

DIRECT TESTIMONY

of

**Eric Lounsberry
Supervisor**

**Engineering Department
Energy Division
Illinois Commerce Commission**

Interstate Power and Light Company

Petition for Approval of Sale of Utility Assets pursuant to Section 7-102; Approval of the Discontinuance of Service pursuant to 8-508; Cancellation of Tariffs pursuant to 9-201 of the Public Utilities Act; and the Granting of all other Necessary and Appropriate Relief.

Docket No. 05-0835

May 1, 2006

1 Witness Identification

2 Q. Please state your name and business address.

3 A. My name is Eric Lounsberry. My business address is 527 East Capitol Avenue,
4 Springfield, Illinois 62701.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Illinois Commerce Commission ("Commission") as a
7 Supervisor of the Gas Section of the Engineering Department of the Energy
8 Division.

9 Q. Please state your educational background and work experience.

10 A. I received a Bachelor of Science degree in Civil Engineering from the University
11 of Illinois and a Master of Business Administration degree from Sangamon State
12 University (now known as the University of Illinois at Springfield).

13 Q. What are your primary responsibilities and duties as the Supervisor of the Gas
14 Section of the Energy Division's Engineering Department?

15 A. I assign my employees or myself to cases, provide training, and review work
16 products over the various areas of responsibility covered by the Gas Section. In
17 particular, the responsibilities and duties of Gas Section employees include
18 performing studies and analyses dealing with day-to-day and long term
19 operations and planning for the gas utilities serving Illinois. For example, Gas
20 Section employees review purchased gas adjustment clause reconciliations, rate

21 base additions, levels of natural gas used for working capital, and utility
22 applications for Certificates of Public Convenience and Necessity. They also
23 perform audits of utility gas meter shops.

24 Purpose of Testimony

25 Q. What is the purpose of this proceeding?

26 A. On December 22, 2005, Interstate Power and Light Company (“IPL”) filed a
27 petition requesting Illinois Commerce Commission approval of the sale of its
28 Illinois electric and gas distribution assets to Jo-Carroll Energy, Inc. (“JCE”), to
29 approve IPL’s discontinuance of service, and to cancel IPL’s electric and natural
30 gas tariffs upon transfer of ownership to JCE.

31 Q. What is your assignment with respect to this proceeding?

32 A. My assignment is to determine whether, from an engineering perspective,
33 pursuant to Section 7-102 of the Illinois Public Utilities Act (“Act”), the “public will
34 be inconvenienced” by the proposed transaction to allow IPL to sell its Illinois gas
35 distribution assets to JCE.

36 Q. What are the requirements contained in Section 7-102 of the Act?

37 A. Section 7-102 (C) states the following:

38 The proceedings for obtaining the approval of the Commission
39 provided for in this Section shall be as follows: There shall be filed
40 with the Commission a petition, joint or otherwise, as the case may
41 be, signed and verified by the president, any vice president,
42 secretary, treasurer, comptroller, general manager, or chief
43 engineer of the respective companies, or by the person or

44 company, as the case may be, clearly setting forth the object and
45 purposes desired, and setting forth the full and complete terms of
46 the proposed assignment, transfer, lease, mortgage, purchase,
47 sale, merger, consolidation, contract or other transaction, as the
48 case may be. Upon the filing of such petition, the Commission shall,
49 if it deems necessary, fix a time and place for the hearing thereon.
50 After such hearing, or in case no hearing is required, **if the**
51 **Commission is satisfied that such petition should reasonably**
52 **be granted, and that the public will be inconvenienced thereby,**
53 the Commission shall make such order in the premises as it may
54 deem proper and as the circumstances may require, attaching such
55 conditions as it may deem proper, and thereupon it shall be lawful
56 to do the things provided for in such order. The Commission shall
57 impose such conditions as will protect the interest of minority and
58 preferred stockholders. (Emphasis Added)

59 Q. Have you made a determination as to whether IPL should be allowed to sell its
60 Illinois gas distribution assets to JCE?

61 A. Yes. I cannot support the sale. Given the current status of the proposed
62 transaction between IPL and JCE, I cannot agree that the public would be
63 inconvenienced by this transaction for several reasons. First, IPL and JCE have
64 not finalized the operating agreement covering certain gas assets. Second, IPL
65 and JCE have not finalized the gas supply contract that would allow IPL to act as
66 the agent for JCE to obtain gas service. Third, JCE does not know at this time
67 whether one of its newly acquired gas assets will fall under Federal Energy
68 Regulatory Commission ("FERC") regulation and has not covered that possibility
69 in its testimony.

70 Operating Agreement

71 Q. Have IPL and JCE finalized an operating agreement that would discuss how they
72 would operate and maintain certain natural gas facilities that are necessary or

73 could impact how those facilities provide service to JCE's Illinois gas system
74 customers assuming the proposed transaction is approved by the Commission?

75 A. No.

76 Q. Is IPL selling all of its Illinois natural gas assets as part of the proposed
77 transaction?

78 A. No. The Direct Testimony of Matthew Patton, IPL Exhibit MDP-1, pages 5 and 6,
79 explains that IPL will retain 10" and 12" transmission pipeline laterals between
80 Hooppole and the Mississippi River including all associated fittings and
81 equipment. IPL is retaining these assets in order to serve its Iowa customers in
82 Clinton, Iowa and the surrounding areas. The Hooppole location refers to the
83 gate station or point of interconnect between IPL's transmission system and
84 Natural Gas Pipeline Company of America ("NGPL"), an interstate pipeline.

85 Q. Are the 10" and 12" pipeline laterals connected to any pipelines that would
86 become JCE property assuming the proposed transaction is approved?

87 A. Yes. JCE would own an 8" pipeline lateral that would interconnect to both the
88 10" and 12" pipelines at nine valve locations along the pipelines.

89 Q. Would IPL be able to take gas off of the 8" line and would JCE be able to take
90 gas off of the 10" and 12" lines?

91 A. Yes. Both could occur if the necessary valve or valves were opened. However,
92 IPL has indicated that all the valves connecting the 10" and 12" pipelines to the

93 8" pipeline will be closed and locked, but will remain in place. (IPL Exhibit MDP-
94 1, p. 5) As long as the valves are closed, no gas can pass between the
95 pipelines. However, IPL's response to Staff Data Request ESL-IPL 1.13
96 indicates that although it is expected to be rare, under special conditions one or
97 more of these valves may be opened.

98 Q. Under what special conditions would these valves be opened?

99 A. According to IPL's response to Staff Data Request ESL-IPL 4.02, the valves
100 could be opened in an emergency situation or on a scheduled outage of a
101 section of the 8" pipeline for repairs or construction.

102 Q. Is there any equipment aside from the nine valves that is considered common to
103 the 8", 10", and 12" pipeline laterals that is being retained by IPL in the proposed
104 transaction?

105 A. Yes. IPL has indicated that all three pipeline laterals are currently cathodically
106 protected jointly by one cathodic system using two rectifiers. IPL has also
107 indicated it does not intend to isolate either of the lines from the current cathodic
108 system. Further, the three pipeline laterals currently share for most of their
109 length common easements. (IPL Exhibit MDP-1, p. 7)

110 Q. How will IPL and JCE determine under what circumstances the valves are
111 opened on the three pipeline laterals, how the gas volume taken when those
112 valves are opened is estimated, who is responsible for emergency situations
113 regarding the three pipelines, who is responsible for cathodic protection on those

114 pipelines, who is responsible for operations and maintenance on the pipelines,
115 and other associative issues surrounding those three pipeline laterals?

116 A. IPL has indicated that it and JCE will sign an operating agreement that will
117 address these matters.

118 Q. Has this operating agreement been finalized and provided to Staff for its review?

119 A. No. According to IPL's response to Staff Data Request ESL-IPL 2.02, IPL and
120 JCE have exchanged several drafts of the operating agreement and IPL plans on
121 sending a revised draft to JCE in early April.

122 Q. Can you support this proposed transaction without an operating agreement
123 signed by both parties available for your review?

124 A. No. I would need to review the operating agreement and verify that I do not have
125 any issues with it prior to reaching any determination as to whether or not the
126 proposed transaction conveniences the public.

127 Q. What do you recommend that IPL and JCE provide regarding this operating
128 agreement in their rebuttal testimony?

129 A. At a minimum, IPL and JCE should provide the signed operating agreement in its
130 final form so that I have the opportunity to review it and verify that I have no
131 concerns with any provisions contained within it and that it addresses all of the
132 necessary topics associated with the three pipelines.

133 Q. Why is it necessary for you to review the operating agreement prior to supporting
134 the proposed transaction?

135 A. To determine whether or not the proposed transaction conveniences the public, I
136 need to verify that the proposed operating agreement between IPL and JCE is
137 reasonable for Illinois gas customers in IPL's service area, that it does not
138 contain any onerous provisions, and that all potential areas of concern are
139 discussed or covered by the operating agreement.

140 Gas Supply Agreement

141 Q. Have IPL and JCE signed a gas supply agreement that would ensure the gas
142 supply and transportation contracts that IPL is currently using to provide service
143 to Illinois customers in IPL's service area are part of the proposed transaction?

144 A. No.

145 Q. How do IPL's gas customers in Illinois currently receive their gas supplies?

146 A. IPL's Illinois system is basically comprised of a northern section and a southern
147 section. The customers in the southern section receive their service from the 8"
148 pipeline discussed above which is directly connected to NGPL interstate pipeline.
149 The northern section receives service from a 10" main that connects to Northern
150 Natural Gas Company's ("NNG") interstate pipeline. IPL maintains transportation
151 capacity on both of these interstate pipelines as well as various gas supply
152 contracts that IPL uses to serve its Illinois customers.

153 Q. What information has IPL provided regarding the transfer of the gas
154 transportation and supply assets that it uses to provide service to its Illinois gas
155 customers?

156 A. The Direct Testimony of Jeffery E. Hicken, IPL Exhibit JEH-1, page 2, discusses
157 the manner in which JCE will purchase gas commodity, balancing, and delivery
158 service from IPL immediately following the consummation of the proposed
159 transaction. In particular, Mr. Hicken refers to IPL Exhibit A, Schedule 5.18,
160 which is the Asset Purchase Agreement (“APA”) between IPL and JCE.

161 Mr. Hicken then discusses on page 3 of his Direct Testimony that once separate
162 metering is installed, IPL will release the appropriate amount of pipeline assets
163 (balancing, transport, and storage) to JCE to serve the Illinois service territory.
164 He indicates that JCE will then designate IPL as agent on these pipeline assets
165 and IPL will use them to serve JCE. To detail the terms of IPL’s gas service to
166 JCE, the parties will draw up a contract as outlined in Schedule 5.18 of the Asset
167 Purchase Agreement.

168 Finally, Mr. Hicken notes that IPL will purchase gas for JCE and arrange for
169 pipeline transportation and storage services. IPL will also manage pipeline
170 scheduling and perform interstate pipeline operational duties for JCE under this
171 proposed gas supply agreement.

172 Q. Have IPL and JCE finalized and signed the proposed gas supply agreement
173 discussed by Mr. Hicken and provided it to Staff?

174 A. No. IPL's response to Staff Data Request ESL-IPL 2.05 indicates that IPL
175 planned on providing an initial draft of the proposed gas supply agreement to
176 JCE by the end of March 2006 in order to obtain its comments.

177 Q. Can you support this proposed transaction before both parties sign the proposed
178 gas supply agreement and provide it to you for your review?

179 A. No. I would need to review the proposed gas supply agreement and verify that I
180 do not have any issues with it prior to reaching any determination as to whether
181 the proposed transaction conveniences the public.

182 Q. What do you recommend that IPL and JCE provide regarding the proposed gas
183 supply agreement in their rebuttal testimony?

184 A. At a minimum, IPL and JCE should provide the signed gas supply agreement in
185 its final form so that I have the opportunity to review it and verify that I have no
186 concerns with any provisions contained within it. Further, one area of concern
187 that I have with the proposed gas supply agreement is the timing of the gas
188 supply asset transfers as well as the identification of the types and volumes of
189 the contracts being transferred and whether those details are part of the
190 agreement. I would expect to see those topics covered in the proposed gas
191 supply agreement.

192 Q. Why is it necessary for you to review the gas supply agreement prior to
193 supporting the proposed transaction?

194 A. In order for me to determine whether the proposed transaction conveniences the
195 public, I need to verify that the proposed gas supply agreement between IPL and
196 JCE is reasonable for Illinois gas customers in IPL's service area, that it does not
197 contain any onerous provisions, and that it covers all potential areas of concern.

198 Regulatory Status of JCE

199 Q. Assuming the Commission approves the proposed transaction to allow IPL to sell
200 its gas assets to JCE, what authority in your non-legal opinion do you understand
201 the Commission to have over JCE?

202 A. It is my understanding that JCE would be considered a natural gas public utility
203 pursuant to Section 3-105 of the Act.

204 Q. How does the Act define a public utility?

205 A. Section 3-105 of the Act states, in part:

206 "Public utility" means and includes, except where otherwise
207 expressly provided in this Section, every corporation, company,
208 limited liability company, association, joint stock company or
209 association, firm, partnership or individual, their lessees, trustees,
210 or receivers appointed by any court whatsoever that owns, controls,
211 operates or manages, within this State, directly or indirectly, for
212 public use, any plant, equipment or property used or to be used for
213 or in connection with, or owns or controls any franchise, license,
214 permit or right to engage in:

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- 217 a. the production, storage, transmission, sale, delivery or
 - 218 furnishing of heat, cold, power, electricity, water, or light,
 - 219 except when used solely for communications purposes;
 - 220 b. the disposal of sewerage; or
 - 221 c. the conveyance of oil or gas by pipe line.

222 "Public utility" does not include, however:
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* * *

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225 4. residential natural gas cooperatives that are not-for-profit
226 corporations established for the purpose of administering
227 and operating, on a cooperative basis, the furnishing of
228 natural gas to residences for the benefit of their members
229 who are residential consumers of natural gas. For entities
230 qualifying as residential natural gas cooperatives and
231 recognized by the Illinois Commerce Commission as such,
232 the State shall guarantee legally binding contracts entered
233 into by residential natural gas cooperatives for the express
234 purpose of acquiring natural gas supplies for their members.
235 The Illinois Commerce Commission shall establish rules and
236 regulations providing for such guarantees. The total liability
237 of the State in providing all such guarantees shall not at any
238 time exceed \$1,000,000, nor shall the State provide such a
239 guarantee to a residential natural gas cooperative for more
240 than 3 consecutive years;

241 Q. In your non-legal opinion would JCE qualify as a residential natural gas
242 cooperative?

243 A. No. I reach this conclusion because IPL's response to Staff Data Request ESL-
244 IPL 1.06 indicates that as of January 1, 2006, it was providing service to 5,132
245 residential customers, 492 commercial customers, 6 industrial customers, and 2
246 transportation customers. If the Commission approves the sale of IPL's gas
247 assets to JCE, JCE would be providing service to non-residential customers.
248 Therefore, my understanding of Section 3-105 of the Act indicates that JCE
249 would be considered a public utility and would be subject to Commission
250 regulations.

251 Q. Assuming the Commission determines that JCE is subject to Commission
252 regulation, would this finding cause you any concerns regarding your review of
253 the proposed transaction?

254 A. No.

255 Q. Is there proposed legislation to amend Section 3-105 of the Act that could impact
256 the determination as to whether or not JCE would be subject to Commission
257 regulation if the proposed transaction is approved?

258 A. Yes. It is my understanding that SB 2807 would, among other things, amend
259 Section 3-105 of the Act and would provide new language that would provide an
260 entity, such as JCE, with an exemption from being considered a public utility and
261 would therefore not be subject to Commission regulation. Further, it is my
262 understanding that SB 2807 passed both houses on March 16, 2006, and is
263 currently waiting for the Governor's signature.

264 Q. Assuming the Governor signs SB 2807 into law, do you have any concerns
265 regarding JCE not being subject to Commission regulation?

266 A. Yes.

267 Q. Why do you have concerns?

268 A. Staff Data Request ESL-JCE 2.04 asked JCE about what regulatory entity would
269 have rate authority over the 10" main that JCE would own that is located in Iowa.
270 JCE's response to this question indicates that "...based on the location of the
271 3,100 feet of 10" intercity main, there is no opportunity to serve Iowa customers
272 and the 10" main is only used to serve the customers in Illinois that are receiving
273 natural gas through the Savanna Metering Station. Therefore, JCE believes that

274 there is not additional regulatory entity that will have rate authority over the line;
275 rather, oversight for that line will be the same as it is for the entire JCE system.

276 Q. Do you agree with that statement?

277 A. Assuming that JCE is under Commission regulatory authority and JCE's
278 reference in its response was to the Commission, I would agree that the
279 Commission would have rate authority over that line. However, if JCE is not
280 subject to the Commission's regulatory authority, then the Commission would not
281 have rate authority over that line.

282 Q. What is your non-legal opinion regarding who would have rate authority over the
283 10" main that is located in Iowa if JCE is not subject to Commission regulatory
284 authority?

285 A. Since the 10" main in question crosses the boundary between the Iowa and
286 Illinois state lines, it would be considered an interstate pipeline. As such, unless
287 JCE qualifies for an exemption under Section 7 of the Natural Gas Act, the
288 pipeline would be subject to the rules and regulations of the FERC.

289 Q. What is the basis for your opinion?

290 A. It is my understanding that all interstate natural gas lines are subject to FERC
291 authority unless they qualify for an exemption. Further, due to the infrequency
292 with which I deal with FERC regulations, I also contacted FERC to verify my
293 understanding of the FERC's jurisdiction and to get specific answers regarding
294 the situation facing IPL and JCE if the Commission approves the proposed

295 transaction. The FERC staff confirmed my conclusion that the 10" interstate
296 pipeline used to serve the northern section of IPL's gas system would be subject
297 to FERC rules if the Commission does not have regulatory authority over JCE.

298 Q. What concerns do you have if JCE is potentially subject to FERC regulation?

299 A. I have two concerns. First, it is not clear to me if JCE is aware that it could be
300 subject to FERC jurisdiction should the Governor sign SB 2807 into law. The
301 potential for JCE to be subject to FERC jurisdiction could cause IPL and JCE to
302 change the manner in which they set up the APA. For example JCE, may want
303 to avoid FERC jurisdiction by making various amendments to the APA, such as
304 JCE only purchasing Illinois based gas transmission assets and IPL retaining
305 ownership to all Iowa based gas transmission assets. This scenario also
306 assumes that JCE would seek and receive a common carrier certificate from the
307 Commission pursuant to Article 15 of the Act. If something like this were to
308 occur, then both parties would likely need to adjust the operating agreement and
309 the gas supply agreement. In essence, the whole request currently before the
310 Commission could change.

311 Second, JCE may not have included the potential costs associated with being
312 regulated by FERC into its rate assumptions for its gas customers. To the extent
313 that this additional cost would cause additional harm to the current IPL gas
314 customers or cause JCE to rethink the purchase price for the assets, then it
315 could impact Staff's review of the proposed transaction.

316 Q. What do you recommend that JCE provide in its rebuttal testimony on this topic?

317 A. I recommend that JCE explain whether or not the potential for having the 10”
318 interstate pipeline regulated by FERC would alter the manner in which it would
319 purchase the gas assets from IPL, explain whether this would cause it to rethink
320 the purchase price for the assets, and explain what financial impact being
321 regulated by FERC would have on its potential gas customers.

322 Q. You indicated above that IPL will also operate two interstate lines to provide
323 service to its Iowa customers. Is IPL subject to FERC jurisdiction?

324 A. No. My understanding is that IPL’s two interstate lines qualify for what is called a
325 “Hinshaw Exemption”. Specifically, the Hinshaw Amendment excludes from
326 FERC’s jurisdiction the following:

327 [A]ny person engaged in or legally authorized to engage in the
328 transportation in interstate commerce or the sale in interstate
329 commerce for resale, of natural gas received by such person from
330 another person within or at the boundary of a State if all the natural
331 gas so received is ultimately consumed within such State, or to any
332 facilities used by such person for such transportation or sale,
333 provided that the rates and service of such person and facilities be
334 subject to regulation by a State commission. [15 U.S.C. § 717(c)]

335 Since IPL’s gas system is still regulated in Iowa by the Iowa Utility Board, the
336 interstate lines that IPL would retain are not subject to FERC regulation.

337 Q. Does this conclude your prepared direct testimony?

338 A. Yes, it does.