for reconsideration of findings 1 through 5, which provide for each city that if a certificate of authority is granted, the current corporate limits of each city should be utilized in establishing the exclusive service territory of each municipal utility. The Cities argue that strict adherence to corporate limits results in unnecessary duplication of facilities and unnecessarily increases the costs of reintegration, noting that the use of primary metering would provide a more economical and appropriate method for reintegration.

Second, the Cities ask for reconsideration of findings 6 through 10, which set the reasonable price to be paid by each city for IPL's facilities, including reintegration costs, if a certificate of authority is granted. The Cities argued that the Board's decision should be revisited because it failed to incorporate primary metering as an acceptable method to accomplish reintegration, overvalued IPL's assets, failed to account for depreciation of IPL's assets, failed to incorporate net salvage value, and overvalued transmission costs.

Third, the Cities ask for reconsideration of findings 11 through 15, which provided that for each city it would be unreasonable and not in the public interest to grant a certificate of authority to form a municipal utility. The Cities repeat their prior allegations with respect to service territory boundaries and the price to be paid to IPL. In addition, the Cities argue that the Board's order established a municipalization standard that would be unattainable by any city because it would require a city to have firm power contracts in place for power supply and transmission and ancillary services, as well as an established plan for energy efficiency and utility operations, prior to filing a petition for municipalization. The Cities finally argue that use of IPL's growth rate was inappropriate, that the Cities' operations and energy efficiency plans were reasonable, and that the Board made assumptions as to what voters in each city believed when they cast their ballots in favor of municipalization.

The Board will briefly address each of the three categories of findings separately, but first will make some preliminary comments regarding the reconsideration application. The Cities' application in effect argues that the Cities' evidence should have prevailed over that of other parties. The Board has the authority to weigh the evidence on which it relies in making its determinations and an agency decision does not lack substantial evidence because inconsistent conclusions could be drawn from the same evidence or because different conclusions could be drawn from the same record. Arndt v. City of Le Claire, 728 N.W.2d 389, 393 (Iowa 2007). The record in this case was voluminous but the Cities' claim that there may

be evidence to support findings that were not made does not provide a basis for reconsideration because there is substantial evidence in the record to support the Board's decision and the Board found that evidence to be more persuasive. The Cities made no arguments in the application for reconsideration that were not considered by the Board in reaching its Final Order.

### **I. SERVICE AREA BOUNDARIES**

Iowa Code §§ 476.22 through .26 delegate to the Board the authority to determine whether it is in the public interest to issue a certificate of authority to a new municipal electric utility. Included within this delegation is the responsibility to make public interest determinations regarding assigned areas of service; § 476.23(1) grants the Board sole discretion to issue certificates of authority for a new municipal utility.

A consistent theme throughout the Board's Final Order is the Cities' failure to undertake sufficient investigation and study so that others could have confidence in their municipalization plans. The Cities left too many important issues to be studied and addressed in the future. As one example, the Cities did not fully consider the terms and conditions that might be appropriate for use of primary metering. This led the Board to conclude that primary metering could not be considered as a viable option in this case. (Final Order, p. 13). While this resulted in some duplication of facilities in the cost analysis, under the facts and circumstances these duplications

are not unreasonable. The Cities did not provide sufficient and persuasive evidence to support their claim that primary metering should be required.

Similarly, the Cities failed to provide any reliable evidence on the value of the facilities to be purchased from IPL in the areas outside of the Cities. In other words, the Board had no evidence on the valuation of these facilities and accepting the Cities' position on boundaries without compensating IPL for facilities located outside the corporate limits would likely have resulted in taking IPL's property without just compensation, a result inconsistent with Iowa law. This is not a figure that can properly be left for future determination; it should have been a part of the Cities' case. The Board affirms findings of fact 1 through 5.

## **II. PRICE**

The Cities' alleged flaws regarding the Board's determination of the buyout price for each city reiterate legal arguments that were fully considered by the Board in its Final Order; the Cities do not allege any facts that were not considered by the Board. The fact that some of the evidence may have supported the Cities' positions does not make the Board's decision unreasonable or unsupported by substantial evidence; different conclusions may be drawn from the same record. The Board affirms findings of fact 6 through 10.

MidAmerican noted that with respect to salvage value, which is one aspect of the price determination, both it and the Cities supported the concept of net negative salvage value. IPL took the opposite position, contending that salvage costs have no

bearing on an asset's market value. However, as pointed out by MidAmerican, the Cities did not provide any testimony on what that salvage value should be. In other words, even if the Board had wanted to adopt the Cities' position on salvage value, it would be impossible to do so with the record in this proceeding.

### **III. PUBLIC INTEREST**

The Cities' primary argument regarding findings 11 through 15 appears to be that the Board established a standard for municipalization that will be unattainable by any municipal utility. In support of this statement, the Cities argue that the Board's order requires prospective municipal utilities to have firm contracts in place for both power supply and transmission and ancillary services, as well as an established plan for energy efficiency and a proven track record of electrical operations.

The Board's Final Order contains no such requirements and, in fact, explicitly states that the "Board does not expect signed contracts or detailed work plans regarding maintenance and operation of the utility systems." (Final Order, p. 43). What the Board does expect in municipalization cases, as outlined in the Final Order, is more study and planning than was performed by the Cities in these proceedings. For example, the evidence presented by the Cities in prefiled testimony and at hearing contained insufficient testimony to show they had considered the important issue of how best to provide energy efficiency plans. The Cities' only evidence regarding purchase power rates consisted of invoices from South Dakota utilities based on old contracts and not rates for contemporaneously negotiated contracts,

and non-binding letters from adjacent cooperatives describing in a very general way the utility service operations that could be provided, without specifics; follow-up to these letters was minimal or non-existent. The Board is not requiring that the Cities enter into firm contracts prior to filing for municipalization, but the Board expects to see more thorough study than was shown in this record. The Board affirms findings of fact 11 through 15.

#### **IV. ORDERING CLAUSE**

##### **IT IS THEREFORE ORDERED:**

The "Application for Reconsideration" filed by the cities of Everly, Kalona, Rolfe, Terril, and Wellman, Iowa, on June 30, 2008, is denied.

##### **UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 25<sup>th</sup> day of August, 2008.