

**STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES DIVISION  
BEFORE THE IOWA UTILITIES BOARD**

**FILED WITH  
Executive Secretary  
February 14, 2014  
IOWA UTILITIES BOARD**

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**IN RE:**

**DOCKET NO. RPU-2014-0001**

**INTERSTATE POWER AND LIGHT  
COMPANY**

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**LARGE ENERGY GROUP'S RESPONSE TO  
INTERSTATE POWER AND LIGHT COMPANY'S REPLY TO  
RESISTANCE TO MOTION FOR APPROVAL OF  
CORPORATE UNDERTAKING**

The Large Energy Group (LEG) states in response to the reply of Interstate Power and Light Company (IPL) submitted on February 7, 2014:

1. On January 13, 2014, Interstate Power and Light Company (IPL) filed both a corporate undertaking and a motion for approval of the corporate undertaking in this docket. On January 27, 2014, the LEG filed a resistance (LEG Resistance) asking the Board to deny the motion, reject the corporate undertaking, and require IPL to provide prior written notice to affected customers of the massive increase in costs to be recovered through IPL's energy adjustment clause (EAC) beginning on February 22, 2014. A brief supplement to the resistance was subsequently filed by the LEG on January 29, 2014. On February 7, 2014, IPL submitted a reply (IPL Reply) to the LEG Resistance. In this response, the LEG will briefly respond to some of the arguments raised in the IPL Reply.

2. In ¶¶ 2 and 23 of the IPL Reply, IPL colorfully mischaracterizes the LEG Resistance as "a thinly veiled attempt to re-litigate matters that were previously decided"

by the Board in the order issued on January 31, 2013, in Docket Nos. SPU-2005-0015, TF-2012-0577 (January 31 Order) and as “simply a feeble attempt to re-litigate matters initially raised, and decided” in the January 31 Order. The LEG Resistance raises and discusses two issues: (i) the adequacy of the proposed corporate undertaking IPL submitted on January 13, 2013, along with a motion for approval of the proposed undertaking; and (ii) the need for IPL to provide prior written notice to affected customers of the massive increase in costs to be recovered through the EAC beginning on February 22, 2014, without a corresponding reduction in costs recovered in base rates. Neither of those issues has been previously litigated or decided by the Board.

a. Clearly, IPL itself does not believe the Board has previously determined the adequacy of the proposed corporate undertaking IPL filed on January 13, 2014 – otherwise, IPL would not have deemed it necessary to file a motion asking the Board to approve that particular proposed undertaking. Also, as IPL admits (in ¶ 4 of the IPL Reply and in the last paragraph of the cover letter that accompanied IPL’s motion filed on January 13, 2014), the proposed corporate undertaking filed on January 13, 2014, is not the same corporate undertaking IPL presented to the Board in Docket Nos. SPU-2005-0015, TF-2012-0577. Consequently, the Board could not have previously determined, in Docket Nos. SPU-2005-0015, TF-2012-0577, the adequacy of the proposed corporate undertaking filed by IPL on January 13, 2014.

b. The IPL Reply does not identify anything in the December 31 Order, or in any other document in the record of Docket Nos. SPU-2005-0015, TF-2012-0577, indicating that the issue of whether IPL should provide prior

written notice to affected customers of the increase in costs to be recovered through the EAC beginning on February 22, 2014, without a corresponding reduction in costs recovered in base rates was decided or even addressed. In addition, the LEG is aware of nothing in the December 31 Order, or any other document in the record of Docket Nos. SPU-2005-0015, TF-2012-0577, indicating that this issue was decided or addressed there.

3. Assuming purely for the sake of argument that the two issues raised in the LEG Resistance have already been litigated in Docket Nos. SPU-2005-0015, TF-2012-0577, re-litigation of those same issues in this docket (Docket No. RPU-2014-0001) is neither barred or precluded. *See, e.g., In re Iowa-American Water Co.*, Docket No. RPU-2013-0002, Order Denying Motion for Issue Preclusion (IUB July 19, 2013).

4. The inadequacy of IPL's proposed corporate undertaking is obvious to the LEG and should be equally obvious to IPL. In ¶ 26 of the IPL Reply, IPL claims that its proposed corporate undertaking "was specifically designed to address the double-recovery issue raised by the other parties" and then immediately quotes an excerpt from the December 31 Order that includes the following language: "IPL noted that if the base tariff rates in effect during the rate case end up being higher than the final rates, IPL would refund the difference to customers; this refund obligation eliminates the issue of double recovery." IPL's design falls far short of achieving its goal. What is needed in the corporate undertaking is clear and unambiguous language that honors this specific IPL commitment and accomplishes this stated purpose. What we get in the proposed corporate undertaking filed on January 13, 2014, however, is language that is ambiguous and lacking in clarity. The corporate undertaking includes two separate statements of the

refund obligation. The first statement (on page 1) states that IPL “is herein formally bound to the Iowa Utilities Board (Board) and unto each and all of IPL’s electricity service subscribers, covering any and all electric revenues to be billed or collected on and after February 22, 2014, in excess of the amount collected under rates, charges, schedules and regulations finally approved by the Board in the general rate case proceeding docket initiated by IPL’s March 28, 2014, filing, to the payment of which it binds itself, its successors and assigns, formally by these presents.” (Emphasis added.) The second statement (on page 5) states that IPL has an “unqualified commitment . . . to make any and all refunds in the event that all or any portion of its current electric rate changes, effective on February 22, 2014, if found, upon order of the Iowa Utilities Board, to be excessive.” (Emphasis added.) Significantly, neither formulation clearly and unambiguously commits IPL to refund to customers the difference between base tariff rates in effect during the rate case and final approved base rates in the event the former are higher than the latter.

5. In ¶ 38 of the IPL Reply, IPL argues that the Board has already determined that the new DAEC costs are appropriately recovered through the EAC and that changes in customer costs flowed through the EAC are “exempted from the Board’s customer notification procedures.” This argument, however, misses the point. It is not the LEG’s position that the recovery of DAEC costs through the EAC in itself constitutes an interim rate increase; rather, the LEG’s position is that the recovery of DAEC costs through the EAC in conjunction with the continued recovery of those same costs in base rates during the pendency of IPL’s imminent rate case constitutes an interim (temporary) rate increase that, according to the LEG’s calculations, amounts to at least \$58 million

annually. Accordingly, pursuant to Iowa Code § 476.6(2), IPL must provide prior written notice to affected customers of the increase. The LEG would further note that customer notice was not provided for the proceeding (Docket Nos. SPU-2005-0015, TF-2012-0577) in which the Board purportedly already determined that the new DAEC costs are appropriately recovered through the EAC. Consequently, affected customers – which includes LEG members but is in no way limited just to LEG members – have never received written notice of the massive increase in costs to be recovered through the EAC beginning on February 22, 2014, without any concomitant reduction to IPL’s base rates during the pendency of IPL’s imminent rate case.

6. Paragraph 33 of the IPL Reply should be stricken in its entirety and totally disregarded by the Board because the information disclosed therein is privileged pursuant to 199 IAC 7.18(7) and Iowa R. Evid. 5.408. In ¶¶ 5, 6, and 27 of the IPL Reply, IPL discusses the ongoing negotiations among the parties to Docket Nos. SPU-2005-0015, TF-2012-0577, which includes IPL and the LEG. The crux of the discussion in ¶ 33 is IPL’s statement that “[i]n order to minimize disputes among IPL and other parties,” IPL provided drafts of the corporate undertaking on two occasions to counsel for all parties to Docket Nos. SPU-2005-0015, TF-2012-0577 and invited them to “opine” on the drafts. In light of the fact that IPL does not ordinarily submit drafts of its pleadings to the LEG for prior review and comment, the LEG reasonably understood that IPL’s provision of the drafts of the corporate undertaking and invitation to LEG to opine thereon were part of the ongoing negotiations. This reasonableness of this understanding is confirmed, in fact, by IPL’s statement that the drafts were provided and the parties were invited to comment on them “[i]n order to minimize disputes among IPL and the other parties.”

199 IAC 7.18(7), entitled “Inadmissibility,” provides that any discussion made during any negotiation on a settlement is privileged, and thus inadmissible as evidence, to the extent provided by law, including Iowa R. Evid. 5.408.

7. Assuming purely for the sake of argument that ¶ 33 of the IPL Reply does not constitute privileged, inadmissible information, additional context should be considered by the Board. The draft of the corporate undertaking IPL ended up filing with the Board was forwarded by electronic mail to LEG’s legal counsel at 4:03 p.m. on Thursday, January 9, 2014, along with a message asking the LEG simply to “advise with any concerns.” This draft was then filed with the Board on the following Monday, January 13, 2014. IPL thus gave the LEG’s legal counsel only one business day – Friday, January 10, 2014 – to review and consider the new draft, consult with the 23 members of the LEG, and “advise” IPL of “any concerns.”

WHEREFORE, the LEG respectfully renews its request that the Board deny the motion for approval of a corporate undertaking filed by IPL on January 13, 2014, reject the corporate undertaking also submitted by IPL on that same date, and require IPL to provide prior written notice to affected customers of the massive increase in costs to be recovered through the EAC beginning on February 22, 2014.

Dated February 14, 2014.

Respectfully submitted,

*/s/ Philip E. Stoffregen*

Philip E. Stoffregen  
Brown, Winick, Graves, Gross, Baskerville &  
Schoenebaum, P.L.C.  
666 Grand Avenue, Suite 2000  
Des Moines, IA 50309-2510  
Tel.: (515) 242-2415  
Fax: (515) 323-8515  
[stoffregen@brownwinick.com](mailto:stoffregen@brownwinick.com)

ATTORNEY FOR LARGE ENERGY GROUP