

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INTERSTATE POWER AND LIGHT COMPANY AND ITC MIDWEST LLC	DOCKET NO. SPU-07-11
---	----------------------

**ORDER TERMINATING DOCKET AND RECOMMENDING DELINEATION OF  
TRANSMISSION AND LOCAL DISTRIBUTION FACILITIES**

(Issued September 20, 2007)

**TABLE OF CONTENTS**

<u>PROCEDURAL HISTORY</u>	<u>2</u>
<u>DESCRIPTION OF PROPOSED REORGANIZATION</u>	<u>4</u>
<u>STATUTORY FACTS</u>	<u>9</u>
<u>SUMMARY OF PARTIES' POSITIONS</u>	<u>11</u>
<u>BOOKS AND RECORDS</u>	<u>15</u>
<u>CAPITAL STRUCTURE</u>	<u>18</u>
<u>SAFE, REASONABLE, AND ADEQUATE SERVICE</u>	<u>26</u>
<u>RATEPAYER INTEREST</u>	<u>30</u>
A. <u>General discussion of the issue</u>	<u>30</u>
B. <u>Cost-benefit analysis</u>	<u>39</u>
<u>PUBLIC INTEREST</u>	<u>48</u>
A. <u>Jurisdiction</u>	<u>48</u>
B. <u>Board authority to order a new reorganization application</u>	<u>64</u>
C. <u>Board authority to impose precautionary conditions</u>	<u>65</u>
D. <u>Merger of IPL and WPL/past actions</u>	<u>66</u>
E. <u>State and federal policy</u>	<u>69</u>
F. <u>Effect on AEP and PURPA obligations</u>	<u>72</u>
G. <u>Applicant's commitments</u>	<u>73</u>
<u>IPL DELINEATION</u>	<u>74</u>
<u>CONCLUSION</u>	<u>81</u>
<u>CHANGES TO THE PROPOSAL</u>	<u>82</u>
<u>FINDINGS OF FACT</u>	<u>83</u>
<u>CONCLUSION OF LAW</u>	<u>84</u>
<u>ORDERING CLAUSES</u>	<u>84</u>
<u>DISSENT</u>	<u>85</u>

### **PROCEDURAL HISTORY**

On March 30, 2007, Interstate Power and Light Company (IPL) and ITC Midwest LLC (ITC Midwest), collectively "Applicants," filed with the Utilities Board (Board) a joint application for reorganization pursuant to Iowa Code §§ 476.76 and 476.77 (2007) and 199 IAC 32 to allow IPL to sell and transfer its electric transmission assets to ITC Midwest. Pursuant to the proposed transaction, ITC Midwest would purchase, among other things, IPL's Iowa-based electric transmission assets. ITC Midwest is a limited liability company formed to acquire IPL's transmission assets; ITC Holdings (ITC) is the corporate parent. ITC is the only publicly traded company engaged exclusively in transmission in the United States and is the largest independent transmission company and eighth largest transmission company in the United States. ITC primarily operates in Lower Michigan but has interest in expanding generation in the Great Plains region.

The Board accepted the filing and issued a notice of hearing on April 27, 2007. In that order, the Board also extended the 90-day statutory deadline for deciding the case by an additional 90 days, the maximum extension allowed. (Iowa Code § 476.77(2)). The Consumer Advocate Division of the Department of Justice (Consumer Advocate) requested the extension and there were no objections. The statutory deadline for issuance of the Board's decision is September 27, 2007.

On June 27, 2007, the Board ordered IPL to provide additional information relating to the cost-benefit analyses of the reorganization and the transfer of 34.5 kV electric lines. IPL filed additional information on July 17, 2007.

There are several intervenors in this docket. In addition to Consumer Advocate, the intervenors are: MidAmerican Energy Company (MidAmerican); Corn Belt Power Cooperative (Corn Belt); Central Iowa Power Cooperative (CIPCO); Dairyland Power Cooperative (Dairyland); American Transmission Company, LLC (ATC); Ag Processing Inc. (Ag Processing); Iowa Consumers Coalition (ICC); the Community Coalition for Rate Fairness, Large Energy Group, and Resale Power Group of Iowa (CCRF/LEG/RPG); the Iowa Association of Municipal Utilities, Midwest Municipal Transmission Group, Missouri River Energy Services, and Wisconsin Public Power Inc. (collectively, Municipal Coalition); Sierra Club; and Clean Wisconsin, Community Energy Solutions, Environment Iowa, Iowa Chapter of Physicians for Social Responsibility, Iowa Citizens for Community Improvement, Iowa Environmental Council, Iowa Farmers Union, and Iowa Renewable Energy Association (collectively, the Environmental Coalition).

Applicants objected to interventions by the Sierra Club, the Environmental Coalition, and the Municipal Coalition. The Board granted the interventions but noted some of the issues raised by the Sierra Club and Environmental Coalition (i.e. carbon emissions) were not likely to be relevant to the reorganization proceeding. The Board said, though, that issues such as quality, nature, price, access, and availability

of transmission service could be relevant as impacting the public interest, even though the Federal Energy Regulatory Commission (FERC), not the Board, has jurisdiction over wholesale transmission rates.

A prehearing conference was held on July 26, 2007. At the prehearing conference, the parties discussed, among other things, numbering of exhibits, witness order and scheduling, and order of cross-examination.

Of the intervenors, Consumer Advocate, the Environmental Coalition, the Municipal Coalition, CCRF/LEG/RPG, ICC, Dairyland, MidAmerican, and ATC submitted prefiled testimony. All parties appeared at the hearing, which began on August 1, 2007. Post-hearing initial briefs were filed on August 17, 2007, and reply briefs on August 24, 2007.

### **DESCRIPTION OF PROPOSED REORGANIZATION**

On January 18, 2007, IPL signed an Asset Sale Agreement (ASA) with ITC Midwest to sell IPL's transmission facilities with voltages of 34.5 kV and above. The sale is contingent upon receiving all regulatory approvals and closing by December 31, 2007. ITC Midwest would purchase all of IPL's transmission assets, which are primarily located in Iowa. IPL also has transmission assets in Minnesota, Illinois, and a nine-mile line in Missouri.

IPL is an Iowa corporation providing retail electric and gas service in Iowa and is a wholly-owned subsidiary of Alliant Energy Corporation (Alliant), a public utility holding company. IPL's retail electric and gas service is regulated by the Board. ITC

Midwest is a Michigan limited liability company that will operate as an independent transmission company managing the transmission assets purchased from IPL. ITC Midwest is owned by ITC, a holding company that is the largest independent transmission company in the United States and the only publicly traded company engaged exclusively in the transmission of electricity in the United States.

The joint application states that the proposed sale was the result of IPL's long-standing efforts to explore alternative independent transmission organization structures that would best serve the needs of IPL's customers and the region. The joint application notes that the proposed transmission sale is part of IPL's larger plan for major electric utility infrastructure development to advance its customers' interests in economic development, renewable energy, and the Midwest's burgeoning alternative fuels industry. Applicants argue in their application that the infusion of capital into IPL from the sale, along with ITC Midwest's ability to provide the transmission infrastructure needed to support IPL's proposed base load generation and wind power facilities, are the keys to success for these projects, which will support economic and infrastructure development in Iowa.

In addition, Applicants point out that the federal government has encouraged the divestiture of transmission assets to FERC-defined independent transmission companies through a deferred tax incentive. In order to qualify for the incentive, the entire amount realized from the sale must be used within four years from closing to purchase property for electric generation or distribution (the favorable tax treatment is

that the gain from the sale can be recognized over an eight-year period). The transmission sale must close by December 31, 2007, to qualify for the favorable tax treatment.

The sale price is approximately \$750 million, with net proceeds in excess of \$575.4 million (after subtracting transaction costs and taxes). Of this amount, \$181.8 million will be used to retire IPL short-term debt and \$393.6 million will be distributed as an extraordinary dividend to IPL's parent, Alliant. Of the net proceeds above Net Book Value (\$360.2 million as of December 31, 2005) of the assets, IPL proposed in its initial filing to use \$60 million to create a regulatory liability account to be used to offset the Allowance for Funds Used During Construction (AFUDC) accrued on capital for investments in new generation, environmental upgrades, and automated metering. IPL refers to this as its Transaction Adjustment (TA).

In rebuttal testimony, IPL proposed an alternative use of some of the net proceeds. While IPL still favors creation of the regulatory liability account proposed in its direct testimony, it offered an alternative to address some of the criticisms of its initial proposal, called the Alternative Transaction Adjustment (ATA). IPL in its testimony said the Board could choose between the TA and the ATA. Under the ATA, IPL would:

1. Refund \$13,040,000 per year to its full requirements customers in each of eight years, beginning in the year customers experience an increase in rates related to transmission charges assessed by ITC Midwest.

2. Commit to file for no greater than a 50 percent common equity capital structure in its first retail electric rate proceeding in which rates are set in Iowa to reflect the transaction.

In addition, under the ATA, ITC Midwest would:

1. Agree to provide a rate discount of \$4,125,000 to its customers in each of eight years, beginning in the year customers experience an increase in transmission charges following consummation of the transaction. IPL estimates that 92 percent of the rate discounts will benefit IPL's full requirements customers.
2. Commit not to seek from FERC authority to recover in rates the first \$15 million in transaction costs.

Other provisions of the proposed transaction include provisions for IPL transmission employees to transfer to ITC Midwest (existing benefits and salaries are guaranteed for 30 months) and an agreement that ITC Midwest will remain a member of the Midwest Independent System Operator, Inc. (MISO), for five years. Various ancillary service agreements will also be executed to facilitate the sale.

Applicants must receive approvals from the state utility commissions or boards of Iowa, Illinois, and Minnesota. A limited approval is also required from the Missouri commission. The sale also requires FERC approval and either the Federal Trade Commission or the U.S. Department of Justice must review the reorganization. If the reorganization is allowed to proceed, IPL will need to establish a regulatory liability account in the year the transaction closes that will be sufficient to pay any refund obligation.

This is the second reorganization docket in which IPL seeks to sell its transmission assets to an independent transmission company. The first such reorganization was filed on November 26 and December 18, 2002, and involved IPL and MidAmerican in Docket Nos. SPU-02-21 (IPL) and SPU-02-23 (MidAmerican). IPL sought to transfer ownership of its electric transmission facilities to TRANSLink Transmission Company, LLC; MidAmerican asked to transfer functional control, but not ownership, of its transmission facilities to the same entity. The Board on June 13, 2003, issued an order disapproving the applications without prejudice and recommending delineation for IPL of transmission and local distribution facilities. The Board's order is commonly referred to as the TRANSLink order or decision.

The Board, in denying the applications without prejudice, said it had concerns, among other things, that Iowa's views on regional transmission issues might be ignored if the Board no longer had the authority to protect Iowa ratepayers on at least some aspects of transmission. The Board also had concerns that IPL was the only utility (other out-of-state utilities were also involved) to contribute assets to the independent transmission company; other utilities were leasing their assets. (TRANSLink, p. 9). The Board cited uncertainty in the transmission marketplace as a factor in its decision. (TRANSLink, p. 12). The Board also said it would have preferred to delay its decision, ask for more information, and reconvene the hearing, but the statutory deadlines for a reorganization did not allow for such a procedure.

IPL and MidAmerican did not refile to join TRANSLink because some of the other utilities involved subsequently abandoned the project.

In the TRANSLink reorganization filing, IPL also asked that its 34.5 kV facilities be classified as distribution and its 69 kV and above facilities be classified as transmission. The Board adopted this classification, even though no delineation was required at that time because the reorganization was not allowed to go forward. The Board decided the issue because it was expected to facilitate IPL's planning; the Board noted that future events could cause the delineation to change. (TRANSLink, pp. 14-16).

### **STATUTORY FACTORS**

Iowa Code § 476.77(1) provides that "[a] reorganization shall not take place if the board disapproves." Iowa Code § 476.77(3) lists the following factors that the Board may consider in its review of a proposal for reorganization:

- a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.
- b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.
- c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.
- d. Whether ratepayers are detrimentally affected.
- e. Whether the public interest is detrimentally affected.

The standards for review in § 476.77 indicate the most important questions are the impact of the reorganization on the utility's ability to attract capital, the utility's ratepayers, and the public interest generally. However, it is important to note that no single factor is determinative and that with respect to ratepayer and public interest, the statute does not impose upon Applicants the burden of establishing positive benefits. Rather, Applicants' burden is to show that the reorganization does not have a detrimental effect on ratepayers or the public interest. Also, the statute does not require the Board to disapprove a reorganization if one of the statutory factors is not satisfied—the statute only provides that the five factors are points the Board "may consider." The Board will discuss each of the statutory factors separately.

Some of the issues overlap. For example, the same evidence may impact both ratepayer interests and the public interest. In looking at ratepayer interest, the Board's rules require a cost-benefit analysis that describes the projected benefits and costs of the reorganization. (199 IAC 32.4(4)"a"). The Board's rules define public interest as the interest of the public at large, separate and distinct from the interest of the public utility's ratepayers, including consideration of the impact on the economy of the state. (199 IAC 32.4(4)"c"). While the Board has listed issues under one heading or the other, the Board recognizes that there is overlap. The parties also apparently recognize this overlap, because each party's arguments related to ratepayer interest and public interest are similar.

### **SUMMARY OF PARTIES' POSITIONS**

Applicants maintained that the proposed sale will be beneficial to IPL's customers and shareholders, promoting critical state and federal policy objectives. Applicants argued that given IPL's pressing need to invest in new generation, this sale is in the best interest of the burgeoning Iowa renewable industry, Iowa ratepayers, and the public at large, who will all benefit from the reduction of transmission constraints, the reduction of congestion costs, and the lessening of line losses that this sale will enable.

Applicants viewed ITC Midwest as the right buyer, in part because ITC is the only independent transmission company in the country and has a singular focus on transmission, with no internal competition for capital investment (between generation and transmission) and no incentive to discriminate when providing transmission access. Applicants maintained that ITC Midwest's parent company has an exemplary record of investment in, and operation and maintenance of, transmission infrastructure, with no party disputing the buyer's financial or technical capabilities with respect to ownership, maintenance, or operation of the transmission system following the sale. Applicants said this is the right time for the proposed sale because the customer benefits from the tax incentives of the Energy Policy Act of 2005 (EPAct 2005) will disappear at year end. Applicants contended that underinvestment in transmission at the national and state level is a problem that requires a clear and present solution, with the proposed sale allowing the Board a

unique opportunity to take a giant step forward to provide electric grid improvements that are essential to Iowa's future.

Applicants requested three explicit Board approvals:

1. The Board, as part of allowing the transaction, should grant IPL explicit approval to establish a regulatory liability account as envisioned in the TA or ATA and recognize that this account is being established for the sole purpose of (a) funding the AFUDC offset under the TA or (b) paying IPL's refund obligation under the ATA and the account (plus accrued interest) should not and will not be reflected in any future IPL rate proceedings.

2. The Board order should allow the tax savings from the annual refund obligation under the ATA to be excluded from IPL's revenue requirement. The tax savings will be refunded, so the regulatory liability account should not be used to reduce rate base.

3. The Board should explicitly acknowledge that the sale includes all of IPL's 34.5 kV facilities and that these facilities are recognized as performing a transmission function.

Consumer Advocate argued that the cost of the proposed sale – in terms of the additional financial cost to customers with no certain and quantified offsetting benefits and the jurisdictional cost flowing from the permanent relinquishment of the Board's ratemaking and other jurisdiction – is too great a price to pay, given that IPL is currently obligated to make all necessary improvements to the transmission system and ITC Midwest would be working within the same MISO planning framework.

Consumer Advocate said customers in Iowa cannot afford an irrevocable diminishment of the Board's authority and influence on transmission issues.

Consumer Advocate argued that denial of the proposed sale does not equate to the Board overruling national energy policy. Also, Consumer Advocate contended that

IPL's transmission delineation does not comport with the FERC's seven-factor test for determining whether facilities should be classed as transmission or distribution.

ICC said that IPL has not established that the proposed sale is not contrary to the interest of ratepayers and the public interest. (Iowa Code § 476.77(1)). ICC argued that evidence in this case establishes that ratepayers and the public interest would be detrimentally affected if the reorganization proposal is allowed to go through as proposed and, therefore, the Board must disapprove the proposal. (Iowa Code § 476.77(3)"d" and "e").

Municipal Coalition members opposed this sale because of concerns about the increased cost of transmission service and reduced Iowa influence over important grid-related decisions, including the Board's access to ITC Midwest's books and records. The Municipal Coalition argued that the ATA does not alter the conclusion that the sale is a bad deal for consumers, and that the sale is a great deal only for IPL and Alliant shareholders.

CCRF/LEG/RPGI said the Board should approve the sale (with the ATA), with certain conditions, such as mitigation of rate impacts on RPGI and other transmission-only customers that are directly interconnected with, and transmission dependent upon, the current IPL system. CCRF/LEG/RPGI argued that the Board should accept Applicant's transmission/distribution delineation and enforce ITC Midwest's commitment to accept the assignment from IPL of all contracts as described in exhibits entered into evidence at hearing.

The Sierra Club said the proposed sale raises many concerns for alternate energy producers (AEPs) and renewable energy in general. The Sierra Club said the Applicants have not shown the sale is in the public interest and, therefore, the sale should be disapproved.

Ag Processing maintained that Applicants have failed to establish that the sale is not contrary to the interests of the public utility's ratepayers. Ag Processing recommended the sale be disapproved.

MidAmerican had no objection to this sale as long as IPL and ITC Midwest follow through on their respective commitments to MidAmerican to leave system interconnections intact and to enhance them as MidAmerican has proposed.

The Environmental Coalition argued that the proposed sale creates too much risk and too little in the way of reliable benefits. The Environmental Coalition said that Applicants should be directed to resubmit an application that includes measurable, enforceable benefits for lowans and does not, as a side effect, increase IPL's dependence on coal.

Dairyland said that in light of IPL's commitments to respect and preserve the Dairyland Power-IPL agreements (Exhibits 800 and 801), Dairyland believes that the impact of the sale will not be detrimental and the Board may make findings to that effect. Dairyland took no position on any other issue raised in this proceeding.

CIPCO supported the reorganization and said the concerns that gave rise to its intervention have been adequately addressed by Applicants.

## **BOOKS AND RECORDS**

There will be no change in the Board's access to IPL's books and records if the reorganization is allowed to go forward, and the parties do not dispute this point. (Tr. 48). The only dispute relates to access to ITC Midwest's books and records.

1. Summary of evidence and arguments

Applicants argued that subsection 476.77(3)"a" applies only to a public utility and, therefore, does not apply to ITC Midwest. Nevertheless, Applicants pointed out that ITC Midwest witness Welch committed that the Board and Consumer Advocate will have full access to ITC Midwest's books and records, although he did ask that requests for such access be timely in the context of specific regulatory filings. (Tr. 786-88).

In response to assertions made in brief by the Consumer Advocate and the Municipal Coalition that the "full access" to books and records referred to by Mr. Welch was limited, Applicants noted that Mr. Welch merely said he would like the request to come in when annual filings are made so his accounting department would not be swamped by requests every month, but that he was not limiting the range of access to books and records by the Board and Consumer Advocate. (Tr. 788). In other words, Applicants maintained that Mr. Welch only asked for reasonable timing of requests, consistent with the statute's language regarding "reasonable" access to books and records.

Consumer Advocate noted that its access to public documents, such as the FERC Form 1 and Securities and Exchange Commission (SEC) filings, and participation in the MISO planning process, is the start of Consumer Advocate's review, not the end. While ITC Midwest witness Welch agreed at hearing to provide the Board and Consumer Advocate greater access, Consumer Advocate said this was limited to providing access at the time of ITC Midwest's annual filings when it closes its books. (Tr. 788). Unlike the TRANSLink reorganization (the subject of the earlier reorganization docket), Consumer Advocate said it could not gain access to ITC Midwest's books through IPL. Consumer Advocate pointed out that the annual inputs into the MISO's Attachment O formula rate, which are important to evaluating these rates, are not filed with FERC or subject to any regulatory review, so there may not be a regulatory filing to trigger review.

The Municipal Coalition expressed concern that the Board will not have unfettered access to transmission records like it does today, arguing that information on the FERC Form 1 is not sufficient to determine whether rates passed on pursuant to the FERC formula are just and reasonable. (Tr. 631-34). Unlike the proposed TRANSLink reorganization, where the Board would have had access to TRANSLink's records through IPL (because IPL would have been a shareholder in TRANSLink), the Municipal Coalition said that here there is no such ability to obtain ITC's records through IPL. ITC Midwest witness Welch's statement at hearing regarding access for

the Board and Consumer Advocate is too restricted and applies only so long as ITC Midwest would continue to own the transmission facilities, which is unknown.

2. Board analysis

By its terms, Iowa Code 476.77(3)"a" applies only to a "public utility." If the reorganization is allowed to go forward, ITC Midwest will not fit within the definition of public utility in Iowa Code chapter 476 because it will not furnish electricity to the public for compensation. Instead, it will furnish transmission service to IPL and others. Thus, an argument can be made that the books and records factor is not applicable with respect to ITC Midwest. The Board believes, though, that even if this criterion is not specifically applicable to ITC Midwest, the Board's access to ITC Midwest's books and records relates to both ratepayer interest and public interest criterion, making it an issue for the Board to consider in this reorganization proceeding.

Even without the pledge made by Mr. Welch at hearing, the Board, if the reorganization goes forward, will have access to portions of ITC Midwest's records in FERC transmission proceedings and pursuant to Iowa Code chapter 478, which deals with electric transmission lines. Chapter 478 applies to any person that constructs, erects, maintains, or operates an electric transmission line. Under chapter 478, however, it is unlikely that the Board would have the same access to ITC Midwest's records as it does under chapter 476 to the records of a rate-regulated public utility.

Nevertheless, ITC Midwest witness Welch made a commitment at hearing to provide the Board and Consumer Advocate full access to books and records, asking only that the requests be reasonably timed so there would not be a barrage of requests every month. The Board takes Mr. Welch at his word, and expressly conditions this order on the Board's understanding that the Board and Consumer Advocate will have full and unfettered access to ITC Midwest's books and records. With Mr. Welch's commitment, the Board finds that, if the reorganization goes forward, it will have reasonable access to ITC Midwest's books and records for its future regulatory duties.

## **CAPITAL STRUCTURE**

### **1. Summary of evidence and arguments**

The impact of the proposed reorganization on IPL's ability to attract capital, including maintenance of a reasonable capital structure, was addressed in testimony or brief by Applicants, ICC, Consumer Advocate, the Municipal Coalition, and the Environmental Coalition. Applicants argued that the evidence in this case demonstrates that IPL's ability to attract capital on reasonable terms and maintain a reasonable capital structure would not be impaired if the reorganization is allowed to go forward. In part, this is due to the proposed disposition of the proceeds from the sale of transmission assets. In determining what to do with the proceeds IPL witness Bacalao said he sought to achieve the following directives: 1) the sale should not negatively impact IPL's credit rating; 2) IPL's ratepayers should not be negatively

impacted by the sale by having to pay a higher cost of capital for IPL that is subsequently reflected in rates; and 3) shareholder value should not diminish as a result of the transaction. (Tr. 213).

IPL said its plan for the cash proceeds is to retain \$181.8 million to retire short-term debt that is outstanding as of December 31, 2007. The remaining \$393.6 million would be returned to Alliant, IPL's parent, as a special dividend. IPL maintained that using the proceeds this way allows IPL to maintain a reasonable capital structure and meet the directives set forth by Mr. Bacalao. IPL said that applying the proceeds according to its plan reduces IPL's weighted average cost of capital from 8.895 percent to 8.657 percent. (Tr. 216-220).

IPL responded to Consumer Advocate's assertion that IPL is selling its transmission assets in an attempt to cover losses associated with Alliant's unregulated investments. Consumer Advocate cited Alliant's stock repurchase program in support of this assertion. IPL maintained that Consumer Advocate did not understand the reasons for the stock repurchase program. IPL pointed out that the stock repurchase program was instituted because funds from the sale of Alliant's unregulated businesses would sit idle in relatively low-earning investments while Alliant waited to receive necessary regulatory approvals and permits for construction of planned power plants and installation of environmental control equipment, making it more attractive to return the funds to investors. When the funds are subsequently

needed for the construction projects, Alliant will then be able to call upon the investment market for funds. (Tr. 223-224).

IPL said that Consumer Advocate incorrectly assumed that Alliant needed the stock repurchase program to off set the negative impact on earnings-per-share associated with the sale of assets that generate earnings. However, IPL said that in fact the stock repurchase program is driven by the lack of more suitable short-term investment opportunities for the cash from selling assets. Thus, the repurchase program predates the proposed transmission sale. (Tr. 224). IPL also noted that contrary to Consumer Advocate's assertions, IPL has been able to access the capital markets since the 1998 three-way merger with Alliant providing funds as required and IPL being able to access funding in both the debt and preferred stock markets. (Tr. 226).

Applicants also addressed two other arguments on this topic, one made by Consumer Advocate and the other by ICC. IPL said that Consumer Advocate maintained that the acquisition premium associated with the proposed transmission sale is to be converted to rate base that will likely earn a higher return on equity over the life of the investment, pursuant to Iowa Code § 476.57. (Tr. 1662-63). However, IPL noted that it is planning to invest in new generation regardless of whether the transmission sale goes forward, so Consumer Advocate's argument is without basis. (Ex. 207, pp. 6-8).

Applicants said the Board should disregard ICC's claim that by removing IPL's transmission assets from its rate base, IPL's cost of equity will increase because transmission represents the least-risky portion of IPL's operations. IPL argued that the record shows a Standard and Poor's report stating that IPL's business profile is a "5" and that the transmission sale " 'did not affect the Company's rating.' " (Applicants' Reply Brief, p. 31). IPL offered this as evidence that the market does not expect IPL's relative risk, and therefore its cost of equity, to be affected by the sale.

Consumer Advocate argued that the transmission sale was designed to improve Alliant's shareholders' interests. By monetizing its transmission assets, Consumer Advocate said, IPL will be able to obtain a purchase price from ITC Midwest of over \$300 million above book for these assets; this premium was available because ITC Midwest's rate construct includes a 13.88 percent return on equity (compared to IPL's 10.7 percent) and a 60 percent common equity ratio (compared to IPL's 49 percent equity ratio). Additionally, Consumer Advocate noted that ITC Midwest will benefit from forward-looking formula rate mechanisms with automatic true-up provisions, compared to IPL's cost-of-service revenue requirement that includes test-year costs subject to audit and prudence review. (Tr. 1647-49; Ex. 202, DSH-1, Sch. D, E). Consumer Advocate pointed out that IPL will take this premium and invest it in rate base, such as new generation, that will likely earn a guaranteed return on equity for the life of the investment that is higher than IPL's currently approved return on equity. (Tr. 1647-49).

While IPL plans to use the sale proceeds for new investment, Consumer Advocate pointed out that there is nothing preventing Alliant from using the proceeds to continue its share-repurchase plan to shore up its earnings per share.

(Tr. 1641-47). According to Consumer Advocate, the transmission sale is driven by Alliant's desire to enhance shareholders' earnings, which Consumer Advocate said is necessary to offset its poor earnings record caused by Alliant's non-regulated businesses. (Tr. 1646-47).

Consumer Advocate agreed with ICC witness Gorman's testimony regarding the possibility of the cost of capital increasing due to the sale of the relatively low-risk transmission assets. (Tr. 1994-96). To offset this potential increase in risk, Consumer Advocate argued, IPL would need to increase the amount of common equity in its capital structure, which would tend to increase the cost of capital since equity is much more expensive than debt. (Tr. 1496). Consumer Advocate noted that this is contrary to Applicants' assertions that the transmission sale will reduce IPL's cost of capital.

ICC agreed that the transmission sale could have a negative impact on IPL's operating risk, since IPL would be selling the least risky portion of its operations. ICC maintained that the transmission sale could subsequently result in the need to increase IPL's common equity ratio to offset the increase in operating risk, causing an increase in the overall cost of capital. (Tr. 1484-85, 1494-96). ICC pointed out that IPL witness Bacalao agreed that the sale of IPL's transmission assets could

increase IPL's operating risk, although he did not believe it has the magnitude to change IPL's business risk profile because of his informal discussions with Standard and Poor's. (Tr. 259-61).

ICC concluded that the record contradicts IPL's cost-of-capital savings assumption, and that in fact the transmission sale will not allow IPL to reduce its common equity ratio.

The Environmental Coalition argued that both IPL and ITC Midwest have failed to show they will be able to maintain their ability to attract capital once the transaction is completed. The Environmental Coalition agreed with the arguments that IPL's risk exposure will increase and also pointed out that ITC Midwest's parent is so leveraged that the cost to raise capital will increase for Iowa transmission upgrades. Finally, the Environmental Coalition pointed out that Applicants failed to consider the risks associated with a new coal-fired generating plant when analyzing IPL's ability to attract capital.

According to the Municipal Coalition, IPL is being rewarded if the transmission sale goes forward, because IPL will receive about \$300 million in acquisition premium while failing to make needed investments in its transmission system. The Municipal Coalition argued that this gain benefits IPL, Alliant, and Alliant shareholders at the expense of IPL's ratepayers.

2. Board analysis

The way IPL plans to use the cash proceeds from the transmission sale is very similar to the way they were used in the Duane Arnold Energy Center (DAEC) case (Docket No. SPU-05-15). The directives used by IPL are identical and the scenarios are similar. In the DAEC case, the Board determined that the sale of DAEC would not negatively impact IPL's ability to maintain a reasonable capital structure.

In this case, none of the parties directly discuss concerns with how IPL uses its cash proceeds other than to say that Alliant and its shareholders will benefit from the premium on the sale of IPL's transmission assets. Alliant would receive \$393.6 million of the cash proceeds as a special dividend.

ICC argued that the transmission sale could increase IPL's business risk, which may then increase its cost of capital because IPL is selling assets with relatively low-risk. If the credit market believes the increase in business risk is high enough to impact IPL's credit rating, IPL would need to adjust its capital structure to reduce or reverse the impact of the increase in business risk. To do that, the amount of common equity would need to increase, which is the most expensive component of IPL's capital structure. Thus, the steps that would reduce IPL's cost of debt would also tend to increase its overall cost of capital, according to ICC, Consumer Advocate, and the Environmental Coalition.

Despite these arguments, the evidence as a whole does not support a finding that the transaction will have a detrimental impact on IPL's ability to maintain a reasonable capital structure or attract capital. While ICC suggests that IPL's cost of

capital may increase because IPL is selling its assets with relatively low financial risk, nothing was presented that quantified this increase and IPL's evidence demonstrates that the transaction and the use of the proceeds will in fact reduce IPL's average weighted cost of capital. The Board believes the focus should be on IPL's discussions with S&P and the S&P August 9, 2007, report stating that the proposed transmission sale will not impact IPL's credit rating. The evidence simply does not show that IPL's ability to maintain a reasonable capital structure will be impaired; instead it shows the sale will have little or no impact on IPL's credit rating. (Tr. 259-261, Ex. 14). In any event, if the credit rating agencies change their views if the transaction is allowed to go forward, the Board will have the ability to address any negative impact on capital structure in future rate case proceedings, if the evidence supports those adjustments.

The Board does not believe this transaction is fueled by Alliant's stock repurchase program. The program began before the transmission sale was proposed (Tr. 224) and IPL was simply returning funds to its investors instead of having the funds tied up in relatively low-earning assets. Investors will be called upon for future equity funding, when needed.

The evidence also shows that the proposed transaction will not have an adverse impact on IPL's ability to attract capital. Even with planned generation expenditures, including a proposed coal plant, IPL should continue to have strong access to capital under reasonable terms and conditions. (Tr. 1515). The

Environmental Coalition's concerns about ITC's ability to attract capital is not an issue because ITC will not be accessing the debt and preferred stock markets on behalf of ITC Midwest. ITC Midwest will have its own capital structure (60 percent equity) identical to two other ITC subsidiaries, both of which have had success in acquiring capital. The Board does not have concerns about ITC Midwest's ability to attract capital for investment in transmission facilities. (Tr. 1520, 1680).

### **SAFE, REASONABLE, AND ADEQUATE SERVICE**

#### 1. Summary of argument and evidence

Applicants argued that the proposed transmission sale would enhance the ability of IPL to provide safe, reasonable, and adequate service to its customers, with no detrimental impacts on utility operations or IPL customers. Applicants stated system reliability would be enhanced because ITC Midwest is an experienced independent transmission entity with a single focus—the planning, construction, maintenance, and operation of the transmission system. (Tr. 285). Applicants noted that ITC Midwest's commitment to expand the transmission system to meet IPL's needs is supported by the Distribution Transmission Interconnection Agreement (DTIA) and by plans to accommodate load growth. (Tr. 285-86). In addition, Applicants pointed out that ITC Midwest will be subject to § 13.5 of the FERC Transmission and Energy Markets Tariff (TEMT), which requires the owner to pay to expand or upgrade its system if it is determined that it is incapable of firm point-to-

point transmission service without impairing service or that it does not have the ability to meet previous contractual commitments.

Consumer Advocate argued that the proposed sale, with the resulting loss of Board jurisdiction over these transmission assets, would adversely impact IPL's ability to provide safe, reasonable, and adequate service to its customers. Consumer Advocate noted that ITC Midwest conceded only that it would be subject to the Board's jurisdiction under Iowa Code chapter 478, and then only to the extent federal law does not preempt portions of chapter 478. Consumer Advocate contended that this means ITC Midwest is clearly reserving its rights to challenge the Board's jurisdiction over transmission service adequacy and reliability. Despite IPL's claim that the Board will maintain service quality and safety authority by virtue of IPL imposing a contractual public utility obligation on ITC Midwest, Consumer Advocate noted that IPL does not agree to be ultimately responsible for transmission service quality and reliability after the sale of its transmission system to ITC Midwest. Consumer Advocate maintained that the public utility obligations that ITC Midwest agreed to by contract exist only between ITC Midwest and IPL and are not otherwise enforceable by or for the benefit of transmission customers.

If the transaction is approved, the Municipal Coalition stated, ITC Midwest will not meet the definition of a public utility set forth in Iowa Code chapter 476 and will only be subject to the Board's jurisdiction under Iowa Code chapter 478. The Municipal Coalition argued that the Board's limited jurisdiction over ITC Midwest

would reduce its ability to ensure IPL's ability to provide safe, reasonable, and adequate service since IPL will be dependent on ITC Midwest's operation of the transmission system.

The Municipal Coalition maintained that ITC Midwest has failed to demonstrate that the transaction will not impair service safety, adequacy and reliability, as shown by ITC Midwest's failure to respond to Consumer Advocate's data request asking ITC Midwest to identify the Board rules that would be applicable to ITC Midwest or its affiliates. (Ex. 409). Municipal Coalition witness Linxwiler contended the provisions in §§ 7.1 and 7.5 of the DTIA fail to replace the Board's regulatory authority. (Tr. 1215). While IPL witness Collins asserted that provisions in the ASA allow IPL to build 34.5 kV interconnection facilities and transfer the facilities to ITC Midwest if ITC Midwest fails to act, the Municipal Coalition stated that after the sale IPL will no longer be a transmission owner. (Tr. 85-86). Because IPL will no longer be a transmission owner, the Municipal Coalition contended, IPL's participation in MISO will be curtailed, thereby limiting IPL's ability to construct looped or higher-voltage transmission facilities that maybe required, in the event ITC Midwest fails to do so. (Tr. 463). The Municipal Coalition said that Applicants' reliance on incentives to construct is an insufficient basis for a finding that the transaction will not impair IPL's ability to provide safe, reasonable, and adequate service.

2. Board analysis

Some of the arguments regarding safe, reasonable, and adequate service relate primarily to jurisdictional arguments, which will be addressed later in this order. No party specifically commented on IPL's ability to provide safe, reasonable, and adequate service as being impaired by the proposed transmission sale but rather focused on the potential loss of Board jurisdiction to ensure that such service would be provided. ITC Midwest witness Welch's testimony noted ITC's focus on power quality and reliability, which has resulted in better service to large end-users in areas served by an ITC affiliate. ITC affiliates have received several awards for their efforts. Such a company focus should bring benefits to IPL customers.

IPL has various transmission and distribution interconnection agreements with neighboring utilities. It is significant that three of those utilities have intervened in this proceeding and do not oppose the proposed sale. The utilities have been assured by Applicants that these agreements, which are critical in providing safe and reliable service, will continue, and the Board accepts Applicants' commitments to renew these agreements. With the continuation of these agreements, and ITC Midwest's singular focus on transmission, safe, reasonable, and reliable service should not be impaired, but instead enhanced. The costs of this enhanced service will be discussed under ratepayer interests, below.

The Board also notes that if the reorganization is allowed to proceed, there is nothing to indicate that FERC will not adequately perform its regulatory

responsibilities with respect to ITC Midwest's operation (although several parties do not appear to like the manner or method by which FERC regulates, such as the use of formula rates). In addition, IPL remains subject to Iowa Code chapter 476 and retains the obligation to provide reasonable retail electric service within its electric service territory. Unlike the situation with TRANSLink, in this case ITC Midwest's affiliates have a track record of investing in and rebuilding transmission systems and collecting awards both for safety and worker training. The evidence in the record supports a finding that the provision of safe, reasonable, and adequate service would not be impaired by the proposed reorganization.

## RATEPAYER INTEREST

### A. General discussion of the issue

#### 1. Summary of arguments and evidence

Applicants argued that the proposed sale allows a top-flight company to take over the ownership and operation of IPL's transmission assets and holds IPL's retail customers harmless, at least for eight years (under the ATA). Applicants contended that there is no dispute regarding the need for new transmission capacity in IPL's service territory and that the sale to ITC Midwest would improve reliability, safety, and access, because ITC Midwest is ready to make the necessary investments in transmission to move Iowa forward in renewable energy and alternative fuels development. At the same time, Applicants pointed out the proposed sale would free up the capital needed for IPL's generation expansion program.

Applicants maintained that national energy policy has established that attributes of an independent transmission company model favor the public interest and no credible evidence was presented disputing ITC Midwest's financial or technical capabilities with respect to ownership, maintenance, or operation of the transmission system following the sale. (Tr. 1320-1521, 1618-1619, 1680).

Applicants argued that this is the right time for the sale because of tax incentives established by EAct 2005 that are set to expire on December 31, 2007. Applicants stated the purchase price is reasonable and the result of intensive

negotiations, with IPL using the purchase price to fund infrastructure improvements and reduce debt. (Tr. 28-29, 40, 42).

Applicants noted that under FERC's standards, a transaction can be in the public interest even if rates will increase for some customers, if there are countervailing benefits. Also, Applicants pointed out that this transaction will not impact IPL's participation in the MISO energy markets. Applicants said there will be no disruption of the MISO stakeholder processes because energy market and transmission functions are separate and ITC Midwest is obliged to keep its transmission assets in MISO for five years. (Tr. 41).

Consumer Advocate pointed out that IPL (or its predecessors) has provided transmission service as part of bundled retail service for several decades and has managed competing demands for its capital by making needed investments in distribution, transmission, and generation, thereby providing IPL customers with reasonable and adequate service at just and reasonable rates. Consumer Advocate noted that ITC Midwest is paying IPL a substantial acquisition premium, which is economically rational only through the use of a rate construct employing a 13.88 percent return on equity, use of a 60 percent equity capital structure without recognition of double leverage, and implementation of a forward-looking revenue requirement with a true-up mechanism. (Tr. 1647-47; Ex. 202, DSH-1, Sch. D, E).

Consumer Advocate concluded that the sale is very good for Alliant shareholders and very bad for IPL customers, and that if IPL wanted to really mitigate

rate impacts, all of the net proceeds above book value would be set aside in a regulatory liability account, like IPL did with the sale of DAEC. Consumer Advocate pointed out that according to IPL witness Hampsher, setting aside all net proceeds in a regulatory liability account would create an account equaling \$283 million, rather than the \$60-82 million proposed in the initial TA.

Consumer Advocate contended that Applicants' claims of benefits from the transaction are not backed by meaningful commitments. For example, Consumer Advocate pointed out, ITC Midwest declines to commit to carry out IPL's short-term transmission investment plan – a plan that does not even include transmission investments deemed necessary by IPL's planners. ITC Midwest also does not commit to address MISO's designation of a Narrowly Constrained Area (NCA) throughout IPL's footprint. Consumer Advocate argued that the lack of such commitments means: 1) Applicants cannot provide any magnitude of reliability improvements, line losses, or reductions in transmission congestion costs after the sale; 2) IPL remains obligated to build needed transmission should ITC Midwest fail to perform its contractual "public utility obligation" to IPL; and 3) IPL will have no ability to address the transmission limits between Iowa and Wisconsin that prevent Iowa ratepayers from realizing benefits from integrated resource planning by Alliant electric subsidiaries.

In addition, Consumer Advocate said that IPL's claimed benefits from the transaction are not at all dependent on the transaction because IPL fully intends to

meet current and future needs of its customers and is obligated by law to provide reasonable and adequate service at reasonable rates. Consumer Advocate noted that ITC Midwest does not agree to be held to the same public utility obligation. Consumer Advocate also believed that IPL, not ITC Midwest, can best identify transmission and generation additions that will most benefit IPL customers through participation in the MISO processes. Consumer Advocate said that Applicants have not identified the specific amount of transmission to be built by IPL without the sale, or by ITC Midwest with the sale, so no comparison can be made. (Ex. 447).

Consumer Advocate argued the proposed sale would disrupt and potentially preempt the ongoing stakeholder process for reviewing MISO objectives and alternative transmission models. Consumer Advocate stated that IPL joined MISO in order to comply with FERC Order 888 and that IPL is currently allowed to flow through to its customers, via its energy adjustment clause, the costs and credits associated with its participation in wholesale markets operated by MISO. Consumer Advocate noted that IPL has acknowledged the need for further internal study if the MISO cost-benefit analysis shows negative results for customers, and that IPL plans to use the results of studies by the Minnesota and Wisconsin commissions regarding transmission model alternatives as a guide for IPL's Iowa policies. Consumer Advocate believed the proposed transmission sale will substantially limit, if not entirely preempt, the ability of the Board and the legislature to evaluate and implement Iowa transmission policies.

CCRF/LEG/RPGI recognized the benefit of the transaction and believed that while Applicants have met four of the reorganization statutory requirements, they remained concerned about whether ratepayers will be detrimentally affected because transmission-only customers have been largely ignored and some transmission-only customers will be harmed by the transaction as it now stands. CCRF/LEG/RPGI argued that this can be remedied only by changes in the ATA (this is discussed separately in the cost-benefit section, below) and ITC Midwest's assurances that RPGI will have the opportunity for joint investment in its transmission system.

CCRF/LEG/RPGI stated that the benefits of the proposed transmission sale are: 1) ITC Midwest would make the investments needed to move Iowa forward in the renewable energy and alternative fuel industries while freeing capital for IPL's generation expansion program (Tr. 40); 2) CCRF/LEG/RPGI will benefit by using the net proceeds to reduce rate increases ensuing from IPL's generation expansion (Tr. 46); 3) the transaction will provide the capital investment needed for new base load and renewable energy generation facilities; and 4) ITC Midwest offered municipal utilities, cooperatives, and investor-owned utilities in this case the opportunity of joint ownership of the post-transaction system. (Tr. 845, 883). CCRF/LEG/RPGI said that the joint ownership opportunity would provide financial assurance to RPGI that it would not be materially harmed with uncompensated transmission rate increases as a result of the proposed transaction.

The Municipal Coalition members opposed the proposed transmission sale, arguing that it is a great deal only for Alliant and its stockholders. The Municipal Coalition said that transmission rates for existing and currently planned IPL facilities will go up significantly as compared to rates that would apply with IPL ownership. The Municipal Coalition said that assuming ITC Midwest builds only those facilities that are included in IPL's plans, added transmission costs will be more than \$20 million per year and that ITC Midwest will be motivated to add transmission facilities to its rate base on which it can earn 13.88 percent equity return, even if there are other low cost solutions to a particular problem. The Municipal Coalition also noted there are too many uncertainties associated with the transaction, such as what transmission upgrades ITC Midwest will construct and what are the costs and benefits of those upgrades.

ICC contended this case is primarily about money, as IPL's revenue requirements will be at least \$22 million per year higher if the proposed transmission sale is approved. ICC argued that the real question is whether the additional cost (ICC stated at least \$90 million, present value) is offset by sufficient customer benefits. ICC said this question cannot be answered because the record does not include ITC Midwest's transmission plans that could result in lower energy costs; ITC Midwest has not studied IPL's system and has not committed to make even the few upgrades IPL has identified. In addition, ICC maintained that Applicants did not provide a satisfactory explanation as to why IPL cannot make necessary

transmission improvements. While ICC believed that ITC Midwest's transmission infrastructure improvements could result in some savings due to reduction in transmission constraints, line losses, and improved operations, there is no quantification of these benefits to show there will be a net benefit to customers. ICC also pointed out that there is no evidence that IPL cannot and should not undertake the transmission upgrades to improve system reliability; it appears IPL has the capital to undertake any such projects.

The Environmental Coalition pointed out that multiple witnesses testified that the long-term impacts of the transaction for consumers are quite likely negative. Because it is customers who ultimately pay for transmission investment (regardless of whether IPL or ITC Midwest owns the system), the Environmental Coalition argued that transmission investment in Iowa needs to be made with greater accountability by a Board-regulated public utility, or sold in a transaction with greater consumer benefits to offset the increased risk.

## 2. Board analysis

Most of the parties blended their ratepayer and public interest arguments, so some of the arguments discussed above will be addressed later. It is important to note that IPL has had constraints on its lines since at least 2000. IPL witness Collins elaborated on the constraint issue and was supported by ITC Midwest witness Schultz, who provided data on energy prices in the Midwest. MISO's designation of an NCA that includes two paths in IPL's service territory is a good indicator that IPL's

transmission system needs improvement. Mr. Collins also testified that about 800 miles of IPL lines are old and need updating.

ITC Midwest is clearly aware of these problems. One of the main driving forces in this docket is the need to build and upgrade transmission in IPL's service territory. No party in the proceeding disputes the need for at least some additional transmission, and IPL indicated it will only build for reliability reasons, not to relieve constraints that are not related to reliably serving IPL's customers. (Tr. 38-39).

There is much discussion in the Midwest (and nationally) on defining reliability projects versus economically beneficial projects. Traditionally, transmission lines were built with additional capacity so that there was capacity readily available to accommodate future electric flows due to load growth in each utility's service territory. Most reliability-related projects provide both reliability benefits and economic benefits because of the availability of incremental transmission capacity for economic flows. IPL is experiencing problems on its transmission system due to increases in regional and loop flows while IPL is also experiencing load growth in its service territory. IPL has concluded that because these constraints are not caused by IPL and IPL has internal competition for capital resources, IPL is not willing to invest in the needed transmission (but instead will invest the money in other utility improvements) unless that transmission would directly provide reliability benefits to its customers.

IPL's planning department prepared a transmission facilities addition plan that has not been implemented because IPL has invested its capital elsewhere. IPL's

plan has been shared with ITC Midwest and ITC Midwest found the plan to be prudent, although it will not commit to specific projects until it has had an opportunity to extensively study the transmission system it plans to purchase. ITC Midwest committed to construction of reliability and economic transmission system improvements, and the records of ITC subsidiaries affirm this commitment. Because transmission planning is complex and requires detailed modeling and analysis, the Board believes it is reasonable for ITC Midwest to perform its own studies before committing to specific improvements. To do otherwise would risk making commitments to projects that later turn out to be unnecessary. Both IPL and ITC Midwest will be members of MISO, which obligates ITC Midwest to participate in MISO's transmission planning process called MTEP.

**B. Cost-benefit analysis**

2. Summary and discussion

The Board's rules implementing the reorganization statute require Applicants to perform a cost-benefit analysis which describes the projected benefits and costs of the reorganization, with benefits and costs quantified in terms of present value. This analysis focuses on the impact of the reorganization on the public utility's ratepayers. A five-year analysis is required by the rules. (199 IAC 32.4(4)"a"). Another subrule requires Applicants to provide an analysis of the effect on the public interest, which is defined to mean the interest of the public at-large, separate and distinct from the interest of the public utility's ratepayers. (199 IAC 32.4(4)"c"). As a practical matter,

impacts on ratepayers and the public interest often overlap. Also, while subrule 199 IAC 32.4(4)"a" focuses on a quantification of costs and benefits in present value terms, the Board will also consider nonquantifiable costs and benefits in evaluating the proposed reorganization. The statute does not limit the Board's consideration of ratepayer impacts to only quantifiable benefits.

In addition to various cost-benefit analyses presented by Applicants, several parties submitted their own analyses and there was some debate concerning the values of each analysis. The primary issues related to the timeframe of the analyses (five to 44 years), treatment of administrative and general (A&G) expenses, and cost of capital savings in Applicants' cost-benefit analysis. Under the cost-benefit analysis, the Board will also discuss the TA and the ATA, including concerns raised by transmission-only customers that they did not receive any benefits (TA) or insufficient benefits (ATA) from these adjustments.

Applicants' five-year cost-benefit analysis (2008-2012) used a base line revenue requirement (which assumed continued IPL transmission ownership) and a post-transaction revenue requirement (which assumed sale of transmission to ITC Midwest). IPL's analysis showed a net present value benefit to ratepayers of approximately \$18 million, with higher transmission costs of \$90 million offset by \$48.1 million in cost of capital savings and \$60 million in benefits from the TA. In rebuttal, IPL presented an eight-year analysis that included the ATA, which provides for refunds of \$13,040,000 annually for eight years to full requirements customers

and rate reductions by ITC Midwest of \$4,125,000 annually for eight years. The ATA also includes a guarantee that IPL will not propose a capital structure with more than 50 percent common equity in its next rate proceeding after the transaction closes and a guarantee by ITC Midwest that it will not include in transmission rates the first \$15 million in transaction fees. Applicants' eight-year analysis assumed FERC would take jurisdiction over the transmission portion of bundled retail rates in year six. Applicants also pointed out that if IPL did not file a rate case until 2009, customers would be held harmless from the proposed transmission sale for nine years. (Tr. 577-78).

Parties contesting Applicants' cost-benefit analysis generally argued the timeframe of the analysis (five years with the TA, eight years with the ATA) was too short, and various parties presented present value analyses ranging from 20 to 44 years. All of these scenarios showed a negative net present value from the proposed sale. The Board also asked IPL to provide six 20-year scenarios using different assumptions for each; all of these also showed a negative net present value. IPL presented a 20-year scenario (in addition to the six requested by the Board) that showed a net present value benefit of \$6.237 million, using the ATA. This scenario (like IPL's eight-year analysis) was based on the assumption that FERC would take control of transmission pricing that is currently set by state commissions as part of bundled retail rates in year six.

As all the cost-benefit scenarios are considered, the impacts of the proposed transaction must be kept in focus. Under the various scenarios, the impacts on residential customers ranged from bill increases of 16 cents to just under a dollar per month. This is because transmission costs represent a relatively small part of a customer's overall electric bill; most of the costs are for generation. Also, because no one was able to quantify benefits from new transmission that ITC Midwest intends to build, none of the cost-benefit analyses factored in such benefits as relieving congestion, reduced line losses, and enhancing economic dispatch. (Tr. 59).

It is likely that there is no single correct time frame for any analysis of this nature. The five-year period provided for in the Board's rules is probably too short for a transaction involving transmission facilities, and 44 years is too long (as pointed out by Applicants, all electric utilities in Iowa were regulated by municipalities 44 years ago). The Board believes that the most credible time frame for analysis of a long-term asset like a transmission system is 10 to 20 years, with the recognition that the further the analysis is extended, the more speculative it becomes. It is likely that few, if any, of the cost-benefit analyses conducted in this industry 20 years ago correctly forecast most of the changes that have occurred at the retail, wholesale, and regulatory levels. What can be safely said is that all the models, in hindsight, will be wrong to some degree or another, but they are useful to gauge the range of impacts on customers. The question really becomes whether the expected benefits of the transaction outweigh the expected increase in costs.

In the initial TA proposed by Applicants with their five-year analysis, IPL provided \$60 million of the net proceeds to customers in the form of a regulatory liability account for the purpose of offsetting AFUDC on new generation, automated metering infrastructure, or environmental expenditures. (Tr. 541). None of the other parties supported the TA. Consumer Advocate, Municipal Coalition, and ICC all argued that the TA would provide little or no customer benefit until after the end of the five-year period of IPL's analysis, which IPL recognized in its rebuttal testimony. (Tr. 71-72, 1181). The longer IPL goes without a rate case, the lower the present value of the \$60 million TA. In addition, Municipal Coalition and ICC pointed out that the benefits of the TA would accrue entirely to full requirements customers (wholesale and retail), with none of the benefits going to transmission-only customers who use IPL's transmission system.

In rebuttal testimony, Applicants offered the ATA. The ATA includes the following:

1. IPL customers would receive a direct refund of \$13,040,000 for each of the first eight years after the ITC Midwest transmission charges are included in IPL's rates. (Tr. 67).
2. ITC Midwest will provide rate discounts of \$4,125,000 per year for the same time period as IPL's refunds. ITC would not seek recovery of these discounts from customers in its annual true-up process at FERC. (Tr. 67).
3. IPL commits to file for no more than a 50 percent common equity capital structure in its first rate case after the transaction closes. (Tr. 68).

4. ITC Midwest will not seek recovery of the first \$15 million in transaction fees. It is the Board's understanding that this commitment means ITC Midwest will never seek to recover the first \$15 million in transaction costs in a FERC transmission rate filing.

Applicants presented the ATA to hold customers harmless for at least the first eight years after the transaction closes (and longer if IPL delays filing the initial rate case). Unlike the TA, Applicants noted the ATA provides benefits to transmission-only customers because they will receive a share of ITC Midwest's proposed rate discounts.

Consumer Advocate, Municipal Coalition, and ICC all acknowledged that the ATA was better than the TA, but all argued that the ATA provided insufficient benefits to customers. All noted there was nothing to protect customers after the eight-year period ends, and that Applicants' cost-benefit scenarios using the ATA remain flawed because they assume FERC asserts jurisdiction at some point over the bundled portion of transmission in retail rates, something FERC has given no indication that it will do. IPL's commitment not to seek more than a 50 percent capital structure in the first rate case was seen by intervenors as having little or no value because it applied to only the first rate case (and, if another rate case was filed the subsequent year, the commitment would only be for one year), but IPL assumed in its 20-year cost-benefit analysis that this capital structure would continue.

The benefits proposed by Applicants in the TA and ATA are more accurately termed offsets to cost increases that will result if the transaction is approved, not benefits from the transaction. In looking at the TA and ATA, the Board believes that

the ATA will provide the most benefit to all customers, as well as providing some benefits to wholesale-only transmission customers, which the TA does not provide. Under the ATA and IPL's cost-benefit analysis, its customers would be held harmless for eight years, and perhaps up to ten years if IPL is able to delay filing its next rate case. It is important to note that customers will be held harmless for eight years regardless of whether FERC exercises its jurisdiction over the transmission portion of bundled retail rates. However, the additional two years of hold harmless, if a rate case is delayed, is speculative and is not relied upon by the Board in this decision.

CCRF/LEG/RPGI was generally supportive of the proposed transmission sale, but asked the Board to reject the ATA in order to provide for an adjustment to RPGI and other transmission-only customers that are directly interconnected with, and transmission dependent upon, the current IPL system. However, CCRF/LEG/RPGI provides no guidance as to what adjustment it is seeking. For example, if CCRF/LEG/RPGI wants refunds from IPL, it is not clear that IPL would be able to identify all customers who might receive a refund, or have a mechanism to actually provide those customers a refund; because it is the Board's understanding that wholesale-only transmission customers now receive billings directly from MISO, not IPL. The Board notes that RPGI customers, like all customers, whether wholesale or retail, will receive a share of the ITC Midwest discounts, and will also receive unquantifiable benefits from the proposed sale, if allowed to go forward, including

having an independent transmission operator who is not a participant in the wholesale generation market.

In reaching their conclusion that the ATA did not provide sufficient benefits, Consumer Advocate, ICC, and the Municipal Coalition all argued that the A&G assumptions used by Applicants in their cost-benefit analysis were incorrect by assuming that there would be A&G savings of \$3.9 million per year, when such things as how many IPL employees will be transferred to ITC Midwest and how much it will cost ITC Midwest to open an office in Iowa are unknown. The higher the claimed savings, the lower the post-transaction revenue requirement and the higher the net benefits to customers shown in Applicants' various cost-benefit analyses, so this factor is not insignificant.

It is clear that the proposed transmission sale would have some impact in reducing IPL's A&G expenses, but it is less clear what the amount of those savings might be. In addition, it appears many of these expenses would be taken over by ITC Midwest and be included in its revenue requirement. Because most of the expenses could be in either IPL's or ITC Midwest's rates, overall savings to ratepayers are uncertain.

Consumer Advocate, ICC, and the Municipal Coalition also argued that the cost of capital savings for IPL included in Applicants' various cost-benefit analyses are speculative and subject to manipulation. Applicants argued that the use of proceeds from the proposed transmission sale is designed to lower the amount of

IPL's common equity from 54.168 percent to 48.137 percent, which will produce cost of capital savings of approximately \$48.1 million. While IPL contended it had strong incentives to maintain a 50 percent equity capital structure (Tr. 1414-15), others pointed out that there is no guarantee that this will be maintained for the period of IPL's cost-benefit analyses because the commitment made by IPL is only for the first rate case after closing, not all rate cases for the next twenty years. Also, as pointed out by Municipal Coalition witness Linxwiler, IPL can eliminate any estimated cost of capital savings with adjustments made to its capital structure by its parent, Alliant. Mr. Linxwiler argued that any immediate cost of capital savings from the proposed sale will be diluted over time by the growth in IPL's business and the addition of new capital. (Tr. 1184-85).

The Board does not need to decide what amount should be included in the cost-benefit analysis for A&G expenses or what, if any, is the appropriate cost of capital reduction to use in the various scenarios. Even with various adjustments, the resulting cost-benefit analysis would still be an uncertain projection of future events. Rather, the focus is on expected ratepayer impact, based on consideration of a range of analyses using different inputs and methods. Having considered all of the analyses submitted in this record, the Board concludes that the proposed transaction is most likely to have a negative net present value to ratepayers. In other words, it is likely that the transmission component of IPL's retail rates will be slightly higher as a result of this transaction, if approved.

This is not the end of the analysis. The transaction may increase IPL's transmission costs, but savings in other areas will tend to offset, or even eliminate, that increase. IPL's transmission system clearly needs improvement, as evidenced by the constrained areas and the need to upgrade much of the 34.5 kV system. ITC has shown that it will respond when transmission investment is needed, as evidenced by the millions of dollars spent to upgrade Michigan's transmission system. ITC Midwest committed to upgrade IPL's 34.5 kV system in 5 to 7 years, as opposed to the 60 years projected under IPL's current investment strategy. While the benefits of this increased investment are difficult to quantify, the Board believes that transmission to support renewable energy (including wind), reduce line losses, provide greater market access, and relieve transmission constraints is worth the cost, which will be mitigated under the ATA for at least the first eight years following the close of the transaction. The Board will authorize IPL to establish a regulatory liability account for the benefit of customers as necessary to implement the ATA, which is superior to the TA.

## **PUBLIC INTEREST**

### **A. Jurisdictional issues**

#### **1. Summary of arguments and evidence**

There are several arguments relating to jurisdiction. The point made most often by various intervenors is that if the proposed reorganization is allowed to go forward, the Board will lose its ability to set the transmission component in bundled

retail rates. All transmission rates, not just wholesale transmission rates, would be determined by FERC. Intervenors are concerned about this loss of jurisdiction for a variety of reasons, but primarily because rate incentives are available from FERC for transmission owned by independent transmission companies like ITC Midwest that are not available for transmission owned by an investor-owned utility like IPL. Even though wholesale rates are set by FERC today and will continue to be set by FERC whether or not the reorganization goes forward, several intervenors are concerned that their wholesale rates will increase because of FERC's rate incentives for independent transmission companies.

In addition to the transmission component of bundled retail rates, several intervenors are concerned about the Board's jurisdiction over ITC Midwest if the transaction goes forward. ITC Midwest will not be a public utility as defined by Iowa Code chapter 476 because it does not provide retail electric service. In looking at this issue, the Board's jurisdiction over transmission, including siting, in Iowa Code chapter 478 must be examined.

Applicants do not believe the proposed transaction will have a significant impact on the Board's jurisdiction because that jurisdiction is already somewhat limited. Applicants cited New York v. FERC, 535 U.S. 1 (2002), where the Supreme Court said that FERC has jurisdiction under the Federal Power Act to set the rates for all transmission services, regardless of whether the cost of transmission is bundled in state jurisdiction rates. Applicants noted that while the Supreme Court found FERC

had jurisdiction over the transmission component of bundled retail rates, the Court said that FERC's decision not to regulate those bundled retail transactions was a statutorily permitted policy choice. Applicants pointed out that three justices (out of nine) questioned FERC's failure to regulate the transmission component of bundled retail rates, saying that it made little sense and could conflict with FERC's statutory mandate to provide for just and reasonable rates. (535 U.S. at 33). In other words, FERC has the authority now to exercise jurisdiction over IPL's transmission rates, but has chosen not to do so at this time. That situation could change at any time, according to Applicants.

Applicants stated the current regulatory structure, in which IPL's wholesale and transmission-only customers pay higher rates than IPL's retail customers for the same transmission service on the same transmission facilities, is not sustainable. Because there is no legal impediment preventing FERC from regulating the transmission component of bundled retail rates, Applicants believed that FERC's failure to do so is either a mere policy decision or, looking at the comments of the three Supreme Court justices, an improper abstention by FERC that could be corrected in a future federal court case. Applicants argued that neither situation is sustainable over the long term, citing in particular three events that may lead FERC to re-examine its policy:

First, Applicants noted that the revenue distribution methodology under MISO will change in 2008 (the end of the MISO transition period). Applicants contended

that MISO will need to send bills for transmission service to all customers, including vertically integrated utilities, and this billing will be under the FERC-jurisdiction MISO tariff. (Tr. 321-22). Introduction of MISO billing in this form could cause FERC to exercise its authority in this area.

Second, Applicants maintained that when FERC reexamines its transmission incentives, which are not currently available to the majority of transmission owners, FERC will move to take jurisdiction over all transmission in order to stimulate investment by making the incentives more widely available.

Third, because FERC believes in the independent transmission company model, Applicants argued that denial of transactions such as this one would cause FERC to assert jurisdiction. In other words, Applicants said that if transactions such as this one are denied because of the ROE differences allowed in bundled retail rates and FERC-allowed ROE for unbundled transmission, FERC will eliminate that impediment by asserting pricing jurisdiction. (Tr. 322-23).

Applicants noted that several parties (Consumer Advocate, ICC, Municipal Coalition) are concerned that the Board will lack meaningful jurisdiction over ITC Midwest once the transaction is completed, because ITC Midwest will not be a public utility as defined by Iowa Code § 476.1. However, Applicants stated these parties are ignoring Iowa Code chapter 478, "Electric Transmission Lines."

Applicants pointed out that the Board's jurisdiction under chapter 478 extends to any entity that owns, constructs, maintains, or operates transmission facilities,

regardless of whether that entity is a public utility as defined by Iowa Code § 476.1. Applicants cited Iowa Code § 478.12, which provides that anyone obtaining a franchise for a transmission line has "consented to such reasonable regulation as the utilities board may apply . . . ." Applicants also cited Iowa Code § 478.19, which gives the Board the authority to adopt further and additional rules regarding "location, construction, operation and maintenance of said transmission line as may be reasonable." Applicants noted both Consumer Advocate and ICC in their briefs attacked the Applicants because in responses to data requests the possibility of federal preemption of certain aspects of transmission regulation was raised. However, Applicants contended that no one has identified any portion of the Board's statute or rules that could be preempted, and the possibility of preemption would exist regardless of who owns the transmission facilities.

Consumer Advocate argued that the Board should not relinquish its statutory duty under Iowa Code chapter 476 to regulate all aspects of IPL's retail electric service, including the transmission component of bundled retail rates. In fact, Consumer Advocate cited Iowa Code § 476.15 and argued the Board cannot voluntarily relinquish its jurisdiction.<sup>1</sup> Consumer Advocate said that while IPL has committed the operation of its transmission assets and dispatch of its generation assets to MISO, IPL remains a vertically integrated monopoly provider, and the Board should retain ratemaking jurisdiction over all rate components to ensure just

---

<sup>1</sup> Section 467.15 provides that the jurisdiction and powers of the Board over public utilities in Iowa shall extend "to the full extent permitted by the Constitution and laws of the United States."

and reasonable retail rates. Consumer Advocate argued that if the Board divests itself of this rate component, it can no longer ensure that IPL's rates are just and reasonable. Consumer Advocate maintained that this was particularly important because the Board's ratemaking standards are based on a test-year examination of costs (Iowa Code § 476.33(4)) while the FERC process is based on projected revenue requirements with an annual true-up outside of a federal Section 205 rate case proceeding.

Consumer Advocate is concerned that IPL customers were not given notice of the proposed transaction and will not be given notice of rate changes filed with FERC. Consumer Advocate also claimed that Applicants misled FERC in their FERC application because, for example, Applicants state that the transaction will have no impact on rates. Consumer Advocate objects to the forward-looking projected revenue requirement used by FERC, preferring the more traditional ratemaking principles used by the Board. Consumer Advocate stated that the proposed sale and loss of jurisdiction would lead to higher transmission costs.

Consumer Advocate argued jurisdiction pursuant to Iowa Code chapter 478 cannot replace the many protections afforded under Iowa Code chapter 476, in part because chapter 478 does not allow the Board to mandate construction of new transmission facilities if needed to provide safe and reliable service. Despite IPL's claim that the Board will maintain service quality and safety authority by virtue of IPL imposing a contractual public utility obligation on ITC Midwest (Tr. 85-86), Consumer

Advocate pointed out that IPL does not agree to be ultimately responsible for transmission service quality and reliability after the sale to ITC Midwest.

Consumer Advocate stated that in the years after New York v. FERC, FERC has had ample opportunity to regulate bundled retail transmission service, but FERC has declined to do so on at least two occasions and there is no indication FERC will change its approach. Consumer Advocate noted that FERC has not indicated that state regulation of bundled retail transmission rates has any impact on discrimination in the wholesale market, which is the issue FERC primarily addresses.

The Municipal Coalition asserted that FERC's actions demonstrate that it is highly unlikely that FERC will exercise jurisdiction over the transmission component of bundled retail load any time soon. The Municipal Coalition noted that FERC's effort under former Chairman Pat Wood to push the jurisdictional envelope in its "Standard Market Design" created a political firestorm, and FERC retreated from its proposal, stating in a white paper in 2003 that "the Commission will not assert jurisdiction over the transmission component of bundled retail service . . ." In Order 890, issued on February 16, 2007, the Municipal Coalition pointed out that FERC again said it would not assert jurisdiction over the transmission component of bundled retail sales. Also, the Municipal Coalition cited a recent complaint docket in which FERC dismissed a complaint that sought to address alleged discriminatory rates charged to wholesale and transmission customers and the transmission component of bundled retail sales and did not seek to assert jurisdiction over the

transmission component of bundled retail sales. (Alabama Municipal Electric Authority v. Alabama Power Co., 119 FERC ¶ 61,286 (2007)).

The Municipal Coalition also argued that events at MISO do not suggest there will be a change at FERC in transmission jurisdiction. In fact, the Municipal Coalition pointed out that the MISO transmission owners, including IPL, have filed for a continuation of "license plate" rates, which do not require that FERC assert its jurisdiction over parts of bundled retail rates.

The Municipal Coalition stated the Board should not voluntarily relinquish ratemaking jurisdiction over transmission in bundled retail rates. As articulated by the Board in the TRANSLink decision, the Municipal Coalition argued that there are concerns that if the transmission sale goes forward any Board review of transmission costs would be quite limited and that Iowa's views on regional transmission issues will be ignored if the Board no longer has the authority to protect Iowa ratepayers on at least some aspects of transmission costs. If the transaction is allowed to go forward, the Municipal Coalition pointed out that the Board will have no choice but to pass FERC rates through to retail ratepayers, even if the Board disagrees with the high returns allowed by the FERC formula. The Municipal Coalition said that any protests to the rate would have to be at FERC, where the burden is on those protesting the rate; in Iowa, the burden is on the utility to prove the rate is just and reasonable.

Also, if ITC Midwest sells the transmission assets in the future, the Municipal Coalition noted that the transaction would not be subject to Board review because ITC Midwest is not a public utility as defined by the reorganization statutes, with the same being true of any decision by ITC Midwest to leave MISO. While not advocating a sale to the American Transmission Company (ATC), the Municipal Coalition stated that a sale to ATC apparently was not considered and there was no analysis as to whether such a transaction would better serve IPL's ratepayers.

The Municipal Coalition pointed out that the Board's authority under chapter 478 is no substitute for its authority over public utilities in chapter 476. As conceded by Applicants in their initial brief, the Municipal Coalition said the Board's rules implementing chapter 478 assume that the transmission utilities are owned by a vertically integrated utility, and therefore may need to be revised if the transaction goes forward. (Applicants' Initial Brief, p. 68, n. 59).

ICC explained that if this transaction goes forward, the pricing of the transmission component of bundled retail electric rates will shift from the Board to FERC with respect to IPL's 34.5 kV and higher facilities. Absent this transaction, ICC said there is no credible evidence this jurisdictional shift will occur, contrary to the assertions of IPL witness Collins. In Order 890 (the Open Access Reform Rule) issued in February of this year, FERC stated it would retain the existing jurisdictional divide over the transmission component of bundled retail rates. ICC also noted that

FERC reinforced this with its ruling in the Alabama Power complaint cited by the Municipal Coalition.

ICC argued that the Applicants are wrong in their belief that the end of the MISO transition period in February 2008 will usher in the end of state regulation of the transmission component of bundled retail rates. As explained by ICC witness Dauphinais, FERC has allowed a pricing regime (license plate) like MISO's to continue on a post-transition period basis in the PJM region. ICC stated that continuing license plate rates means the Board will be able to continue to establish the pricing component of bundled retail electric rates.

In addition to losing pricing authority, ICC believed the Board would also lose regulatory authority over non-rate matters as well, including interconnection of qualifying facilities (QFs) that interconnect at 34.5 kV and higher. ICC said that because FERC's QF rule on interconnection would no longer apply, the interconnections would be subject to FERC's general rules on interconnection to the transmission grid. This would likely be a disincentive to QF interconnection.

IPL does not believe the transaction will have a significant impact on the Board's jurisdiction; the intervenors who commented on this issue disagree. Many of the concerns are not the result of the perceived loss of jurisdiction itself, but the expected impact of FERC regulation. If transmission rates would decrease under FERC regulation, jurisdictional concerns of at least some of the intervenors would likely be reduced.

2. Board analysis

The U.S. Supreme Court in New York v. FERC, 535 U.S. 1 (2002), said that FERC has jurisdiction under the Federal Power Act to set the rates for all transmission services, regardless of whether the cost of transmission is bundled in state jurisdictional rates. However, FERC has chosen not to exercise its jurisdiction over the cost of transmission when it is bundled in state jurisdictional rates; therefore, the Board today sets transmission rates for IPL retail ratepayers as an unidentified part of bundled retail rates. FERC sets the rates for IPL transmission customers who are not retail customers (e.g., municipal utilities and electric cooperatives). Some of these customers are transmission-only customers, while others are full requirements customers who also purchase wholesale power from IPL for resale to their customers. These customers often intervene in FERC transmission proceedings. It is important to note that FERC has on at least two occasions since the New York decision declined to take jurisdiction over bundled retail rates (Order 890, Alabama Power complaint).

FERC today has jurisdiction over the rates, terms, and conditions of service for the transmission assets that IPL plans to sell to ITC Midwest, and FERC will continue to have the same jurisdiction if those assets are sold. What will change if the transaction is allowed to go forward is that FERC will affirmatively exercise jurisdiction over ITC Midwest's transmission charges to IPL's retail customers because those transmission charges will no longer be part of a vertically integrated

utility's bundled rate. The rates, terms, and conditions of ITC Midwest's transmission services will be set by FERC using a formula-based cost-of-service model and recalculated annually; IPL currently uses such a model under the MISO tariff for transmission services provided to its wholesale customers.

For retail customers, the concern is that transmission rates will no longer be set by the Board and that the FERC process will result in higher rates. Much of that issue was discussed in the preceding section of this order.

There is also concern that ITC Midwest will not be a public utility as defined by Iowa Code chapter 476 (because it does not provide retail electric service) and, therefore, the Board will not have adequate oversight over ITC Midwest. However, the Board has jurisdiction (including siting) over some parts of electric transmission lines, pursuant to chapter 478. This chapter applies to any person (not just a utility) that constructs, erects, maintains, or operates a transmission line at a voltage of 69 kV or above. The Board "shall have power of supervision over the construction of a transmission line and over its future operation and maintenance." (Iowa Code § 478.18(1)). In addition, Iowa Code § 478.12 provides that any person owning, obtaining, or operating a transmission line under a franchise is deemed "to have consented to such reasonable regulation as the utilities board may, from time to time, prescribe. The provisions of this chapter shall apply equally to assignees as well as to original owners." It is important to note that the Board believes concerns that ITC Midwest may overbuild the transmission system to take advantage of the FERC rate

of return on new transmission are overstated, because Iowa Code § 478.4 provides, in part, that before granting a transmission franchise the Board must find that the line or lines "are necessary to serve a public purpose and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest." This is in addition to the MTEP process at MISO that ITC Midwest will have to go through for proposed new transmission lines.

The Board understands that if the proposed transmissions sale is allowed to go forward, the Board's transmission siting and regulation rules may need to be modified because, as written, they generally contemplate ownership by a utility. This is a process the Board can begin at any time, and the statutes cited above give the Board certain authority if additional transmission line regulation is necessary.

For wholesale customers, the concern is not so much the loss of jurisdiction by the Board (because FERC regulates the wholesale rates they pay now), but a fear of rate increases because of the FERC incentives for independent transmission companies. For both retail and wholesale customers, the intervenors believe that rates are likely to increase because of the ROE incentives FERC has granted to independent transmission companies and because FERC does not give adequate scrutiny to transmission rates.

IPL's witness Collins believes that in the next five years FERC will exercise its jurisdiction over transmission and the Board will lose the ability to set transmission rates as part of a bundled transmission rate. Mr. Collins bases his opinion on several

factors: 1) the MISO revenue distribution methodology will change in 2008, making it likely that all customers will be charged under the MISO tariff; 2) FERC transmission incentives are not available to most transmission providers (those who have bundled rates set by states), so FERC will exercise complete jurisdiction over bundled rates to expand incentives to promote transmission expansion; and 3) FERC believes in the independent transmission model and if states withhold approval of sales or reorganizations of transmission assets to independent transmission companies for fear of loss of jurisdiction, FERC will eliminate the impediment by exercising complete jurisdiction over bundled rates as they relate to transmission. These may be possibilities, but the fact is that FERC has not exercised such jurisdiction to date. It is important to note that when FERC proposed its Standard Market Design a few years ago, it retreated quickly when there was an adverse public reaction to FERC's proposal to require all utilities to join an RTO.

The Board believes the jurisdiction issue has the most significance not because of the loss of actual Board jurisdiction, but because FERC regulation may result in increased costs. Conceding for the sake of argument that FERC will not assume its full transmission jurisdiction in five years, there are still questions whether the rate incentives that are available to independent transmission companies will be made available to vertically integrated utilities. If the same incentives are not available, transmission for both retail and wholesale customers will likely be more expensive from ITC Midwest than if IPL continued to own the transmission, even

though FERC would regulate both entities. Once again, the question really becomes, if the transaction is allowed to go forward, whether the benefits of the transaction outweigh any increased costs and loss of Board jurisdiction. While this issue was touched upon above, it bears re-visiting in this context.

There are intangible benefits to consider that relate indirectly to jurisdiction and how FERC transmission regulation has evolved. IPL has said it will only build transmission for reliability or to serve native load, not to relieve congestion for economic reasons. Because transmission is now supposed to be operated independently with no discrimination, IPL has no advantages in serving its transmission over other load, even though it owns the system. Until the last several years, IPL was able to use its own transmission to serve its load first and discriminate in favor of its native load; this can no longer be done. IPL has little incentive to build transmission to serve regional needs if there is no real benefit for its retail customers. ITC Midwest would not be faced with the same lack of incentive, because it is not a market participant, meaning it does not sell or purchase power but only provides transmission, and it would build transmission to fill economic as well as reliability needs. These intangible benefits (the possibility of a more robust transmission system and an independent operator) are difficult to quantify, but also must be considered along with the price ramifications that might result from the transfer of transmission assets to ITC Midwest, resulting in the Board losing the ability to set bundled rates that include transmission for IPL's retail customers.

Consumer Advocate raised the argument that the Board cannot voluntarily relinquish jurisdiction over bundled retail transmission because of Iowa Code § 476.15, which provides that the "jurisdiction and powers of the board shall extend as hereinbefore provided to the utility business of public utilities operating within this state to the full extent permitted by the Constitution and laws of the United States." Consumer Advocate offered no cases in support of its argument and the Board does not accept Consumer Advocate's argument. Section 476.15 is intended to give the Board broad authority, but it does not appear to impose any particular duties or obligations or to direct the manner in which the Board should exercise the authority granted.

Iowa Code § 476.15 does not prohibit sale of IPL's transmission system. Taken to the extreme, Consumer Advocate's argument would have prevented the sale of DAEC or any other utility asset, because the Board would lose jurisdiction over any asset sold. The section is a catchall to give the Board the maximum jurisdiction possible, but it does not prohibit transactions or reorganizations the Board finds to be in the public interest.

As a final note, the Board in the TRANSLink decision was concerned about loss of jurisdiction, particularly because it of the possibility that its views on regional transmission issues would not be heard. The Board no longer has that concern. With the evolution of the MISO process and the Organization of MISO States, commonly referred to as OMS, the Board has adequate forums to makes its views on

regional transmission issues heard. The proposed transmission sale may even enhance the Board's ability to influence the regional debate, because ITC Midwest and its parent and various subsidiaries have a more regional view on transmission than did IPL, particularly with respect to economic projects that could be beneficial to solve regional concerns with congestion and power flows. Also, the Board has never shied away from participation in federal regulatory proceedings to articulate positions that benefit Iowa's ratepayers and citizens. The Board expects to be active in FERC proceedings involving ITC Midwest to the extent necessary to protect Iowa's interests.

**B. Board authority to order a new reorganization application**

The Environmental Coalition in brief argued that the Board should direct Applicants to "resubmit an application that includes measurable, enforceable benefits for Iowans and does not, as a side effect, increase IPL's reckless overdependence on coal." (Environmental Coalition Initial Brief, p. 4).

As noted by Applicants in their reply brief (pp. 36-37), the issue before the Board is to determine whether to allow this transaction to proceed or disapprove the transaction. (Iowa Code §§ 476.76 and 476.77). The Board's authority is to exercise regulatory oversight of IPL, not to manage IPL's business. Applicants cite several Board decisions to this effect as well as the seminal Supreme Court case, State of Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri, et al., 262 U.S. 276, 279 (1923), where the court said "[I]t

must never be forgotten that while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership."

While the Board has the authority to disapprove Applicants' proposed transmission sale (and in its disapproval identify possible changes that might make the proposal acceptable), it does not have the authority to order IPL to submit a new application. If the proposal before the Board is disapproved, it is IPL's decision whether to submit a new proposal for Board review.

**C. Board authority to impose precautionary conditions**

The Environmental Coalition at page 15 of its initial brief suggested a number of conditions to be imposed if the Board does not disapprove the proposed reorganization, primarily related to terms and conditions of generator interconnections but also proposing a renewable portfolio standard. As noted by IPL at page 38 of its reply brief, the Environmental Coalition's witness did not mention or discuss any of these conditions in either prefiled testimony or at hearing; IPL argued the record does not provide sufficient support for the Board to consider the conditions requested by the Environmental Coalition.

MidAmerican in its reply brief (pp. 2-3) stated that interconnection standards should not be applied to one utility and the Board has an ongoing proceeding, Docket No. NOI-06-4, dealing with interconnection standards. Also, MidAmerican argued

that the conditions proposed by the Environmental Coalition, such as limiting the prices IPL could charge, would give interconnection customers to the IPL system unreasonable preferences in violation of Iowa law.

The Board does not find sufficient record evidence to support any of the proposed conditions. In addition, Iowa Code chapter 476 does not authorize subsidies for interconnecting customers, and the Board in this order will not create such subsidies. If changes to interconnection policies and standards are appropriate, those changes should be made in a docket where they would apply to all utilities, not just IPL. Finally, the Board has previously noted that it is questionable whether the Board has the authority to directly impose conditions on a reorganization. In past rulemaking dockets, the Board has rejected suggestions that it adopt rules specifically allowing it to condition merger approval. In the preamble to the adopted rules in Docket No. RMU-91-8, issued August 15, 1991, the Board said:

The Iowa Association of Municipal Utilities again urged the Board to provide by rule that conditions may be imposed upon an applicant for reorganization in an order approving the reorganization. The cases cited by the association deal with situations where the agency involved had statutory authority to approve the act. Iowa Code section 476.77(2) does not give the Board authority to approve a reorganization, but merely the authority to disapprove. It is questionable, therefore, whether the Board has the authority to "conditionally approve" a merger. The Board will not adopt the rule requested by the association.

**D. Merger of IPL and WPL/past actions**

Consumer Advocate in its initial brief argued that the proposed sale of IPL's transmission assets is inconsistent with and will preclude IPL's delivery of efficiency savings claimed in connection with the merger of IPL and Wisconsin Power and Light (WPL). Consumer Advocate stated that in the merger proceedings involving IPL and WPL (Docket No. SPU-96-6), merger savings of \$441 million (net present value) were projected over ten years. Consumer Advocate pointed out that a four-year rate freeze followed the merger.

Consumer Advocate in its brief focused on filings with the Securities and Exchange Commission, where IPL and WPL said they planned to construct two different interconnections across the Mississippi River, providing for a physical transmission link between the IPL and WPL systems. This proposed construction, according to Consumer Advocate, was one of the reasons that FERC found the merger was in the public interest. There is no dispute that the interconnections across the Mississippi River have not been built.

When the Board approved IPL's transfer of operational control of its transmission system to MISO (Docket No. SPU-01-8), Consumer Advocate noted that IPL touted the benefits of regional transmission planning. Consumer Advocate argued the continued limited transfer capability between IPL and WPL deprives customers of significant integrated resource planning efficiencies that would produce

the cost savings projected in the IPL and WPL merger proceedings, translating to lower and more stable retail prices.

In its reply brief, IPL said that Consumer Advocate's main point appears to be that the two proposed transmission line river crossings have not been built. As IPL noted in its reply brief at p. 18, initially the crossings were proposed to comply with requirements of the Public Utility Holding Company Act of 1935 (PUHCA) that there be a physical contract path between the two utilities, not for reliability benefits. Later, IPL determined that the purchase of transmission capacity would satisfy the PUHCA requirements. Also, in the FERC merger proceedings, intervenors challenged the river crossings as being too costly, so IPL agreed to delay construction. Subsequently, the crossings ran into opposition from the Wisconsin Public Service Commission staff because of risk to bald eagles; IPL could not construct these lines without several regulatory approvals. (IPL Reply Brief, p. 19). More importantly, IPL pointed out that PUHCA was subsequently repealed and with the formation of MISO IPL no longer had to pay for a transmission path to WPL.

As noted by IPL in its reply brief, WPL no longer owns transmission (it was transferred to American Transmission Company) and it is difficult to see a relationship between IPL's projected merger savings and this transmission sale. IPL said that with the advent of MISO, it appears that many, if not all, of the benefits of a river crossing are being realized without the expense of such a crossing.

IPL also said that Consumer Advocate brought up in brief IPL's prior sale of the DAEC nuclear generating facility, apparently suggesting that new base load capacity would not be needed if the nuclear plant had not been sold. IPL said Consumer Advocate's argument is not persuasive because IPL entered into a long-term power agreement for the plant's output with the new owner. IPL stated that even though it continues to receive the output from the nuclear plant, there is still a projected need for additional base load capacity.

Consumer Advocate's arguments on this subject were not raised in prefiled testimony and Consumer Advocate does not offer any analysis on amounts of projected IPL and WPL merger benefits that were not realized. The Board is not persuaded there is any connection between this sale and any alleged unrealized merger benefits, particularly when the benefits of the river crossing relied on by Consumer Advocate in its argument appear to have been largely realized through MISO. Finally, the Board does not see a connection between the sale of DAEC and IPL's planned use of sale proceeds for new capacity. IPL continues to receive the output from DAEC so that power is included in IPL's planning process, which apparently shows a need for new capacity even with the nuclear plant's output.

**E. State and Federal policy**

In Applicants' Initial Brief (pp. 22-26), they argued that the transaction supports state and national energy policy, stating that a key advantage of the independent transmission company model is that ITC and its operating subsidiaries (including ITC

Midwest) are independent of market participants with no inherent reason to prefer or discriminate against any generation resources, regardless of ownership. Applicants said this independence avoids the conflict that can occur within traditional vertically integrated utilities that own both transmission and generation.

Applicants pointed out the protocol signed by governors of several Midwestern states in 2005 agreeing to work together to support additional investment in a reliable electric transmission grid and to support and coordinate regional transmission activities and siting. Applicants noted Congress passed legislation in 2004 allowing for gains from a sale of transmission assets to an independent transmission company to be recognized over an eight-year period, if the amount of the gain is used within four years of closing to purchase property for electric generation, transmission, or distribution, or for natural gas production or distribution. That tax incentive expires December 31, 2007. Applicants said FERC has also provided incentives for independent transmission companies and has recognized the need for new transmission infrastructure, noting that FERC has said that independent transmission companies eliminate the internal competition within traditional utilities for capital for generation and transmission functions. (FERC Order 679, p. 224).

Consumer Advocate in its reply brief (pp. 1-2) argued that there is no federal policy mandating divestiture of transmission assets by IPL and that the transaction is inconsistent with state policy. In particular, Consumer Advocate stated that the state obligation to provide just and reasonable service does not contemplate the

unbundling of transmission services and voluntary relinquishment of the Board's ratemaking authority to FERC. Consumer Advocate said IPL's continued ownership of transmission is vital to assuring adequate service at reasonable rates, particularly given that IPL has access to sufficient capital to enable needed transmission investments. (Tr. 326). The Municipal Coalition raised similar arguments to Consumer Advocate's at pages 18-22 of their reply brief.

In addition to the arguments discussed above, the Municipal Coalition claimed that the American Transmission Company rejects FERC-allowed transmission incentives as making it harder, not easier, to construct new transmission. The Municipal Coalition also argued that even if divestiture was the best way to meet state and federal policy objectives, Applicants have not shown that this transaction is the most beneficial or least-cost way to meet those objectives. ICC also raised this point and further noted that IPL has not explained why it cannot make the necessary transmission investments itself. (ICC Reply Brief, pp. 8-9).

While divestiture of transmission assets is not required by federal statute or FERC rule, a reading of FERC decisions and statements over the past several years reveals that FERC both favors and promotes the independent transmission company model. There is nothing in Iowa Code chapter 476 that requires an electric utility to own transmission to serve its customers (many municipal utilities do not) and nothing that prohibits IPL from selling its transmission assets (assuming the standards of the reorganization statutes are found to be met). IPL will retain the obligation to provide

adequate service to its retail customers if this transaction is approved—if ITC Midwest's transmission service falters, it will be IPL's responsibility to make sure its statutory obligations are satisfied, even if this means building new transmission that ITC Midwest, for whatever reason, refuses to build.

It is correct, as noted by Consumer Advocate, that when chapter 476 was written, vertically integrated electric utilities were the industry model. That model has evolved over the years, and chapter 476 was written with broad language that has accommodated changes in the energy and gas industry, such as the formation of MISO. Nothing in chapter 476 prohibits this transaction, assuming the standards of the reorganization statutes are met.

**F. Effect on AEP and PURPA obligations**

The Sierra Club in its initial brief (pp. 1-5) expressed concern that the transaction would adversely impact IPL's obligations to provide non-discriminatory rates for back-up power, to purchase excess generated power under PURPA at avoided cost, and to provide a net metering arrangement. IPL in its reply brief (pp. 13-14) noted that these are obligations of IPL and that IPL will have the same obligations if the transaction is approved as it does today.

IPL is correct that, absent statutory changes, it will have the same obligations if the transaction is allowed to go forward. ITC Midwest will only provide transmission services, so none of the obligations regarding back-up power, PURPA purchases, or

net metering will apply to ITC Midwest. These are retail service obligations that will remain with IPL.

The Sierra Club, Municipal Coalition, and ICC also expressed varying degrees of concern that alternate energy producers and PURPA qualifying facilities will not receive fair and nondiscriminatory access to ITC Midwest's transmission facilities. (Sierra Club Initial Brief, p. 5-6; ICC Initial Brief, pp. 29-30; Tr. 1215-1216). The concerns appear to primarily relate to the fact that FERC will have jurisdiction over interconnections at 34.5 kV and above, although, as pointed out by IPL in its reply brief at p. 14, there is no factual evidence in the record to support these concerns.

The Sierra Club is also worried that if ITC Midwest invests in transmission to support, for example, ethanol facilities, these costs will be passed on to IPL's ratepayers through the FERC tariff; however, if the transaction is not approved, IPL would make these improvements and the costs would be borne by IPL ratepayers. The proposed transmission sale does not impact who will pay these costs.

The concerns expressed about alternate energy producers, PURPA, and interconnection do not appear to have any basis in fact or law. In fact, interconnection may be better if the transmission is approved, because ITC Midwest is not a generation market participant and has no incentive to favor one owner of generation over another.

#### **G. Applicants' Commitments**

In addition to commitments (such as ITC Midwest's commitment related to access to books and records) made by one or both Applicants that were discussed earlier, commitments were also made by the Applicants to MidAmerican, Dairyland, CIPCO, and Corn Belt regarding various agreements between IPL and those parties. The Board expects Applicants to follow through on all commitments made and considers those commitments to now be part of the joint application for reorganization before the Board. In addition, ITC Midwest made commitments to CCRF/LEG/RPGI regarding assignment of contracts from IPL. Finally, ITC Midwest agreed to explore joint ownership of transmission with some entities, although the Board understands that this may be problematic because joint ownership might jeopardize ITC Midwest's status as an independent transmission company. The Board views ITC Midwest's status as an independent transmission company to be one of the key benefits of the proposed reorganization, and joint ownership should be pursued only to the extent it can be done without adversely affecting ITC Midwest's status.

### **IPL DELINEATION**

IPL requested a revision to the delineation of transmission and distribution facilities as set forth in the TRANSLink Order, specifically asking that all of IPL's 34.5 kV assets be designated as transmission rather than distribution. These assets include transmission land rights, transmission line facilities, and transmission substation facilities. (Tr. 287). IPL pointed out that its 34.5 kV facilities are currently

designated as transmission in IPL's property records and in IPL's Attachment O to the MISO Transmission and Energy Market tariff.

IPL noted that several parties cite the TRANSLink order as evidence that the 34.5 kV facilities are distribution, but pointed out that the TRANSLink delineation was intended to be used as guidance and not be the Board's final word on the subject. IPL said it used the TRANSLink order as guidance and determined that changing loads warrant a change of delineation. IPL argued that because changing loads will continue to cause substantial changes in both system usage and operation, a new technical study is not needed to modify the current delineation.

IPL maintained that the Consumer Advocate's opposition to classifying the 34.5 kV facilities as transmission is not supported by the testimony of its own witness. IPL pointed out that while Consumer Advocate witness Shi opposed the requested delineation in this case because it differs from the delineation set forth in the TRANSLink order, in the TRANSLink docket Dr. Shi criticized both studies the Board relied on to come to its conclusion in TRANSLink.

Consumer Advocate said that as part of the TRANSLink filing, IPL applied the FERC's seven-factor analysis using a voltage-class approach, concluding that facilities below 69 kV were distribution. Consumer Advocate said the Board's consultant noted a number of weaknesses in IPL's seven-factor study, but ultimately supported IPL's proposed delineation. In the TRANSLink docket, Consumer

Advocate said it accepted IPL's classification of the 34.5 kV facilities as distribution, but recommended a circuit-by-circuit approach for delineating the 69 kV facilities.

Consumer Advocate argued IPL has provided no evidence to support the claim that its 34.5 kV facilities should now be classified as transmission under the FERC's seven-factor analysis. When IPL was asked to provide any technical analysis that compares and contrasts the function and operation of the existing 34.5 kV facilities to the function and operation of the existing 69 kV facilities, Consumer Advocate noted that IPL submitted the same seven-factor analysis it had undertaken for the TRANSLink docket. In the TRANSLink docket, Consumer Advocate said the primary difference noted by IPL between 34.5 kV and 69 kV lines was that the 34.5 kV system is operated radially as compared to the 69 kV system, which is predominantly networked. Consumer Advocate said this primary difference was viewed as the determining factor by IPL in its TRANSLink recommendation that the 34.5 kV facilities be designated as distribution.

Consumer Advocate said its witness Dr. Shi testified that the 34.5 kV facilities continue to perform "exactly the function they are designed for, delivering power to IPL's end-users," and pointed out that IPL witness Collins agreed that IPL's 34.5 kV facilities are currently designed and operated as distribution. Consumer Advocate also said that Mr. Collins agreed with Dr. Shi that the conversion of a 34.5 kV line to 69 kV does not necessarily support a change in delineation to transmission, and said

that the delineation really depends on how a particular line is operated and used, rather than its voltage level.

Consumer Advocate pointed out that IPL is in the process of converting its 34.5 kV facilities to 69 kV, with reliability being the driver for this conversion. Consumer Advocate maintained that from ITC Midwest's standpoint, the connection of new ethanol producers will not necessarily require or cause the conversion of 34.5 kV facilities to 69 kV; conversion can only be expected if necessary to assure system performance and reliability. Consumer Advocate said Dr. Shi's testimony highlights the primary flaw in IPL's argument, that FERC's seven-factor analysis evaluates the characteristics of the existing system, not a hypothetical system that may or may not materialize. If the proposed transmission sale is allowed to go forward, Consumer Advocate recommended that all 34.5 kV facilities be classified as distribution, as well as converted 69 kV lines that continue to function as distribution.

CCRF/LEG/ RPGI argued that IPL's 34.5 kV facilities and 69 kV facilities in Iowa serve basically the same function and consequently should both be delineated as transmission. In addition, CCRF/LEG/ RPGI said that pursuant to the ASA, the two systems should be owned and operated by the same entity. CCRF/LEG/ RPGI stated that geographically and physically, the 34.5 kV system serves a different customer base than that of the 69 kV facilities, but serves the same basic functions as a 69 kV system for that customer base. CCRF/LEG/ RPGI maintained that Consumer Advocate and ICC have not argued persuasively that IPL's 34.5 kV

facilities should be delineated as distribution and its 69 kV facilities as transmission, and that no party to this proceeding has conducted a new line-by-line analysis or FERC seven-factor test analysis.

ICC argued that the Applicants have provided no justification for reclassifying all of IPL's 34.5 kV facilities as transmission because no new studies, analysis, or other documents using FERC's seven-factor test have been provided. In addition, ICC said there is no evidence all the 34.5 kV facilities will be upgraded to transmission, a fact confirmed by ITC Midwest witness Welch. Also, there has been no quantification of the benefits of upgrading most of the 34.5 kV system to 69 kV, an analysis that is needed to determine if there are any net benefits from the upgrade.

In this proceeding IPL is asking the Board to revisit the issue of delineation of 34.5 kV lines from distribution to transmission. The Board notes that the transmission-distribution distinction is not something that is always clear or can be determined by a precise formula—if it was so easily determined, FERC would not have had to design a seven-factor test. In fact, some lines have both transmission and distribution characteristics. FERC's seven-factor test looks not only at the line's voltage but also at the physical interconnection of the line (radial or networked, location of meters on the line for billing purposes), geographical location (proximity to load), and how the line is operated (used to transfer power to other markets, direction of flows). FERC also clarified that there was no bright line that would distinguish distribution from transmission and said it would defer transmission-distribution

delineation matters to states, if they were retail access states (which Iowa is not). In practice, FERC appears to have granted deference to states' determinations whether they are retail access states or not. This deference is conditioned upon the state's evaluation of the seven factors and "any other relevant factors to make recommendations consistent with the essential elements of the rule."

It appears that at least three changes have occurred since the Board's TRANSLink order. The Board noted in TRANSLink that the order was not meant to be the last word on the delineation issue, particularly since the transmission transfer at issue in TRANSLink was disapproved without prejudice. First, if the transmission sale is allowed to go forward, reclassification of 34.5 kV as transmission will allow ITC Midwest to plan the transmission system holistically. Second, reclassification will reduce the degree of planning coordination required between the transmission and distribution companies, potentially reducing a cost that otherwise would be borne by IPL ratepayers. Third, reclassification would recognize new demands that have been placed or will be placed on IPL's 34.5 kV facilities.

Ideally, a new detailed line-by-line study of IPL's 34.5 kV system would have been done to support reclassification, although the Board questions whether even a new study would have resolved this issue to everyone's satisfaction. The evidence (Exhibit 205) shows that: 1) 25 percent of IPL's 34.5 kV system is constructed to 69 kV standards and would be included as transmission according to the TRANSLink order; 2) the 34.5 kV and above system is already under the MISO tariff, although

IPL has operational control of the facilities below 100 kV and operational control of the 100 kV and above facilities has been transferred to the MISO per Board order under Docket No. SPU-01-8; and 3) the increase in the number of ethanol plants requesting service in areas served by 34.5 kV will necessitate the conversion to a higher voltage, most likely 69 kV, to serve the increased demand.

Perhaps most important, the Board believes that operational control of the 34.5 kV and 69 kV system should stay with the same entity. The Board notes that much of the 34.5 kV system will be upgraded, and under TRANSLink this would qualify as transmission once the upgrade is complete. ITC Midwest witness Welch testified that ITC Midwest estimates it would take about 5-7 years for ITC Midwest to upgrade the existing 34.5 kV lines as opposed to IPL witness Collins' estimate of 60 years for complete conversion. (Tr. 895-896). It does not make sense to have IPL perform these upgrades pursuant to its 60-year schedule and then transfer the lines to ITC Midwest on a line-by-line basis. Also, according to the testimony of ITC Midwest witness Welch, much of the 34.5 kV system will be looped when it is upgraded to 69 kV, meaning that those lines will no longer be radial lines after the upgrades are completed. In TRANSLink, the radial nature of the 34.5 kV lines was a factor in their delineation as distribution. Even if the FERC-seven factor test did not favor reclassification, the Board would reclassify these lines because of its belief that they must be owned and operated by the same person, given the way IPL's system was built. In other systems, 34.5 kV might not be transmission, but here it must be.

The evidence also indicated that the conversion of much of the 34.5 kV system will enhance reliability and reduce line losses. Reduction of line losses is particularly important, because it means that more of the electricity generated will actually be used.

Finally, there was some discussion about dual transmission charges for those customers that are directly connected to IPL's 34.5 kV system. These dual charges would be similar to rate pancaking for power that has to travel over both the 34.5 kV system owned by IPL (if classified as distribution) and a higher voltage transmission system owned by ITC Midwest. (Tr. 317-18, 485-86). If the transaction goes forward, having the two systems under the same classification and owner will eliminate any dual transmission charges.

### **CONCLUSION**

There are costs to this reorganization, but these increased costs to all IPL transmission system users, both retail and wholesale, will be mitigated for at least eight years following the transaction's closing under the ATA. The benefits of the transaction are substantial. Transmission investment crucial to the continued development of Iowa's renewable industry, including wind generation, will be made. One such investment is IPL's planned 100 MW of wind generation, to be on line by 2010. (Tr. 73). ITC Midwest is better positioned than IPL to move forward on new transmission projects, in part because ITC Midwest is a transmission-only company and will not have to compete for investment with other business units, such as

generation and distribution. Congestion will be reduced because ITC Midwest will pursue economic projects that IPL has not. Reduced congestion and a more robust transmission system will stimulate the wholesale market, which should bring prices down (or mitigate increases) for all electricity users. Freeing up IPL's capital for generation and other investment should help to reduce IPL's reliance on purchased power.

One of the most significant benefits is that the transmission system will be under the control of an independent operator. An independent operator has no motive to discriminate in favor of or against any transmission system user, because the independent transmission operator is not a market participant. This should benefit small producers, renewable energy, and other wholesale users of the transmission system. The ratepayer and public benefits of this transaction far outweigh the upfront costs to Iowa ratepayers.

The Board will also find the other statutory factors related to books and records, ability to attract capital, and reasonable and adequate service are satisfied. Therefore, pursuant to Iowa Code §§ 476.76 and 476.77, the reorganization proposed by Applicants, with the ATA, will be permitted to take place by operation of law and this docket will be terminated.

#### **CHANGES TO THE PROPOSAL**

The Board understands that Applicants have not received approval from all other state and federal agencies which have jurisdiction to review all or a portion of

this reorganization, but that to date no material conditions or changes to Applicants' proposal have been imposed by any agency reviewing this reorganization. The Board will reach its conclusions based upon the reorganization proposal submitted to it. Any material change in the proposed transmission sale may change the basis for the conclusions the Board has reached and may require submission of a revised proposal. Therefore, if there are any material changes to the proposed reorganization, Applicants will be required to file a copy of these changes with the Board, including an analysis of the impact of the changes. The Board will then determine whether a new proposal for reorganization must be filed. If customers of another jurisdiction receive more in benefits from the transaction than the ATA put forward by Applicants in this proceeding, the Board considers this to be a material change to the reorganization, unless those additional benefits are also provided to Iowa customers.

#### **FINDINGS OF FACT**

1. It is reasonable to find that after the reorganization the Board will have reasonable access to books, records, documents, and other information relating to IPL or any of its affiliates. Based on the commitments made by ITC Midwest, the Board finds that it will have reasonable access to ITC Midwest's books and records.
2. It is reasonable to find that the reorganization will not impair IPL's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure.

3. It is reasonable to find that the reorganization will not impair IPL's ability to provide safe, reasonable, and adequate service.

4. It is reasonable to find, with the alternative transaction adjustment, that ratepayers are not detrimentally affected by the reorganization, particularly when nonquantifiable benefits are considered.

5. It is reasonable to find that the public interest is not detrimentally affected by the reorganization.

### **CONCLUSION OF LAW**

The Board has jurisdiction of the parties and the subject matter in this proceeding, pursuant to Iowa Code §§ 476.76 and 476.77 (2007).

### **ORDERING CLAUSES**

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

1. Docket No. SPU-07-11 is terminated. The joint application for reorganization filed by Interstate Power and Light Company and ITC Midwest on March 30, 2007, is not disapproved.

2. Interstate Power and Light Company and ITC Midwest LLC shall promptly file with the Board any material changes to the proposed reorganization. The filing shall include an analysis of the impact of any changes.

3. Interstate Power and Light Company is authorized to establish a regulatory liability account for the benefit of customers as necessary to implement the Alternative Transaction Adjustment.

4. Interstate Power and Light Company's proposed delineation of transmission and distribution facilities (34.5 kV and above is transmission) is recommended by the Board to FERC at this time pursuant to Order 888, but the Board specifically reserves the right to recommend different delineations if changes in facts and circumstances so warrant, particularly if this reorganization does not go forward because, for example, all necessary regulatory approvals are not obtained.

5. Motions and objections not previously granted or sustained are denied or overruled. Any argument not specifically addressed in this order is rejected either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comment because the argument would not change the Board's decision.

**UTILITIES BOARD**

\_\_\_\_\_  
/s/ Curtis W. Stamp

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Krista K. Tanner

**DISSENT**

I respectfully dissent from the conclusions reached by my colleagues on ratepayer interest, public interest, and reclassification of 34.5 kV lines. Because I believe Applicants have not met their burden to establish that the reorganization will

have no detrimental impact on ratepayer interest or the public interest, I vote to disapprove the reorganization.

With respect to the ratepayer interest standard, the Board's rules require a quantification of costs and benefits. While the rules require a five-year analysis, for long-term assets such as those that comprise IPL's Iowa transmission system, a long-term analysis is more appropriate. More than 20 cost-benefit scenarios were presented by Applicants and other parties, with various terms. Considering all of them, the evidence is not persuasive that this transaction will yield net quantifiable benefits to ratepayers. The TA and ATA, which IPL used in various scenarios to demonstrate net benefits to the transmission sale, do not represent benefits in the traditional sense (for example, where there are cost savings as a result of increased efficiencies from a reorganization) but rather are partial offsets to increased costs resulting from the transmission sale (due in large part to FERC's higher return on equity).

In order to find that a reorganization is not a detriment to ratepayers, the cost-benefit analysis should at least show that the transaction is neutral on a net-present-value basis. This reorganization cannot make that claim. It is curious to note that the transmission sale was timed to take advantage of federal tax policy (set to expire at the end of the year) that encourages sale of transmission assets to independent transmission companies. Applicants stated that the transaction would not go forward if it does not close by the end of the year. Even with the tax incentives, Applicants

could not show a net benefit to this transaction over a 20-year time frame without some questionable assumptions (cost of capital savings, for example) and the use of the ATA which, as I have indicated, is only a partial mitigation of increased costs and not a benefit that flows from the transmission sale.

My colleagues in their ratepayer impact analysis consider nonquantifiable benefits, which I believe should be evaluated under the public interest criterion. I view the ratepayer criterion as a quantitative standard and the public interest criterion as more of a policy and, to some extent, qualitative standard. Still, the lack of a neutral cost-benefit showing is not fatal to a reorganization proceeding, because no one criterion is determinative and the statute does not require an affirmative finding on each factor for a reorganization to be approved.

I now turn to the public interest criterion. The transmission sale represents a fundamental change in how electric utility service will be provided in Iowa. No longer will IPL be a vertically-integrated utility providing generation, transmission, and distribution to its customers. I recognize that there have been numerous electric industry changes in recent years. For example, some states have restructured their electric industry and now allow customers to choose their electricity provider. (Iowa's legislators looked at this issue several years ago and decided to maintain the current regulatory scheme.) Other industry changes include the formation of MISO and increased wholesale competition.

I am not by any means opposed to change in the electric industry if the result is improved service at reasonable rates, but a fundamental change such as the one proposed here must be supported by sound policy and substantial evidence. I also believe such a fundamental change in transmission policy requires a higher degree of accuracy and confidence in the analysis provided to support the transaction. I did not find this kind of support in the Applicants' case.

I believe ITC has been and will be a successful company. However, ITC provided scant detail on what transmission investments it plans to make in Iowa, the estimated costs of those investments, and the projected benefits of those investments. For me to approve a fundamental change in the way IPL's transmission system is owned and operated, I need more than the general promises and commitments ITC Midwest made in its prefiled testimony and at hearing. I need firm plans that demonstrate the undeniable increased costs to ratepayers will provide benefits to the public interest and the state of Iowa that justify those costs.

I am also concerned that IPL's 34.5 kV and 69 kV systems are part of this sale. The federal policy favoring independent transmission companies appears to apply primarily to lines larger than 100 kV. To justify classifying current 34.5 kV as transmission, there should have been an affirmative showing that these lines contribute to regional power flows. The reclassification of all of IPL's 34.5 kV as transmission seems to be designed to allow ITC Midwest to take advantage of the higher rate of return available from FERC on a larger rate base (the 34.5 kV lines are

valued at \$90 million). FERC's incentive rates of return are based, at least in part, on its policy of promoting transmission to support regional power flows. There was insufficient evidence to show these lines support the policy underlying the incentive rates.

The loss of jurisdiction over the bundled portion of retail transmission rates is another factor in my decision. While I am not concerned about the loss of jurisdiction per se, I am concerned that the Board will have reduced ability to directly influence transmission issues because of the loss of rate regulation authority. As noted by several parties, this Board is perceived as being more accessible than FERC and our contested proceedings are designed to facilitate participation by numerous parties on a cost-effective basis.

IPL indicates that regardless of the outcome of the reorganization, it has sufficient capital to make its planned generation investments and maintain and upgrade its transmission system. IPL has been a good steward of its transmission system, as evidenced by its response to the 2007 storms. IPL's transmission system is not in crisis, although more investment is necessary. While the independent transmission company model has been successful in Michigan (which suffered from years of transmission underinvestment), the model has not taken hold nationally. I do not believe Iowa should be in the forefront of the development of the independent transmission company model without a better showing of costs and benefits. I am willing to embrace change, but only change that is shown to be likely to benefit Iowa.

As an alternative to the transmission sale, I am ready to explore state incentives for transmission upgrades that the Board may be able to pursue under its current authority and to work on possible legislative solutions, if necessary. The General Assembly and the Governor have both been supportive of actions that advance Iowa's position as a renewable energy leader.

I am convinced, however, that with the approval of this transaction by my colleagues, ITC Midwest will be a good corporate citizen of Iowa and will provide excellent service to those that use its transmission system. I am confident that ITC Midwest will join the Board, Consumer Advocate, and other stakeholders in working to ensure that Iowans continue to receive safe, adequate, and reliable service from their electric providers.

In the end, reasonable persons may disagree on close cases like this one. It is my conclusion that the Applicants have failed to bear their burden in this case, so I vote to disapprove the proposed transaction.

/s/ John R. Norris                      09/20/07  
John R. Norris, Chair                      Date

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 20<sup>th</sup> day of September, 2007.