124 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Interstate Power and Light Company Docket No. EL08-73-000

ORDER AUTHORIZING THE USE OF OTHER PAID-IN
CAPITAL ACCOUNTS FOR THE PAYMENT OF DIVIDENDS

(Issued July 31, 2008)

1. Interstate Power and Light Company (IP&L) filed a petition for declaratory order seeking Commission authorization to issue dividends from Other Paid-In Capital (Accounts 208-211) under section 305(a) of the Federal Power Act (FPA).[1] As discussed below, we will grant the petition.

Background

2. IP&L is a public utility that provides electric and gas utility services in Iowa and Minnesota. It is a direct wholly-owned subsidiary of Alliant Energy Corporation (Alliant), a public utility holding company.

3. In December 2007, IP&L completed the sale of its jurisdictional electric transmission assets in Iowa, Minnesota, and Illinois and related jurisdictional contracts, agreements and books and records.[2] It asserts that the net proceeds of this sale (approximately $772 million) were used to retire approximately $150 million of its short-term debt, to pay a special dividend of $400 million to Alliant, to fund investments in short-term securities and for other general corporate purposes. As a result of the special dividend, which it charged to Retained Earnings (Accounts 215 and 216), and other dividends to Alliant in 2007 and 2008, IP&L's Retained Earnings have been reduced from $357.6 million in December 31, 2006 to $15.8 million in March 31, 2008.

[1] 16 U.S.C. § 825d(a) (2006).

[2] *See ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007).

4. IP&L states that although its Retained Earnings were reduced as a result of the special and regular dividends described above, Other Paid-In Capital (Accounts 208-211) increased during the same period, primarily as a result of equity contributions by Alliant in 2007 and 2008 totaling $200 million, from $514.4 million on December 31, 2006 to $714.8 million on March 31, 2008. IP&L claims that these equity contributions were made in order to optimize the use of surplus cash by Alliant on a system-wide basis rather than due to any need by IP&L for permanent equity infusions.

5. IP&L proposes to charge up to $400 million of regular and/or any special dividends paid to Alliant to Other Paid-In Capital (Accounts 208-211). This is the amount of the special dividend that it paid to Alliant following completion of the sale of IP&L's electric transmission assets in December 2007. IP&L asserts that the practical effect will be to restore $400 million to IP&L's Retained Earnings (Accounts 215 and 216), as if the $400 million special dividend had been charged to Other Paid-In Capital (Accounts 208-211) when it was made. Thus, assuming no other adjustments to IP&L's equity accounts, IP&L states that the accounting treatment of future dividends paid by IP&L (up to $400 million) would have no net effect on common equity; the only change would be in the relative amounts of Other Paid-In Capital (Accounts 208-211) and Retained Earnings (Accounts 215 and 216).

6. IP&L states that the resulting increase in Retained Earnings would improve IP&L's dividend paying capacity to approximately the level that existed before the sale of IP&L's electric transmission assets. IP&L also asserts that paying future dividends from Other Paid-In Capital will provide it with needed flexibility in declaring and paying regular quarterly dividends to Alliant, which on a going forward basis in 2008 it expects to be approximately $24.5 million per quarter, including a regular quarterly dividend of approximately $24.5 million that was deferred in the second quarter of 2008. Finally, IP&L argues that Commission approval would enable it to reduce its current equity to debt ratio to be more in line with regulatory requirements for ratemaking and other purposes.

7. IP&L makes three representations that it claims make its proposed dividend issuance similar to those the Commission has approved in other orders.[3] First, it states that the source of dividends will be IP&L's earnings. Rather than charge dividends paid by IP&L to Retained Earnings, as would normally be the case, IP&L is proposing to charge up to $400 million of dividends paid to Alliant to Other Paid-In Capital (Accounts 208-211). Second, it states that these dividends to be paid from Other Paid-In Capital will not be excessive. It states that its proprietary capital is well above the minimum 30 percent proprietary capital ratio that the Commission has found acceptable in other orders

[3] *Niagara Mohawk Holdings, Inc.*, 95 FERC ¶ 61,381 (2001); *New England Power Co. and Montaup Electric Co.*, 89 FERC ¶ 61,266 (1999).

under FPA section 305(a).[4] It also notes that its ability to pay common dividends is limited in various respects by state commission orders. Finally, IP&L states that its proposed dividend will not affect the ownership of IP&L, so the proposed dividends will have no adverse effect on the value of shareholders' interests in IP&L.

8. Notice of IP&L's filing was published in the *Federal Register*, 73 Fed. Reg. 40,336, with comments, protests, and interventions due on or before July 18, 2008. None was filed.

Discussion

9. We will grant IP&L's petition because the concerns underlying section 305(a) are not present in the circumstances of this transaction. Section 305(a) states:

> It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.[5]

10. The concerns underlying the enactment of section 305(a) included "that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies."[6] A central concern thus "was corporate officials raiding corporate coffers for their personal financial benefit."[7]

11. The record in this case raises no such concerns. IP&L has stated that the source of future distributions of dividends will be its earnings. There is also nothing in the filing to indicate that dividends paid from the Other Paid-In Capital would be excessive. IP&L

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[4] Application at 7 (citing *Cincinnati Gas and Electric Co.*, 115 FERC ¶ 61,250 (2006); *Niagara Mohawk Holdings, Inc.*, 95 FERC ¶ 61,381; *Entergy Louisiana, Inc.*, 114 FERC ¶ 61,060 (2006)).

[5] 16 U.S.C. § 825d(a) (2006).

[6] *Allete, Inc.*, 107 FERC ¶ 61,041 (2004); *Citizens Utilities Co.*, 84 FERC ¶ 61,158, at 61,865 (1998); *Delmarva Power & Light Co., et al.*, 91 FERC ¶ 61,043, at 61,158-59 (2000); and *PPL Electric Utilities Corp.*, 99 FERC ¶ 61,317, at 62,356-57 (2002).

[7] *Citizens Utilities Co.,* 84 FERC ¶ 61,158 at 61,865.

proposes to limit the dividends paid from its Other Paid-In Capital to $400 million. Moreover, based on IP&L's representations, the proposed dividends will have no adverse effect on the value of shareholders' interests, since Alliant, as the sole common stock shareholder of IP&L, will be the sole recipient of the dividends.[8]

The Commission orders:

The petition for declaratory order is hereby granted, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[8] Application at 7.