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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

INTERSTATE POWER AND LIGHT COMPANY Petitioner, v. IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA, Respondent, and OFFICE OF CONSUMER ADVOCATE, and IOWA UTILITY ASSOCIATION, Intervenors.	CASE NO. CVCV065011 **PETITIONER'S BRIEF IN SUPPORT OF ITS PETITION FOR JUDICIAL REVIEW**

COMES NOW the Petitioner, Interstate Power and Light Company (IPL) and hereby submits its Brief in support of its Petition for Judicial Review.

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INTRODUCTION AND HISTORY OF ADVANCE RATEMAKING IN IOWA

IPL has adopted a straightforward mission: to deliver the energy solutions and exceptional service our nearly 500,000 electric and 250,000 gas customers in Iowa communities count on—safely, efficiently, and responsibly. As a public utility, IPL is regulated by the Iowa Utilities Board (Board) and is required by law to reliably serve all customers within its service territory, including residential and business customers. In order to provide electric service, IPL owns an electric distribution system throughout the state and electric generation facilities including coal power plants, natural gas power plants, wind farms and solar facilities.

This case concerns solar generation facilities and a battery energy storage system (BESS) that IPL is seeking to construct to ensure it can continue to provide safe, reliable, and affordable service to its customers. IPL routinely engages in comprehensive resource planning to rigorously evaluate its generation fleet and consider whether changes or additions to the type or amount of generation facilities would benefit customers. IPL engaged in such a process throughout much of 2020, leading to the development of an Integrated Resource Plan called the Iowa Clean Energy Blueprint. This Integrated Resource Plan evaluated various generation options, ultimately concluding that the retirement of an existing coal unit and its replacement with 400 megawatts (MW) of solar and battery energy storage would help Iowa customers avoid an estimated $300 million in customer costs over the next 35 years.

Consistent with this long-term plan, IPL evaluated available projects to meet this need and in November 2021 submitted an Application for Advance Ratemaking (Application) to the Board for four solar energy projects and a BESS to be co-located with a solar project (hereinafter collectively referred to as the "Projects"). The four specific projects for which IPL requested advance ratemaking principles consisted of Duane Arnold Solar I, a 50 MW solar generating facility (DAS I); Duane Arnold Solar II, a 150 MW solar generating facility (DAS II) paired with

a 75 MW BESS, and an additional 200 MW of solar generating facilities in Iowa, at locations to be finalized based on IPL's site selection process.

In support of its Application, IPL filed hundreds of pages of testimony, dozens of exhibits, an up-to-date market cost analysis and multiple financial analyses, and responded to hundreds of data requests, including numerous questions from the Board and third parties. *See* portions of Certified Record (CR) and Confidential Certified Record (CCR) cited in the Legal Argument sections, *supra*. After a year-long proceeding that included a contested case hearing lasting two days, the Board summarily denied IPL's Application in a 16-page final order on November 9, 2022 (Final Order) on the asserted basis that IPL had not sufficiently evaluated alternatives. IPL submitted a Motion for Reconsideration or Rehearing (Motion for Rehearing) as to all four Projects. In response, the Board issued an order on December 29, 2022 granting the Motion for Rehearing (Order on Rehearing) with regard to the Duane Arnold I and Duane Arnold II solar projects[1] but denying the Motion for Rehearing regarding the additional 200 MW solar project and the BESS project (the 200 MW of solar and the BESS project will be referred to individually by name and collectively as "projects"). The Board's decision to deny rehearing for the remaining 200 MW of solar was premised on a newly-asserted basis that advance ratemaking principles should not be issued as IPL had not yet completed its site-selection, despite specifying ratemaking principles for similarly situated projects in multiple previous cases and its own rules not requiring this information. It denied rehearing for the BESS on the assertion that a BESS is "untested" and "unproven" and thus ineligible for advance ratemaking principles, despite issuing rules in 2020

[1] On April 27, 2023 the Iowa Utilities Board entered a 31-page ruling on IPL's Motion for Rehearing and specified advance ratemaking principles for DAS I and DAS II.

which explicitly stated that a BESS paired with solar is eligible for advance ratemaking principles and never raising this newly-asserted issue in the more than year-long proceeding.

IPL has sought judicial review of the Final Order and the Order on Rehearing because these decisions are legally and factually erroneous and should be reversed and remanded with directions. The extensive record evidence in this case overwhelmingly demonstrates the projects are eligible for advance ratemaking principles as a matter of law and IPL has met the statutory standard set forth in the *NextEra Energy* case, which the Board remarkably failed to even cite in its 16-page Final Order. *See generally NextEra Energy Res. LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30 (Iowa 2012). The 200 MW solar project and the 75 MW BESS project are needed to serve customers, and the Board's Final Order, Order on Rehearing and denial of IPL's Application are based on grounds inconsistent with Iowa Code section 476.53, the Board's own administrative rules, binding precedent, the seminal case of *NextEra Energy*, the evidence in the record, and are in violation of numerous provisions of Iowa Code section 17A.19(10).

IPL seeks reversal of the Board's decisions and remand to the Board to specify advance ratemaking principles for the 200 MW project and the BESS, just as the Board recently did with the DAS I and DAS II projects.

A. A Brief History of Advance Ratemaking in Iowa

After a series of large-scale rolling blackouts in the late 1990s and an energy crisis gripping the country in 2000, the Iowa Legislature enacted Iowa Code section 476.53 in 2001. The statute's express purpose is to encourage utility-owned power generation in Iowa which, in turn, ensures reliable electric service for Iowa consumers, provides economic benefits to the state, and promotes diversity in the types of fuel used to generate electricity. The statute includes a statement of intent which explains that the advance ratemaking law was adopted to:

> attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state. It is also the intent of the general assembly to encourage rate-regulated public utilities to consider altering existing electric generating facilities, where reasonable, to manage carbon emission intensity in order to facilitate the transition to a carbon-constrained environment.
>
> * * *
>
> The general assembly's intent with regard to the reliability of electric service to Iowa consumers, as provided in subsection 1, shall be implemented by considering the diversity of the types of fuel used to generate electricity, the availability and reliability of fuel supplies, and the impact of the volatility of fuel costs.
>
> * * *
>
> **It is the intent of the general assembly to encourage the development of renewable electric power generation. It is also the intent of the general assembly to encourage the use of renewable power to meet local electric needs** and the development of transmission capacity to export wind power generated in Iowa.

Iowa Code §§ 476.53(1), (2)(b), and 476.53A (emphasis added). The advance ratemaking law has been a success and Iowa's Legislature has repeatedly enacted measures encouraging the development of in-state power generation facilities, including solar and wind facilities, over an extended period. *See* Natalie Ginty, Note, *Sz Enterprises v. Iowa Utilities Board: Impact on Rural Iowa*, 20 DRAKE J. AGRIC. L. 413, 418–419 (2015) (listing 18 different statutes and regulations encouraging the above).

To fulfill the legislative purpose of attracting the development of power generation facilities, the statute requires that "[t]he board *shall* specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the electric power generating facility or alternate energy production facility are included in regulated electric rates…" Iowa Code § 476.53(3)(a) (emphasis added). Advance ratemaking principles specified

pursuant to Iowa Code § 476.53 establish, in advance of construction, the financial parameters of a utility's recovery of the costs of a new generation facility. Such certainty mitigates the substantial economic barriers to the construction of solar power generation plants and the risk that a future Board would deny recovery of a utility's costs to construct the facility.[2]

Advance ratemaking thereby provides the financial certainty necessary for a utility to attract capital investment on reasonable terms to build the resource and meet customers' needs for reliable, long term electric supply. *See* Lynne Holt, Paul Sotkiewicz, Sanford Berg, (WHEN) TO BUILD OR NOT TO BUILD?: THE ROLE OF UNCERTAINTY IN NUCLEAR POWER EXPANSION, 3 Tex. J. Oil Gas & Energy L 174, 217 (2008) (citing Iowa Code section 476.53 as a method of reducing "uncertainty over the ratemaking principles to be used in cost recovery proceedings by providing for a determination of ratemaking principles *prior to the undertaking of plant construction*") (emphasis added). These measures have facilitated "record-breaking growth" and investment in energy generating infrastructure in Iowa to ensure reliable service for customers. *See* Amy L. Stein, Breaking Energy Path Dependencies, 82 BROOK. L. REV. 559, 601 (2017) (internal citation omitted). Since the advance ratemaking law was enacted, the Board has uniformly applied the law—except in the present case—to approximately 20 large-scale generation projects, including multiple IPL projects such as natural gas plants and the addition of 1,000 MW of wind power.

Applicants such as IPL pursue advance ratemaking in reliance on Iowa's statutes, Iowa caselaw, administrative rules, and past precedent of the Board which all encourage the development of in-state power generation facilities and utilization of advance ratemaking.

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[2] *See e.g., Iowa-Illinois Gas and Electric Company v. Iowa State Com. Comm'n*, 347 N.W.2d 423 (Iowa 1984) (decided prior to enactment of the advance ratemaking law and upholding a decision by the Iowa State Commerce Commission to disallow a return on a portion of Iowa-Illinois Gas and Electric Company's investment in a coal-fired power plant after the facility was constructed).

B. IPL's Request for Judicial Review

As described in this Brief, IPL is harmed by and seeks judicial review of the Board's Final Order and its Order on Rehearing (issued on November 9, 2022 and December 29, 2022, respectively). The Board's decisions are contrary to the plain language, purpose and intent of Iowa's advance ratemaking statute set forth in Iowa Code § 476.53, place critically needed renewable energy generation projects at risk, and violate the provisions of Iowa Code Section 17A.19(10). These Projects will provide needed capacity and increase reliability for IPL's customers, create hundreds of good paying jobs, and generate millions of dollars of economic development and tax revenue for the state of Iowa and local jurisdictions as well as lease payments for voluntarily participating landowners.

IPL requested expedited relief and appreciates the Court moving promptly in ruling on a Motion to Dismiss and setting a briefing schedule and hearing date on IPL's Petition for Judicial Review. The record demonstrates that IPL needs to move forward expeditiously with development and construction of the 200 MW of solar generation and 75 MW BESS to reliably serve Iowa customers. The Board's decisions related to the 200 MW of solar generation and 75 MW BESS have adversely impacted IPL's ability to move forward with construction of the Projects, IPL's contracts with third parties, and associated financial obligations under these contracts. These adverse impacts will result in increased costs to customers.

For the reasons set forth below, the Board's decision denying IPL's Application for advance ratemaking should be reversed and remanded by this Court.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER THE BOARD'S DECISION TO DENY IPL'S APPLICATION TO SPECIFY ADVANCE RATEMAKING PRINCIPLES FOR THE 200 MW OF SOLAR GENERATION CONSTITUTES UNLAWFUL ACTION UNDER IOWA CODE SECTION 17A.19(10) (b), (c), (f), (g), (h), (i), (j), (k), (l), (m), (n) REQUIRING REVERSAL AND REMAND TO THE BOARD.

Cases

NextEra Energy Res. LLC v. Iowa Utilities Bd., 815 N.W.2d 30, 36 (Iowa 2012).
State v. Klawonn, 609 N.W.2d 515, 522 (Iowa 2000).
In Re: Interstate Power & Light Co., No. RPU-2016-0005, 2016 WL 6350244 (Oct. 25, 2016).
In Re: Interstate Power & Light Co., No. RPU-2017-0002, 2017 WL 3452832 (Aug. 9, 2017).
In Re: Rule Making for Ratemaking Principles Proceeding (199 IAC Chapter 41), No. RMU-2019-0041, 2020 WL 5367333 (Sept. 3, 2020).
Environmental Law & Policy Center. v. Iowa Utilities Board., No. 22-0385, 2023 WL 3130900 (Iowa Apr. 28, 2023).
In Re: MidAmerican Energy Co., No. RPU-2009-0003, 2009 WL 4886420 (Dec. 14, 2009).
In Re MidAmerican Energy Co., 218 P.U.R.4th 325 (May 29, 2002).
In Re: MidAmerican Energy Co., No. RPU-2022-0001, 2023 WL 3229916 (Apr. 27, 2023).
In Re: Interstate Power & Light Co., No. RPU-2021-0003, 2023 WL 3229903 (Apr. 27, 2023).
In Re: Rev. of Competitive Bidding Process Rules 199 IAC Chapter 40, No. RMU-2016-0029, 2017 WL 280859 (Jan. 18, 2017).
In Re Competitive Bidding, Docket No. RMU-2001-0008, Order Adopting Rules (Mar. 15, 2002).
In Re: Interstate Power & Light Co. & Fpl Energy Duane Arnold, LLC, No. ID175490, 2013 WL 416220 (Jan. 31, 2013).

Statutes and Rules

Iowa Code § 476.42
Iowa Code § 476.53
Iowa Code § 476.43
Iowa Code § 476.44
Iowa Code § 4.1(a)
Iowa Code § 17A.19(10)

199 IAC 41.1.
199 IAC § 7.27(1).
199 IAC 40.2(1).

HF 577, Senate Clip Sheet S-3713, at 7-9 (June 20, 2001).

II. WHETHER THE BOARD'S DECISION TO DENY IPL'S APPLICATION TO SPECIFY ADVANCE RATEMAKING PRINCIPLES FOR THE 75 MW BESS CONSTITUTES UNLAWFUL ACTION UNDER IOWA CODE IOWA CODE SECTION 17A.19(10) (b), (c), (f), (g), (h), (i), (j), (k), (l), (m), (n) REQUIRING REVERSAL AND REMAND TO THE BOARD.

Cases

NextEra Energy Res. LLC v. Iowa Utilities Bd., 815 N.W.2d 30, 36 (Iowa 2012).
In Re: Interstate Power & Light Co., No. GCU-2022-0004, 2023 WL 2582101 (Mar. 15, 2023).
In Re: Grand Junction Solar, LLC, No. GCU-2022-0001, 2023 WL 3093924 (Apr. 21, 2023).
In Re: Duane Arnold Solar, LLC Duane Arnold Solar II, LLC, 2022 WL 1015800 (Apr. 1, 2022).
In Re: Duane Arnold Solar, LLC; Duane Arnold Solar II, LLC, No. GCU-2021-0002, 2022 WL 3021728 (July 26, 2022).

Statutes and Rules

Iowa Code § 476.42
Iowa Code § 476.53
Iowa Code § 17A.19(10)

199 IAC § 41.1(3)
199 IAC § 41.1

STATEMENT OF THE CASE

A. Factual Background

Petitioner IPL is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. *See* CR at p. 60:5-13; Appendix (Appx.) p. 60:5-13. IPL is a rate-regulated public utility that provides electric and natural gas service to approximately 500,000 electric and 250,000 natural gas customers in 83 of the 99 counties in Iowa. *See id.*; *see also* https://www.alliantenergy.com/aboutus/whoweare/whoweare (last accessed May 15, 2023). IPL is a wholly-owned subsidiary of Alliant Energy Corporation. *See id*. IPL routinely requests that the Board specify advance ratemaking principles when proposing to construct, lease, or own alternate energy production facilities, which includes solar and energy storage. *See* Iowa Code § 476.53 (incentivizing rate-regulated utilities such as IPL to request the Board specify advance

ratemaking principles); 199 IAC 41.1 (defining "facility" to include "energy storage systems located at the site of an alternate energy production facility").

Respondent the Board is an agency of the State of Iowa[3] located in Des Moines, Polk County, Iowa. *See* https://iub.iowa.gov/about-us/jurisdiction-regulatory-authority-iowa-utilities-board (last accessed May 15, 2023). Respondent is an administrative agency as defined in Iowa Code Section 17A.2(1). *Id*.

In the present case, IPL filed its Application supported by direct testimony on November 2, 2021, pursuant to Iowa Code section 476.53 and 199 IAC Chapter 41. CR at 6–756; Appx. 1–756; *see also* CCR at 614–45 (Confidential Direct Testimony of Ben Lipari), 38–165 (Confidential Exhibit 1 to Direct Testimony of Brent Kitchen), 150–218 (Confidential Exhibit 2 to Direct Testimony of Brent Kitchen); C-Appx. 1–32, 54–165, 166–234. The statute requires the Board to make two findings in connection with determining the applicable ratemaking principles: that IPL "has in effect a Board-approved energy efficiency plan as required under section 476.6, subsection 15"; and that IPL "has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply." *See* Iowa Code § 476.53(3)(c)(1)-(2).

IPL thoroughly evaluates its generation fleet and sources for long-term electric supply on a regular basis. Most recently, on November 20, 2020, IPL completed and filed with the Board an integrated resource plan, called the Iowa Clean Energy Blueprint (Integrated Resource Plan), which was a resource-neutral evaluation of IPL's generation fleet across various future scenarios.

[3] On April 4, 2023, Governor Kim Reynolds signed Senate File 514 into law, reorganizing many of Iowa's administrative agencies. Under the reorganization, the IUB is no longer within the Department of Commerce. Senate File 514 does not become effective until July 1, 2023. *See* 2023 Iowa Senate File No. 514, Iowa Ninetieth General Assembly - 2023 Session.

See id. at 85–198; Appx. 85–198; *see also* CCR at 38–165 (Confidential Exhibit 1 to Direct Testimony of Brent Kitchen); C-Appx. 54–165. Developing the Integrated Resource Plan was a significant endeavor by IPL and involved a year-long collaborative process where IPL obtained input from stakeholders and held multiple meetings with Board staff, the Iowa Department of Justice, Office of Consumer Advocate (OCA) and multiple other parties to evaluate assumptions and conclusions. *See id*. The Integrated Resource Plan modeling utilized a sophisticated Aurora modeling system to analyze and compare the future impacts of multiple resource portfolios, such as continued investment in existing coal-fired generating units, or adding natural gas-fired generating units, wind, solar, and other resource types within the multi-state energy market. *See id*. at 137–168 (Sections 6–8); Appx. 137–168; *see also* CCR at 88–119; C-Appx. 104–135. The Integrated Resource Plan overwhelmingly showed across a range of scenarios that adding 400 MW of solar, combined with coal power plant retirements and conversions of coal power plants to natural gas, would result in a generation portfolio with the lowest overall average long-term cost to customers. *See id*. at 174–75 (Section 10); Appx. 174–75; *see also* CCR at 125–26; C-Appx. 141–42. After the Integrated Resource Plan was completed, IPL performed supplemental analysis demonstrating that battery energy storage (a BESS) would further enhance the reliability of IPL's generating fleet. *See id*. at 60–77 (Direct Testimony of Mayuri N. Farlinger), 531–62 (Direct Testimony of Ben Lipari), 738–56 (Direct Testimony of Brent Kitchen); Appx. 60–77, 531–62, 738–56; *see also* CCR at 614–45 (Confidential Direct Testimony of Ben Lipari); C-Appx. 1–32.

Consistent with the results of its Integrated Resource Plan, IPL's Application requested that the Board specify advance ratemaking principles for a project consisting of 400 MW of solar and a 75 MW BESS. *Id*. at 3; Appx. 3. IPL's Application and testimony explained that the projects were selected after a rigorous analysis of alternatives through its integrated resource planning

process and were being pursued in order to provide various customer benefits including, but not limited to: (1) the addition of solar and storage projects resulted in the lowest overall average long-term cost to customers; (2) IPL's demonstrated need for additional capacity to provide reliable electric service to customers; (3) the ability to reuse the existing transmission infrastructure at the now retired Duane Arnold Energy Center; (4) the State's policy of encouraging utility development of renewable energy generation; and (5) IPL's desire to further increase fuel diversity through the addition of solar. *Id*. at 3–39; Appx. 3–39.

Additional facts relevant to this matter will be discussed in the Legal Argument section of this Brief.

B. Procedural Background[4]

On January 3, 2022, the Board issued an order docketing the Application, setting a scheduling conference, and requesting additional information from IPL (January 3 Order). CR at 762–75; Appx. 1515–20. On January 24, 2022, IPL filed a response to the Board's January 3 Order, in which IPL provided information that further demonstrated that IPL's Application met statutory requirements. *Id*. at 795–12; Appx. 1521–1538. After reviewing the additional information IPL provided, the Board issued a procedural schedule on January 25, 2022, specifying the dates by which the parties, including intervenors, were required to submit direct, cross rebuttal, and rebuttal testimony. *Id*. at pp. 813–15. On March 11, 2022, the Board issued a second order requesting additional information (March 11 Order) about the Project. *Id*. at 855–63; Appx. 1539–47.

[4] IPL has provided two types of citations in this section. The first is to the Certified Record or the Confidential Certified Record, the second is to the Appendix or Confidential Appendix. In an effort to provide the Court with appendices of a manageable and useful size, not all documents have been included in the appendices. Purely procedural documents are not so included. Documents cited only in this section have also been omitted from the appendices. However, for the Court's convenience, IPL has provided CR or CCR citations for all documents cited.

On April 1, 2022, IPL filed a response to the Board's March 11 Order containing hundreds of pages of additional responsive information for the Board, including 18 pages of narrative explanation and 13 attachments. *Id*. at pp. 1744–4364.[5] In its response, IPL explained the market conditions and risks, cost pressures, and commodity cost issues that limit the feasibility of power purchase agreements (PPA) as an alternative to utility ownership of the Projects. *See generally id.* In support of its responses, IPL submitted copies of all long-term PPAs IPL had entered into within the last five years, supporting data and analysis containing forward-looking projections related to market price risk calculations and pricing forecasts. *See generally id.* On April 5, 2022, IPL filed a motion requesting an extension to the procedural schedule to provide additional time for IPL to evaluate certain economic and trade policy changes affecting solar and battery energy storage projects in the United States. *Id*. at 4389–94. The Board granted IPL's request on April 6, 2022. *Id*. at 4397–99.

On April 15, 2022, IPL filed a Joint Proposed Procedural Schedule, which the Board adopted in its April 20, 2022, Order Cancelling Scheduling Conference and Establishing Revised Procedural Schedule. *Id*. at 4414–16, 4417–19. On May 26, 2022, a technical conference was held with IPL, intervenors, and the Board. *See id*. at 4421–33 (IPL Presentation from Technical Conference); Appx. 1548–1559. Pursuant to the Joint Proposed Procedural Schedule, IPL filed its rebuttal testimony on June 20, 2022 and other parties filed rebuttal testimony on July 13, 2022. On July 21, 2022, IPL filed a motion for leave to file sur-rebuttal testimony, and concurrently filed sur-rebuttal testimony. *See* relevant citations to the CR and the CCR, *supra*. The parties and intervenors filed hearing testimony and exhibits on July 29, 2022, including but not limited to those

[5] Because of the voluminous nature of this portion of the Certified Record, IPL has provided specific citations to documents and narratives included in this submission throughout this brief.

cited here. *See id*. at 5021–6620 (IBEC Direct Testimony and Exhibits), 6621–6626 (OCA's Responsive Testimony of Scott Bents), 6630-90 (Additional Exhibits from IPL, LEG, OCA, and IBEC).[6] The Board held a contested case hearing on IPL's Application at the Board's office in Des Moines, Iowa on August 8–9, 2022. *Id*. at 6716–7215 (Hearing Transcript); Appx. 924–1426; *see also* CCR at 7419–7516; C-Appx. 277–419.

The Inflation Reduction Act of 2022 (IRA) was signed by President Biden on August 16, 2022. On August 24, 2022, the Board re-opened the evidentiary record, established a revised procedural schedule, and required IPL to update the economic evaluation of the Projects based on the enhanced tax benefits for renewable energy projects in the IRA. *See id*. at 6708–12; Appx. 1560–1564. IPL's updated economic analysis showed the newly available tax benefits under the IRA significantly improved the economics of the Projects providing approximately $157 million in additional net present value tax benefits to customers. *Id*. at 7226 (Post-Hearing Testimony of Neil Michek); Appx. 1504. IPL submitted post-hearing testimony and exhibits on September 9, 2022. See relevant citations to the CR and the CCR, *supra*. Intervenors submitted further testimony on September 16, 2022. *Id*. at 7578–7714. The parties submitted their post-hearing briefs on or before September 28, 2022. *Id*. at 7715–7879; *see also id*. at 7880–920 (Amended Brief of OCA).

On November 9, 2022, the Board issued a 16-page Final Order denying IPL's Application and refusing to specify advance ratemaking principles for the Projects. *Id*. at 7921–36; Appx. 840–55. The Final Order concluded in a summary fashion that IPL did not meet the second statutory

[6] Because of the voluminous nature of this portion of the Certified Record, IPL has provided specific citations to documents and narratives included in this submission when needed.

requirement set forth in Iowa Code § 476.53(3)(c)(2) and that "IPL has not demonstrated it has adequately considered other sources for long-term electric supply, or that the solar and [battery energy storage system] projects are reasonable when compared to other feasible alternatives sources of electric supply."[7] *Id*. at 7933; Appx. 852. Notably, the Board largely ignored and failed to review and consider the substantial evidence submitted by IPL in the proceeding. Further, the 16-page Final Order failed to analyze, distinguish, or even cite the *NextEra Energy* case, which interpreted the requirements in Iowa Code § 476.53(3)(c)(2)—the same provision the Board asserted IPL did not meet—or the Board's own prior cases implementing the statute and approving other similarly situated projects.

On November 29, 2022, IPL filed its Motion for Rehearing arguing that the Final Order is based on an erroneous interpretation of Iowa Code § 476.53(3)(c)(2), is contrary to Iowa law, and is contrary to the Board's prior precedent, administrative rules, and the weight of the evidence. *Id*. at 7937–8016; Appx. 856–905. IPL requested that the Board reconsider its Final Order denying IPL's Application, apply the correct legal standard to the Application, and correct the numerous errors made by the Board regarding the record evidence presented by IPL. *Id*. In the alternative, IPL requested a rehearing pursuant to 199 IAC 7.27 to offer new evidence which was not available prior to the Board's Final Order in the matter. *Id*.

On December 29, 2022, the Board issued an Order on Rehearing that denied IPL's Motion for Rehearing on the 200 MW of solar generation and the 75 MW BESS, this time on different grounds asserting for the first time that advance ratemaking principles could not be issued for the solar as IPL was in the final stage of the process for selecting sites and asserting that a BESS was "untested" and "unproven" and therefore ineligible for advance ratemaking principles. *Id*. at

[7] IPL has in effect a Board-approved energy efficiency plan.

8039–86; Appx. 906–923. IPL timely filed a Petition for Judicial Review and has been adversely affected by the Board's Final Order issued November 9, 2022, and Order on Rehearing issued December 29, 2022 denying IPL's Application for Advance Ratemaking for 200 MW of solar generation and a 75 MW BESS project.

STANDARD OF REVIEW

A. The Court Should Afford the Board No Deference and Should Review the Final Order and Order on Rehearing for Corrections of Error at Law Consistent with *NextEra Energy*

The Iowa Administrative Procedure Act, Iowa Code Chapter 17A, is the exclusive means of judicial review of agency actions. *Mercy Health Center v. State Health Facilities Council*, 360 N.W.2d 808, 811 (Iowa 1985); *see also NextEra Energy Res. LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30, 36 (Iowa 2012) (citing Iowa Code § 17A.19(10) as governing judicial review of agency decisions). Under Chapter 17A, an agency's authority is limited in several respects. *Zieckler v. Ampride, et. al.*, 743 N.W.2d 530, 532 (Iowa 2007). Iowa Code § 17A.19(10) states in relevant part:

> The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:
> …
>
> c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
>
> f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings:
>
> (1) "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the

establishment of that fact are understood to be serious and of great importance.

(2) "Record before the court" means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) "When that record is viewed as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

g. Action other than a rule that is inconsistent with a rule of the agency.

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

i. The product of reasoning that is so illogical as to render it wholly irrational.

j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

Iowa Code § 17A.19(10) (emphasis added).

In exercising its judicial review power, a district court acts in an appellate capacity to correct legal errors committed by an agency. *See Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463 (Iowa 2004); *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 465 N.W.2d 280 (Iowa 1990). In determining whether a factual finding is supported by substantial evidence, the district court must review "the record as a whole." Iowa Code §17A.19(10)(f). "Substantial evidence" means the "quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). In evaluating an agency's findings of fact, the Iowa Supreme Court has stated that courts must not "simply rubber stamp the agency fact finding without engaging in a fairly intensive review of the record to ensure that the fact finding is itself reasonable." *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003) (citing Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act* at 68 (1998)). Furthermore, courts are required to consider all evidence, including that offered in opposition to the agency's findings. *Id.* at 499 (citing *Dawson v. Iowa Bd. of Medical Examiners*, 654 N.W.2d 514, 518 (Iowa 2002)).

In applying the law to the facts, the Supreme Court recently noted, "[t]he deference afforded an agency in its application of law to fact is predicated on the assumption the agency reviewed and considered all of the relevant evidence in reaching its decision." *Env't L. & Pol'y Ctr. v. Iowa Utilities Bd.*, No. 22-0385, 2023 WL 3130900 at *6 (Iowa Apr. 28, 2023) (citing *JBS Swift & Co. v. Hedberg*, 873 N.W.2d 276, 280–81 (Iowa Ct. App. 2015). An agency such as the Board is not afforded deference when "the record discloses the agency did not review and consider

the relevant evidence[.]" *Id*. In short, "[a]n agency is entitled to reconcile relevant evidence, not ignore relevant evidence." *Id*. "Where the agency fails to consider relevant evidence, the agency's action is unreasonable, arbitrary, capricious, an abuse of discretion, and the product of illogical reasoning." *Id*. (citing Iowa Code § 17A.19(10)(i), (j), (m), (n)); *see also Hedberg*, 873 N.W.2d at 280–81; *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 225 (Iowa 2006) ("We have said that the commissioner commits error by failing to weigh and consider all of the evidence."); *Armstrong v. State of Iowa Bldgs. & Grounds*, 382 N.W.2d 161, 165 (Iowa 1986) (en banc) (stating it is reversible error for the agency to fail to "weigh and consider all the evidence"). When an agency ignores relevant evidence, "'the agency's ruling does not clearly disclose a sound factual and legal basis for its decision.'" *Id*. (quoting *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 537 (Iowa 1985).

When interpreting the law, the Iowa Supreme Court has stated: "[t]he level of deference afforded to an agency's interpretations of law depends on whether the authority to interpret that law has 'clearly been vested by a provision of law in the discretion of the agency.'" *See Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012), citing Iowa Code § 17A.19(10)(*c*); § 17A.19(10)(*l*)). When the Iowa Legislature clearly vested the agency "with the authority to interpret specific terms of a statute," then the courts will "defer to the agency's interpretation of the statute and may only reverse if the interpretation is 'irrational, illogical, or wholly unjustifiable.'" *NextEra Energy*, 815 N.W.2d at 37 (internal citations omitted); *see also* Iowa Code § 17A.19(10)(l). However, when the agency has not been clearly vested with the authority to interpret a provision of law, then the reviewing court must reverse the agency's interpretation if it is erroneous. *Burton*, 813 N.W.2d at 256 (citing Iowa Code § 17A.19(10)(c)). This Court "should not give any deference to the view of the agency with respect to particular matters that

have not been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(11)(b).

The level of deference that should be afforded to the Board in this case is not a matter of first impression. The specific statutory provision at issue, Iowa Code § 476.53(3)(c)(2), was examined in detail in *NextEra Energy*. In that case, the Supreme Court explained as follows:

> Certain guidelines have emerged to help us determine whether the legislature clearly vested interpretative authority in the agency, two of which are relevant here. [*Renda*, 784 N.W.2d at 14).] First, "when the statutory provision being interpreted is a substantive term within the special expertise of the agency, . . . the agency has been vested with the authority to interpret the provisions." *Id*. Second, "[w]hen a term has an independent legal definition that is not uniquely within the subject matter expertise of the agency, we generally conclude the agency has not been vested with interpretative authority." *Id*. In sum, in order for us to find the legislature clearly vested the Board with authority to interpret section 476.53, we:
>
> > **'must have a firm conviction from reviewing the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved, that the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretive power with the binding force of law over the elaboration of the provision in question.'**

NextEra Energy, 815 N.W.2d at 37 (emphasis added) (quoting *Doe v. Iowa Dep't of Human Servs.*, 786 N.W.2d 853, 857 (Iowa 2010) (citation and internal quotation marks removed in original) (citing *Renda*, 784 N.W.2d at 14 as noted in block citation)). Further, in keeping with normal principles of statutory interpretation, the Supreme Court relies upon the plain language of the statute as the starting point for analysis of its meaning. *Id*. at 42 (interpreting the plain language of section 476.53).

Here, the statutory provision at issue has already been analyzed in detail by the Supreme Court which concluded "that the general assembly did not delegate to the Board interpretive power with the binding force of law. Accordingly, we will examine the Board's interpretation of section

476.53(4)(c)(2) for correction of errors at law. *Id.* § 17A.19(10)(c)."[8] In interpreting Iowa Code § 476.53(3)(c)(2) according to its plain meaning, the Supreme Court found "this section requires a utility to do no more than demonstrate its proposed facility is reasonable in light of the fact the utility cautiously thought about the character or qualities of alternative sources for long-term electric supply it could successfully utilize." *NextEra Energy*, 815 N.W.2d at 41.

The binding precedent and conclusions from *NextEra Energy* should be applied in this case and this Court should similarly afford no deference to the Board, but rather should independently review the Board's decisions for corrections of errors at law.

B. Recent Decisions from the Board Are Inconsistent with Past Precedent and the Decision in this Case

Throughout this Brief, IPL will describe the many ways in which the Board's decisions in this matter were inconsistent with its own past precedent and administrative rules and where the Board failed to state "credible reasons sufficient to indicate a fair and rational basis for this inconsistency." *See* Iowa Code § 17A.19(10)(h). It is worth noting at the outset of this discussion that the recent Board has been deviating from past practices and precedent at a steady rate. On April 27, 2023, one business day before the end of one Board member's term and the effective date of the resignation of a second Board member, the Board released two final decisions. The first decision was *In Re: MidAmerican Energy Company*, Dkt. No. RPU-2022-0001 which involved an application for advance ratemaking submitted by MidAmerican Energy Company. *In Re: MidAmerican Energy Co.*, No. RPU-2022-0001, 2023 WL 3229916, at *2 (Apr. 27, 2023). In granting the application for advance ratemaking and analyzing Iowa Code § 476.53(3)(c)(2), the Board created and utilized for the first time a new seven-factor test, which it stated was "derived

[8] *Note:* Iowa Code section 476.53(4)(c)(2) was subsequently renumbered to Iowa Code section 476.53(3)(c)(2) but not otherwise modified.

from the stated intent of the legislature." *See id*. at 10. The new seven-factor test looks at: "(1) sufficient quantity to meet need, (2) reliability impacts, (3) economic benefits/cost-effective, (4) environmental benefits/impact on carbon intensity, (5) diversity of fuel type in portfolio, (6) availability and reliability of fuel sources, and (7) volatility of fuel prices." *See id*. at 13.

This seven-factor test is completely new, is not articulated in the statute, has never been articulated or applied before, and was also not articulated by the Board in its recent rulemaking. The seven-factor test was not applied in either of the Board's Orders at issue in this case. Further, it was not applied to the other final decision released by the Board on the very same day which finally specified advance ratemaking principles for IPL's DAS I and DAS II projects. *Compare id*. *with In Re: Interstate Power & Light Co.*, No. RPU-2021-0003, 2023 WL 3229903, at *2 (Apr. 27, 2023). The Board's interpretation and application of Iowa Code section 476.53(3)(c)(2) should be given no deference as the Board is continuing to inconsistently analyze advance ratemaking cases, articulating new tests and not applying them uniformly, and the Board continues to depart from its own past precedent in violation of Iowa Code section 17A.19.

Iowa's administrative agencies are tasked with using their unique expertise to efficiently effectuate the laws enacted by Iowa's Legislature and Governor. In doing so, the agency's responsibilities are defined, and their actions bound, by the conditions of the Iowa Administrative Procedure Act (IAPA), which is codified at Iowa Code section 17A.19. In the Final Order and the Order on Rehearing, the Board repeatedly and arbitrarily violated the provisions of Iowa Code section 17A.19(10). For the reasons articulated below, the Final Order and Order on Rehearing must be reversed and remanded to the Board with instructions for the Board to specify ratemaking principles for the 200 MW project and BESS.

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LEGAL ARGUMENT

I. THE BOARD'S DENIAL OF IPL'S APPLICATION FOR THE 200 MW OF SOLAR GENERATION WAS CONTRARY TO IOWA CODE SECTION 476.53, IOWA CASELAW, THE BOARD'S PAST PRECEDENT, AND ADMINISTRATIVE RULES

Iowa Code section 476.53(4)(c)(2) requires an applicant such as IPL establish a need for the Projects. *NextEra Energy*, 815 N.W.2d at 42. The record evidence in this case establishes, and the Board acknowledges in its Final Order, that IPL needs additional, cost-effective capacity to continue to provide safe and reliable service to its customers and to minimize and avoid IPL's exposure to fluctuations and exorbitant costs in the current short-term capacity and energy markets. CR at 7928 (Final Order).[9] The Board unequivocally stated: "There is no question that IPL needs additional capacity and these two solar facilities, which have been approved for generation certificates by the Board, will provide some of the needed capacity." CR at 8053–54 (Order on Rehearing); Appx. 920–21. It is undisputed IPL has satisfied this statutory requirement for advance ratemaking.

Iowa Code section 476.53(3)(a) provides that "[t]he board **shall specify** in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the . . . alternate energy production facility are included in regulated electric rates whenever a rate-regulated public utility" files an application to construct in Iowa an alternative energy production facility as defined in Iowa Code section 476.42. Iowa Code § 476.53(3)(a) (emphasis added); *see also* Iowa Code § 476.42. The word "shall" imposes a duty or requirement

[9] *See also* CR at 741-47 (Direct Testimony of Brent Kitchen), 4652-57 (Rebuttal Testimony of Brent Kitchen), 7092 at 479:4-7 (Hearing Transcript) ("Q. Do you have any basis to disagree with IPL witness Kitchen's testimony that IPL has a capacity need? A. I agree that IPL has a capacity need."), 7093 at 480:5-8 (Hearing Transcript)("Q. And is it your understanding that IPL has proposed these projects primarily for their capacity?" A. Yes."); Appx. 741-47, 1464–69, 1303 at 479:4-7, 1304 at 480:5-8; *see also* CCR at 7270–7281 (Confidential Rebuttal Testimony of Brent Kitchen); C-Appx. 235–246.

upon the agency. *See* Iowa Code § 4.1(a) ("The word 'shall' imposes a duty."); *see also State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000) (explaining that the use of "shall" creates a mandatory action and collecting cases analyzing same). Section 476.53 requires the Board to find the applicant: (1) "has in effect a board-approved energy efficiency plan"; and (2) that the applicant "has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility . . . is reasonable when compared to other feasible alternative sources of supply." *Id*. at (c)(1) and (c)(2); .

The first factor is not at issue as IPL has in effect a board-approved energy efficiency plan. The Board's denial was focused solely on the second factor.

A. The Board Erred in Denying IPL's Application for the 200 MW of Solar Generation on the Basis that IPL Had Not Finalized the Site Selection for this Portion of the Project, Contrary to Iowa Law, the Board's Own Rules, and Past Precedent

The Board refused to specify advance ratemaking principles for the 200 MW of solar on the asserted basis that IPL had "not finalized the size, location, interconnection or costs" of the 200 MW facilities. CR at 8053 (Order on Rehearing); Appx. 920. Section 476.53 contains no requirement that a utility must have finalized the specific location of a proposed project. In fact, IPL's Application in this case exceeded the information provided in past advance ratemaking dockets involving alternative energy production facilities. IPL offered the rebuttal testimony of Ben Lipari who identified a non-exhaustive list of projects being considered by IPL for the 200 MW portion of the Project. *See* CR at 4494 (Rebuttal Testimony of Ben Lipari); Appx. 1431. The list included "a summary of the types of projects and cost profiles that are currently available in the market, as well as a survey of the indicative pricing that reflects the current and forecasted global and domestic supply chain and economic conditions." *Id*. Mr. Lipari stated in his rebuttal testimony that the projects identified in IPL's Confidential Exhibit 1 to the Board was not

necessarily a complete list of all projects under consideration "as other projects may become available between [the date of the testimony] and the time that IPL is ready to execute commercial agreements." *Id.*; *see also* CCR at 38–511 (Confidential Exhibit 1 to Direct Testimony of Brent Kitchen); C-Appx. 54–165. Confidential Exhibit 1 provided a list of the location of potential sites for the 200 MW facilities and the size and cost profiles for such potential sites.

The Board's Final Order requiring identification of the particular size and location of the proposed project is inconsistent with past Board precedent. *See* Iowa Code § 17A.19(10)(h) (specifying the Board may not take "[a]ction other than a rule that is inconsistent with the agency's prior practice or precedents" without stating justifiable and credible reasons showing "a fair and rational basis for the inconsistency"); Iowa Code § 17A.19(10)(n) (prohibiting Board decisions that are "unreasonable, arbitrary, capricious, or an abuse of discretion"). The Board has not required applicants in past dockets, including those involving IPL, to identify each and every project the applicant is considering for acquisition or development in advance of receiving ratemaking principles. It has been sufficient in the past for an applicant to state that any projects ultimately selected for acquisition will be consistent with the advance ratemaking principles ordered by the Board. *See In Re: Interstate Power & Light Co.*, No. RPU-2016-0005, 2016 WL 6350244 (Oct. 25, 2016) (concerning the New Wind I project); *In Re: Interstate Power & Light Co.*, No. RPU-2017-0002, 2017 WL 3452832 (Aug. 9, 2017) (concerning the New Wind II project).

For example, in New Wind I, Docket No. RPU-2016-0005, IPL had identified the Whispering Willow North Project, but had not yet identified the additional projects. *In Re: Interstate Power & Light Co.*, 2016 WL 6350244, at *1. Rather, IPL committed to identifying additional wind projects within the proposed cost cap in that proceeding and explained that it was

using the characteristics of the identified project to guide its search for and selection of comparable sites in Franklin County and throughout Iowa. *Id*. Similarly, in the New Wind II proceeding, Docket No. RPU-2017-0002, IPL had identified the Upland Prairie project, and again, had committed to acquiring additional projects within the proposed cost cap. *In Re: Interstate Power & Light Co.*, 2017 WL 3452832, at *1. The Board specified advance ratemaking principles and did not deny IPL's Application on the basis that sites had not been identified for portions of the project. *Id*.

Even more recently, on April 27, 2023, the Board approved MidAmerican's application for advance ratemaking principles for more than 2,000 MW of wind even though MidAmerican had not finalized site selection of all the facilities. The Board made no attempt to reconcile this undisputable conflict between the MidAmerican decision and the present case, which was ongoing at the time of the MidAmerican decision. The Board failed to state credible reasons for the inconsistency.

The Board's Order is also contrary to its own administrative rules that were adopted in 2020, resulting in violation of multiple sections of section 17A.19(10).[10] In November of 2017, the Board opened a rule-making docket (RMU-2017-0003) to consider rules related to section 476.53 and to establish filing requirements for advance ratemaking principles. *See In Re: Rule Making for Ratemaking Principles Proceeding (199 IAC Chapter 41)*, No. RMU-2019-0041, 2020 WL 5367333, at *1 (Sept. 3, 2020). In April of 2019 the Board requested comments from

[10] *See* Iowa Code § 17A.19.10(g) ("action other than a rule that is inconsistent with a rule of the agency"); *see also* (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational), (j) (prohibiting decisions that are the product of a "process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action", and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

stakeholders on the draft Notice of Intended Action (NOIA). *Id*. In December of 2019 the Board issued an Order Commencing Rulemaking, and in January of 2020, a NOIA was published in the administrative bulletin. *Id*. The Board held an oral presentation in March of 2020 and post-oral presentation comments were accepted by the Board in May of 2020. *Id*. IPL actively participated in this rulemaking.

On September 3, 2020, the Board entered an Order Adopting Rules setting forth the filing requirements for applications for advance ratemaking pursuant to Iowa Code section 476.53. In the Order, the Board addresses the comments it received and details the changes between the NOIA and the rules adopted by the Board. The Board detailed the following comments:

> MidAmerican stated that some of the information required in the rules will not be known with certainty at the time a utility files its application. MidAmerican cited wind project locations as an example. MidAmerican said that at the time a utility files an application for ARPs, the utility may have multiple sites in mind for the project. MidAmerican fears that the rules will require it to choose a site at the time of application and be locked into that site when it comes time to construct the project. MidAmerican acknowledges that the rules provide for omitting information that is not reasonably available, but it believes having to justify omissions will create opportunities for project opponents to slow down the approval process.

Id. at *2.

In its Order adopting the new rules, the Board stated that "[t]he Adopted and Filed version of the rules contains specific changes requested by MidAmerican in order to provide increased flexibility about the type of information that must be submitted. . . . The rules are consistent with the Board's long-standing guidelines and allow for the omission of information that is not reasonably available." *Id*. at *3. Specifically, the final rule differed from the initially proposed rule in that the final rule expressly states that site descriptions should be included "to the extent feasible" for applications describing alternative energy production facilities. *See id*.

In the Order describing this change, the Board went on to expressly state:

> **There is nothing in the rules that would lock an applicant into choosing a particular wind project site.** If an applicant is unable to provide a certain piece of information in its application due to uncertainty about the project details, it may omit the information and explain why it is not reasonably available.

Id. (emphasis added). Thus, the Board in its own rule making process expressly stated that an applicant would not be required to identify a particular project site in connection with its application for advance ratemaking principles, unless it was feasible to do so and the information was reasonably available. The Board has now attempted to change the rules of the game and the position of the goal post rendering the advance ratemaking process completely unpredictable. *See* Iowa Code § 17A.19(10)(k) ("Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy").

As explained in the next section, the record amply demonstrates that IPL provided all the information reasonably available about its site selection process and the options being evaluated, including the cost profile of each project under consideration. The Board ignored and failed to consider this information or reconcile this evidence with its own rule. If the Board is allowed to change what an applicant must do to reach the goal posts at will and without communication to the potential applicants or a change in its rules, then rate-regulated utilities are at a permanent disadvantage and left guess as to what information is required, which violates both the spirit and letter of the statute and regulations. *See id*.

The Board erred by issuing a decision in this contested case proceeding that is directly inconsistent with its own rulemaking process and past precedent in violation of section 17A.19(10)(g), making the decision arbitrary and capricious, illogical, and irrational. *See* Iowa Code §17A.19(10)(g); *see also* §§ (i), (j), (n).

1. The Board's decision to ignore and not consider the relevant testimony of IPL witness Ben Lipari regarding anticipated project locations was irrational and illogical

Throughout the administrative proceeding, IPL provided information regarding its site-selection process—a process designed to ensure IPL obtains the most favorable price for customers—to the extent feasible for the 200 MW of solar, and the record amply demonstrates the Board knew the locations IPL was considering. IPL was very transparent with the Board regarding the status of its site selection and provided economic information regarding the projects being considered with Ben Lipari's rebuttal testimony. CR at 4496, 4498–50 (Rebuttal Testimony of Ben Lipari); Appx. 1433, 1435–37. Further, while IPL's application for advance ratemaking principles was pending, IPL submitted applications to the Board for siting authority for a 150 MW solar project to be located in Wever, Iowa and a 50 MW solar project to be located in Creston, Iowa.[11] At the contested case hearing on August 8-9, the Creston and Wever projects were discussed for more than 12 pages of transcript. *See* CR at 7041–49, 7056–58 (Hearing Transcript); Appx. 1252–60, 1267–69.

IPL also requested the opportunity to present additional evidence through IPL's witness Ben Lipari regarding the status of IPL's identification and development of the 200 MW of solar. *See* CR at 8014–15 (Mot. for Rehearing); Appx. 903–04. The two locations identified were the Wever Project and the Creston Project. *See id*. at 7963–64 (Post-Hearing Testimony of Ben Lipari); Appx. 1458–59. Mr. Lipari in his offered testimony explained that "there is a limited supply of large-scale solar projects in Iowa." *Id*. The Wever and Creston project sites, being developed by IPL, are among the most advanced in the state and have "positive siting factors that

[11] While this application for judicial review has been pending, these applications have been approved. *In Re: Interstate Power & Light Co.*, No. GCU-2022-0004, 2023 WL 2582101, at *15–16 (Mar. 15, 2023).

enable cost competitiveness, specifically, site continuity of layout and transmission upgrade costs." *Id*.

The Board erred in failing to consider IPL's evidence and allow Rehearing on the 200 MW portion of the Project, especially in light of the additional testimony offered regarding the anticipated location for the 200 MW portion of the Project. Iowa Administrative Code section 199-7.27(1) provides, in relevant part, that the Board "shall ether grant or refuse an application for rehearing within 30 days after the filing of the application *or may, after giving the interested parties an opportunity to be heard and after consideration of all of the facts, including those arising since the making of the order, abrogate or modify its order*." 199 IAC § 7.27(1) (emphasis added).

When viewed as a whole, the record evidence amply establishes that IPL conducted an adequate analysis of alternatives under Iowa Code section 476.53(3)(c)(2) and that IPL was appropriately concluding its due diligence on a limited number of projects that would comprise the 200 MW of solar. The record also establishes that IPL satisfied the intent and requirements of Iowa's advance ratemaking statute. While the Board added a new requirement to lock in project sites in order to qualify for advance ratemaking, IPL nevertheless attempted to offer further evidence through Mr. Lipari regarding IPL's selection of the projects comprising the 200 MW of solar. *See* 199 IAC § 7.27(1); *see also Environmental Law*, at *5. This was rejected by the Board.

The Board erred in finding IPL was required to identify the size, location, interconnection and costs of the 200 MW portion of the Project and also erred in denying IPL's Motion for Rehearing to provide additional information to the Board.[12] The Board's decision must be reversed.

[12] *See* Iowa Code § 17A.19.10(g) ("action other than a rule that is inconsistent with a rule of the agency"); *see also* (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational), (j) (prohibiting decisions that are the product of a "process in which the agency did not consider a relevant and important

B. The Board Misinterpreted and Misapplied Iowa Code Section 476.53(3)(c)(2) by Applying an Incorrect Legal Standard to the 200 MW of Solar and Ignored Relevant and Substantial Evidence Demonstrating the Sufficiency of IPL's Alternatives Analysis

In its Final Order, the Board summarily and erroneously concluded that "IPL has not met the requirements in Iowa Code section 476.53(3)(c)(2) for consideration of advance ratemaking principles for the projects proposed in this docket." CR at 7935 (Final Order); Appx. 854. In reaching this faulty conclusion, the Board applied an incorrect legal standard for conducting an alternatives analysis under Iowa Code section 476.53(3)(c)(2), failing to even cite the *NextEra Energy* case that interpreted this exact provision. The Iowa Code section in question plainly states that the rate-regulated public utility must demonstrate "to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. Iowa Code § 476.53(3)(c)(2); *see generally NextEra Energy*, 815 N.W.2d at 36 (interpreting this provision of the statute). The Board's decision to set forth requirements that do not exist in Iowa Code section 476.53(3)(c)(2) or in the Board's rules at 199 Iowa Administrative Code Chapter 41, or in any binding legal precedent interpreting the statute, constitutes reversible error. The Board's decision is also inconsistent with recent decisions addressing advance ratemaking. *See In Re: Interstate Power & Light Co.*, No. RPU-2016-0005, 2016 WL 6350244 (Oct. 25, 2016) (concerning the New Wind I project); *In Re: Interstate Power & Light Co.*, No. RPU-2017-0002, 2017 WL 3452832 (Aug. 9, 2017) (concerning the New Wind II project).

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matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action", and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

1. The Board disregarded the plain language of the statute and Iowa caselaw

Iowa Code section 476.53(3)(c)(2) addressing advance ratemaking states as follows:

> c. In determining the applicable ratemaking principles, the board shall make the following findings:
>
> . . . .
>
> (2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply.

This provision has been thoroughly evaluated previously and the Iowa Supreme Court has made clear the advance ratemaking statute requires that a rate-regulated utility "do no more than demonstrate that its proposed facility is reasonable in light of the fact that the utility cautiously thought about the *character or qualities* of alternative sources for long-term electric supply it could successfully utilize." *NextEra Energy*, 815 N.W.2d at 41 (emphasis added). The record evidence shows that IPL amply met and exceeded that legal standard. *See* Iowa Code § 476.53(3)(c)(2).

To reach this conclusion, the Iowa Supreme Court analyzed the language of the statute and stated the following:

> When the general assembly fails to provide a statutory definition or a word does not have an established meaning in law, we give the words their ordinary and common meaning by considering the context in which the general assembly used them. *State v. Stone*, 764 N.W.2d 545, 549 (Iowa 2009). "Considered" is the past tense of "consider," which means "to reflect on: think about with a degree of caution." *Webster's Third New International Dictionary* 483. "Other" is defined as "being the ones distinct from the one or those first mentioned or understood," i.e., an alternative. *Id*. at 1598. "Compared" is the past tense of "compare," which means "to examine the character or qualities of (as two or more ... things) esp. for the purpose of discovering resemblances or differences." *Id*. at 462. "Feasible" means "capable of being ... utilized ... successfully." *Id*. at 831. Finally, "alternatives" is the plural form of "alternative," which means "offering a choice of two or more things wherein if one thing is chosen the other is rejected ."

Id. at 63.

2. The Board ignored its past precedent

The Board's decision cast aside the last two decades of precedent without explanation or a change in law. That precedent makes clear that the core purpose of the advance ratemaking statute, *in the Board's own words*, is "to provide an incentive for the construction and ownership of electric generation plants by rate-regulated utilities." *In Re: MidAmerican Energy Company*, Docket No. RPU-2009-0003, Final Decision and Order at 15 (Dec. 14, 2009). Since 2002, the Board has repeatedly acknowledged the purpose and intent of Iowa's advance ratemaking statute in Iowa Code section 465.53:

> The ratemaking principles statute encourages utility-built generation in Iowa, because it provides for the establishment of ratemaking principles prior to construction of a proposed facility. While ratemaking treatment of generation facilities is generally well established by prior regulatory precedent, there are risks associated with not having ratemakingtreatment established until a rate case that occurs subsequent to construction of the facility. The large capital expenditure required plus the lead-time in bringing a facility on line creates risk. Changes in Board policy or circumstances, such as an unforeseen decrease in demand, could impact the ratemaking treatment in a future rate proceeding. The possibility of such changes imposes risk to the utility that the statute eliminates by making the principles approved by the Board 'binding with regard to the specific electric power generating facility in any subsequent rate proceeding.'

In Re MidAmerican Energy Co., 218 P.U.R.4th 325 (May 29, 2002) (at page 4); *see also* Section A of the Introduction, *infra*.

There have been approximately 20 advance ratemaking applications filed with the Board since Iowa Code section 476.53 was enacted in 2001. Not one of those dockets has required an applicant to submit an Integrated Resource Plan like the Blueprint, conduct a competitive bidding process, solicit a fixed price power purchase agreement, or consider short-term market purchases as a source of "long-term electric supply." Neither did the Board's own rulemaking under 199 IAC Chapter 41 in 2020. In none of those dockets has the Board disregarded and failed to evaluate

key evidence in the record showing an applicant satisfied its statutory obligation to "no more than demonstrate its proposed facility is reasonable in light of the fact that the utility cautiously thought about the character or qualities of alternative sources for long-term supply it could successfully utilize." *NextEra Energy*, 815 N.W.2d at 41.

The Board's decision in this case is also inconsistent with its recent advance ratemaking case involving MidAmerican Energy Company. As highlighted above, in a decision issued on April 27, 2023, the same day the Board issued a decision on the DAS I and DAS II hearing request, the Board for the first time articulated and utilized a seven-factor test to analyze an advance ratemaking application. *See In Re: Midamerican Energy Co.*, No. RPU-2022-0001, 2023 WL 3229916, at *2 (Apr. 27, 2023). Notably, the Board did not utilize this new seven-factor test when finding IPL was entitled to advance ratemaking for the DAS I and DAS II projects in a decision that was issued the same day. Once again, the Board changed the rules of the game and moved the goal post even with respect to advance ratemaking decisions issued the very same day.

3. IPL's Integrated Resource Plan satisfied Iowa Code section 476.53(3)(c)(2)

Prior to submitting its application, IPL developed an Integrated Resource Plan, a resource-neutral comparison of feasible alternatives completed at the end of 2020 involving input and collaboration between Board staff, the OCA, and the intervenors in IPL's last electric rate case in Docket No. RPU-2019-0001. *See* CR at 85–198 (including intervenors the Environmental Law and Policy Center and the Iowa Environmental Council); Appx. 85–198; *see also* CCR at 38–165 (Confidential Exhibit 1 to Direct Testimony of Brent Kitchen); C-Appx. 54–165. The Integrated Resource Plan modeling analyzed and compared the future impacts of multiple resource portfolios, such as continued investment in existing coal-fired generating units, or adding natural gas-fired generating units, wind, solar, and other resource types. *See id*. at 137–168 (Sections 6–8); Appx.

137–168; *see also* CCR at 88–119; C-Appx. 104–135. In granting advance ratemaking for the DAS I and II project, the Board recently recognized that IPL's Blueprint was an Integrated Resource Plan, as IPL has always maintained. *Compare In Re: Interstate Power & Light Co.*, No. RPU-2021-0003, 2023 WL 3229903, at *2 (Apr. 27, 2023) *with* Respondent's Answer, ¶ 10.

The testimony of IPL witness Brent Kitchen illustrates the significant work that was undertaken in IPL's Integrated Resource Plan to comply with Iowa Code section 476.53 and demonstrates IPL thoroughly considered other sources for long-term electric supply and that the Projects were reasonable when compared to other feasible alternative sources of supply. CR at 743–45 (Direct Testimony of Brent Kitchen); Appx. 743–45. Specifically, the Integrated Resource Plan considered the following capacity replacement options: Solar PV; stand-alone lithium-ion battery storage; Solar PV, paired with lithium-ion battery storage; onshore wind; natural gas peaker of frame type; natural gas combined-cycle; IPL-owned distributed energy resources; energy efficiency programs; demand response programs; and capacity purchases. CCR at 128–29 (Confidential Exhibit 1 to Direct Testimony of Brent Kitchen); C-Appx. 144–45.

Mr. Kitchen testified regarding a two-phased modeling approach that was undertaken and testified regarding:

- Phase 1 which "evaluated IPL's existing owned and operated generation fleet options to develop a series of generation portfolios, that were evaluated under the scenarios described above." CR at 744 (Direct Testimony of Brent Kitchen); Appx. 744.
- The scenario development process "to identify major external uncertainties against which to evaluate IPL's alternatives." *Id*.
- Four additional scenario concepts "developed by stakeholders, which generally modified one of the five existing scenario narratives (e.g. lower gas price, higher carbon price, higher or lower transmission interconnection costs, etc.)" *Id*.
- Under Phase 1, "utility scale solar was the predominant resource selected for IPL's capacity needs." *Id*. at 745; Appx. 745.
- Phase 2 which "performed refinements on a short-list of candidate portfolios." *Id*. at 745–46; Appx 745–76.
- Phase 2 modeling showed that adding 400 MW of solar in 2023, combined with coal retirements and gas conversions, results in a portfolio with a lowest overall average long-

> term [net present value revenue requirements] NPVRR, provides rate stability, maintains reliability and resource diversity, and achieves key sustainability metrics through reduced carbon and water use. *Id*. at 746; Appx. 746.

The Integrated Resource Plan analyses, performed by Charles River Associates with input from IPL, overwhelmingly selected solar over other feasible alternatives across all portfolios and scenarios in the analysis. *See id*. at 53–62 (Phase 1 Portfolio Results), 68–75 (Phase 2 Portfolio Results); 76–81 (Dashboard and Conclusions); Appx. 53–62, 68–75, 76–81; *see also* CCR at 97–106, 112–119, 120–125; C-Appx. 113–122, 128–135, 136–141. The modeling showed that adding 400 MW of solar in 2023, combined with coal retirements and gas conversions, results in a portfolio with a lowest overall average long-term net present value revenue requirement (NPVRR), provides rate stability, and maintains reliability and resource diversity. CCR at 141–42, 144–147 (Confidential Exhibit 1 to Direct Testimony of Brent Kitchen); C-Appx. 157–58 160–63. After the Integrated Resource Plan was completed, IPL performed supplemental analysis demonstrating that battery energy storage would further enhance the reliability of IPL's generating fleet. CR at 199–252 (Exhibit 2 to Direct Testimony of B. Kitchen); Appx. 199–252; *see also id*. at pp. 60–77 (Direct Testimony of Mayuri N. Farlinger), 531–62 (Direct Testimony of Ben Lipari), 738–56 (Direct Testimony of Brent Kitchen); Appx. 60–77, 531–62, 738–56; *see also* CCR at 614–45 (Confidential Direct Testimony of Ben Lipari); C-Appx. 1–32.

During the course of the proceeding, IPL also provided additional alternatives analysis performed by Wood Mackenzie to account for rising commodity costs in 2022 that have affected all generation types. *See* CCR at 7252–7269 (Confidential Rebuttal Testimony of Erin Carroll), 7248–7251 (Confidential Exhibit 2 to Rebuttal Testimony of Erin Carroll); C-Appx. 255–72, 273–276; *see also* CR at 7093 (Hearing Tr. at 480:2-4); Appx. 1304 at 480:2-4. As part of this alternatives analysis, IPL performed an additional resource-neutral comparison of the cost of the

Projects to other generation types that would offer capacity benefits similar to the Projects, such as natural gas simple cycle combustion turbines and combined cycle combustion turbines. That analysis, which no party to the underlying proceeding has challenged, showed that the solar Projects were less costly than those other feasible alternatives. *See id.* IPL also provided additional information in response to questions posed by the OCA related to the costs of other alternatives. *See* CR at 4444.

IPL also submitted additional evidence that demonstrates the costs of the Projects are reasonable. President Biden signed the IRA in 2022, which provides enhanced tax benefits for renewable energy facilities like these Projects considered by the Board. IPL's updated economic evaluation showed that those tax benefits further improved the economics of the projects for customers as they are projected to provide approximately *$157 million* in additional net present value benefits compared to utility ownership without those tax benefits. *See* CR at 7226–27 (Post-Hearing Testimony of Neil Michek); Appx. 1504–05.

The Board, in its 16-page Final Order ignored the volumes of substantial evidence demonstrating IPL thoroughly evaluated feasible alternatives through the Integrated Resource Plan and supplement analyses. The analysis described above far exceeds the statutory standards as described by the Iowa Supreme Court: the statute "requires a utility to do no more than demonstrate that it's proposed facility is reasonable in light of the fact the utility cautiously thought about the character or qualities of alternative sources for long-term electric supply it could successfully utilize." *NexEra Energy*, 815 N.W.2d at 41. The Board also ignored substantial evidence showing that the costs of the Projects are reasonable compared to other feasible sources of supply. Further, the Board did not acknowledge the $157 million in reduced costs of the Projects resulting from the IRA. "An agency is entitled to reconcile relevant evidence not ignore relevant evidence." *Env't*

L. & Pol'y Ctr., 2023 WL 3130900. The 16-page Final Order fails to discuss or acknowledge the relevant, substantial evidence IPL provided regarding its analysis of alternatives and demonstrates that the agency did not review and consider such evidence. CR at 7921–36 (Final Order); Appx. 840–855. In short, "[w]here the agency fails to consider relevant evidence, the agency's action is unreasonable, arbitrary, capricious, an abuse of discretion, and the product of illogical reasoning." *Env't L. & Pol'y Ctr.*, 2023 WL 3130900 (citing Iowa Code § 17A.19(10)(i), (j), (m), (n)).

IPL's Integrated Resource Plan satisfied the requirements of Iowa Code section 476.53(3)(c)(2) and demonstrated that IPL had considered other sources for long-term electric supply and that the Project was "reasonable when compared to other feasible sources of supply." The denial of IPL's Application was in violation of Iowa Code 17A.19 and must be reversed.[13]

C. The Board Applied an Incorrect Legal Standard by Requiring IPL to Conduct a Competitive Bidding Process Through a Request for Proposals (RFP) Prior to Filing its Application and Arbitrarily Disregarded Evidence that IPL Was in the Process of Conducting an RFP for the 200 MW of Solar and BESS

In its Final Order, the Board stated that IPL did not comply with Iowa Code section 476.53(3)(c)(2) because "IPL did not issue a request for proposal ("RFP") to see what responses it might receive from the electric market to provide the needed capacity." CR at 7928 (Final Order); Appx. 847. The Board found that "[w]ithout... issuance of an RFP... IPL has not met the requirements in Iowa Code section 476.53(3)(c)(2)[.]"[14] *Id*. at 7935; Appx. 854. In making this

[13] *See* Iowa Code 17A.19(10)(g) and (h) (prohibiting action other than a rule that is inconsistent with a current rule or past practices or precedents without credible justification), (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational), (j) (prohibiting decisions that are the product of a "process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action", and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

[14] The Board arbitrarily ignored and failed to consider testimony offered by a Wood Mackenzie Senior Vice President Erin Carroll explaining that in the current market an RFP for an entire turn key solar project would not produce meaningful results because developers are often unable or unwilling to provide firm, fixed pricing for material or services due to both rising commodity prices and regulatory uncertainty. *See* CR at 4450–52 (Rebuttal Testimony of

finding, the Board applied an incorrect legal standard for conducting an alternatives analysis under Iowa Code section 476.53(3)(c)(2) which had the effect of requiring IPL to undertake a number of actions not mandated by the plain language of statute, the Board's rules, or past precedent.

An RFP is not mandated by the plain language of the statute, in the Board's rules at 199 Iowa Administrative Code Chapter 41, or in any binding legal precedent interpreting the statute. Nor has the Board required this in past advance ratemaking cases. The Board erred in finding IPL had not satisfied the statutory requirements for consideration of alternative sources of long-term electric supply.

The Board's decision requiring an RFP is directly contrary to the Board's own rules and the Board failed to state credible reasons for the inconsistency. The Board has specific rules for competitive bidding in Chapter 40. When considering a potential rule change to the competitive bidding process in 2017, the "Board recognize[d] that Iowa Code § 476.53(3)(c)(2) expressly provides for an *optional* competitive bidding process 'under rules adopted by the board.'" *In Re: Rev. of Competitive Bidding Process Rules 199 IAC Chapter 40*, No. RMU-2016-0029, 2017 WL 280859, at *1 (Jan. 18, 2017) (emphasis added). The Board also noted that "although utilities have sought advance ratemaking determinations in recent years, none has opted to avail itself of the competitive bidding alternative provided in chapter 40 since the adoption of those rules in 2002." *Id.* (emphasis added).

The Board previously recognized that no such competitive bidding requirement existed when it adopted the rules for the competitive bidding process in 199 IAC Chapter 40 to reflect the General Assembly's adoption of Iowa Code section 476.53. The rules apply to any rate-regulated

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Erin Carroll); Appx. 1485–87. In the rare instance where a fixed price is quoted (and honored), the price is significantly higher due to the contingency that the developer or EPC contractor is adding to the price of the turnkey project to manage these costs and schedule risks or the developer may not honor their initial pricing bids as costs fluctuate. *See id*.

electric public utility choosing to establish a competitive bidding process under Iowa Code section 476.53(3)(c)(2). 199 IAC 40.2(1). However, it is acknowledged that:

> It is important to note at the outset that compliance with these rules is voluntary on the part of the public utility. *The public utility may, at its option, demonstrate that it has considered other sources of supply and that its selection is reasonable without resorting to the competitive bidding process contained in these rules*."

In Re Competitive Bidding, Docket No. RMU-2001-0008, Order Adopting Rules at 2 (Mar. 15, 2002) (emphasis added).

Though an RFP was not required by the plain language of the statute, the Board's own rules or the past precedent of the Board, IPL explained that it was in fact conducting an RFP for the major project components at its 200 MW of self-developed projects, a key fact which was ignored by the Board. CR at 4501 (Rebuttal Testimony of B. Lipari); Appx. 1438. As IPL explained, its RFP process is designed to solicit information directly from suppliers to ensure that project costs remain reasonable for customers. *Id.*; *see also* id. at 7954–55 (Post-Hearing Testimony of Ben Lipari); Appx. 1438, 1449–50. An RFP was not contemplated by or required by the statute, the Board's own rules or past precedent of the Board and the Board disregarded information that IPL was nevertheless conducting an RFP. The Board improperly based its decision on requirements wholly outside the statute in violation of multiple sections of section 17A.19(10), which requires reversal of the Board's decision.[15]

[15] *See* Iowa Code § 17A.19(10)(h) (prohibiting Board decisions that are inconsistent with prior precedent without the inclusion of fair justifications); see also Iowa Code §§ 17A.10(10) (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational), (j) (prohibiting decisions that are the product of a "process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action", and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

D. The Board Applied an Incorrect Legal Standard and Failed to Consider Evidence that IPL Evaluated the Character and Qualities of Alternative Sources for Long-Term Electric Supply It Could Successfully Utilize

In its Final Order, the Board erroneously concluded "IPL did not consider other generation resources or power purchase agreements . . . fully during the Blueprint process or in preparing its application in this docket." CR at 7927 (Final Order); Appx. 846. The Board further concluded that not being able to compare the projects to "other generation resources or PPAs either with or without a later ownership option, does not satisfy the requirements of Iowa Code § 476.53(3)(c)(2)." *Id*. at 7928; Appx. 847. Once again, the Board has applied an incorrect legal standard and imposed an obligation on IPL that is outside the scope of the plain language of the statute, the Board's own rules and past precedent in violation of Iowa Code section 17A.19(10).[16]

In the *NextEra Energy* case, the Iowa Supreme Court analyzed the same statutory provisions at issue here. In that case, NextEra Energy wanted to sell renewable energy to MidAmerican Energy "either through a purchase power agreement ["PPA"] or by developing and selling a windfarm to MidAmerican." *NextEra Energy*, 815 N.W.2d at 35–36. NextEra Energy petitioned for judicial review, arguing that MidAmerican did not compare the Wind VIII project with "other feasible alternatives" of the same type, and that MidAmerican should not have been permitted to perform a post-application comparison to a NextEra Energy PPA obtained through discovery. *See id*. at. 41. The Iowa Supreme Court directly addressed a utility's consideration of PPAs and concluded that under Iowa Code section 476.53(3)(c)(2) a utility is required to "do no more than demonstrate that its proposed facility is reasonable in light of the fact that the utility

[16] *See* Iowa Code § 17A.19(10)(g) (prohibiting "[a]ction other than a rule that is inconsistent with a rule of the agency"); *see also* Iowa Code §§ 17A.19(10)(h) (prohibiting Board decisions that are inconsistent with prior precedent without the inclusion of fair justifications), (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational), and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

cautiously thought about the *character or qualities* of alternative sources for long-term electric supply it could successfully utilize." *Id.* (emphasis added).

As discussed below, IPL more than met that standard in this case and presented substantial evidence demonstrating that IPL thoroughly evaluated the benefits and drawback of ownership of the projects as opposed to purchasing energy through a PPA. *See id.* at 44 (discussing PPAs through analysis of the statute and MidAmerican's various agreements to purchase power from other producers rather than owning the means of production) (citing Iowa Code §§ 476.43, .44(a)(2)).

The legislative history of the advance ratemaking and generating certificate statutes shows that the Iowa Legislature specifically chose not to require a utility to solicit PPAs when it enacted Iowa Code section 476.53(3)(c)(2). The advanced ratemaking statute was enacted concurrently with the generation certificate statute in Iowa Code chapter 476A during the 2001 legislative session and as part of House File 577. As previously explained by the Board:

> Two other decision criteria stricken from Chapter 476A by House File 577 were Iowa Code §§ 476A.6(5) and (6). Subsection 5 criteria required that the siting applicant, if a public utility, demonstrate that it had considered long-term supply from either purchase or investment in facilities owned by others. Subsection 6 required that the public utility consider all feasible alternatives to the proposed facility including nongeneration alternatives. The subsection further required that these alternatives be ranked by cost, that the least-cost alternatives be implemented first, and that the Board find the proposed facility is necessary notwithstanding the implementation of these alternatives.

In Re MidAmerican Energy Co., 218 P.U.R.4th 325 (May 29, 2002) (at pages 2–3).

In short, the requirement to consider "either purchase or investment in facilities owned by others" was stricken from the siting certificate requirements of Iowa Code Chapter 476A and never incorporated into the advance ratemaking principles statute in Iowa Code section 476.53. HF 577, Senate Clip Sheet S-3713, at 7-9 (June 20, 2001). The Iowa Legislature could have required an

advance ratemaking applicant like IPL to consider fixed price PPAs, but the Legislature did not do so and the Board cannot now attempt to import such a requirement into the statute. *See* Iowa Code § 17A.19.10(n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

Iowa Code section 476.53, according to its plain language and past interpretation by the Board, "encourages utility-built generation in Iowa," *In Re MidAmerican Energy Co.*, 218 P.U.R.4th 325 (May 29, 2002) (at page 4), and is intended to favor utility ownership of generation over PPAs with independent power producers, which have "no regulatory obligation to provide power to anyone." *In Re: MidAmerican Energy Co., No. RPU-2009-0003*, 2009 WL 4886420 (Dec. 14, 2009); *id.* at 15 (finding that Iowa Code section 476.53 "was clearly designed to provide an incentive for the construction and ownership of electric generation plants by rate-regulated utilities"); *see In Re: Interstate Power & Light Co. & Fpl Energy Duane Arnold, LLC*, No. ID175490, 2013 WL 416220 (Jan. 31, 2013) (finding that the Legislature "clearly intended that the scales should be tipped to some degree when utilities are weighing their options of building or buying generating capacity"). It is axiomatic that Iowa Code Section 17A.19(10) imposes a requirement on the Board to follow Iowa statutes as written, and when the Board deviates from the statute, as it has here, that arbitrary and capricious action constitutes reversible error.[17]

The Iowa Supreme Court has been clear that Iowa Code section 476.53(3)(c)(2) merely "requires a utility to do no more than demonstrate its proposed facility is reasonable in light of the fact the utility cautiously thought about the *character or qualities* of alternative sources for

[17] *See* Iowa Code § 17A.19(10)(g) (prohibiting "[a]ction other than a rule that is inconsistent with a rule of the agency"); *see also* Iowa Code §§ 17A.19(10)(h) (prohibiting Board decisions that are inconsistent with prior precedent without the inclusion of fair justifications), (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational), and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

long-term electric supply it could successfully utilize." *NextEra Energy*, 815 N.W.2d at 41 (emphasis added). IPL more than amply demonstrated that it "cautiously thought about the character or qualities of alternative sources." *Id*. IPL utilizes PPAs, among other alternatives, where appropriate to fulfill its capacity needs and ultimately concluded that for these Projects ownership provides more benefits for customers. As explained further below, IPL evaluated the options and reasonably concluded, based on the record evidence, that PPAs are not a feasible alternative to the Projects.

1. IPL evaluated whether PPAs were a feasible alternative and found they were not feasible alternatives to the projects.

The evidence is clear that IPL thoroughly evaluated whether PPAs were a feasible alternative to the Projects and the Board erred in disregarding the evidence offered by IPL. IPL reasonably concluded that a PPA was not a feasible alternative, in light of IPL's obligation to meet its load obligations, the limited availability of solar PPAs in Iowa compared to IPL's need, and the commercial risks of PPAs in a capacity-constrained market, utility ownership of the Projects would benefit customers compared to the risks of executing and being bound by a PPA. CR at 746, 748 (Direct Testimony of Brent Kitchen); Appx. 746, 748; CCR at 7261–63 (Rebuttal Testimony of Erin Carroll; C-Appx. 264–66. Mr. Lipari testified that "[i]t is incorrect that IPL failed to consider PPAs as an alternative. As explained in the Application and in IPL witness Brent R. Kitchen's direct testimony, IPL considered entering into PPAs for the Projects rather than acquiring them, but that option was ultimately rejected in light of the benefits of long-term ownership of projects for IPL customers." CR at 4506–07 (Rebuttal Testimony of Ben Lipari); Appx. 1443–44.

Evidence presented to the Board demonstrates that IPL considered PPAs as an alternative to the Projects. In his testimony, Mr. Lipari explained in detail how IPL considered PPAs for these specific projects in light of IPL's statutory obligation to serve its customers, the risks of executing a

long term PPA, IPL's need for capacity to ensure reliability, and the long-term benefits of utility ownership compared to PPAs. *Id*. Mr. Lipari ultimately concluded that utility ownership, which benefits customers through opportunities to optimize market revenue, facility repowering, and the ability to leverage interconnection assets and to add generation at the site, was a more reasonable and lower risk alternative than executing a PPA with an independent power producer, which has no regulatory obligation to serve customers. CR at 746, 748 (Direct Testimony of Brent Kitchen); Appx. 746, 748; CR at 4506–07 (Rebuttal Testimony of Ben Lipari); Appx. 1443–44; CCR at 7262–63 (Confidential Rebuttal Testimony of Erin Carroll); C-Appx. 265–66.

Erin Carroll, Senior Vice President of Supply Chain Consulting at Wood Mackenzie, also testified that PPAs are not a feasible alternative to the Projects because "[t]he availability of solar PPAs in Iowa is currently limited relative to IPL's need for an additional 400 MW of solar generation." CCR at 7262–63 (Confidential Rebuttal Testimony of Erin Carroll); C-Appx. 265–66. Ms. Carroll further testified that "[e]ven to the extent that PPAs are available in Iowa, [independent power producers] are facing the same supply chain constraints, labor shortages, economic pressures, and trade policy uncertainty that IPL is facing with respect to the Projects." *Id.*

IPL also responded to direct requests for information from the Board on March 11, 2022 which requested "a summary with the current market conditions for [PPAs] in MISO and an explanation for how difficult it would be for IPL to enter into a [PPA] containing similar commercial characteristics as the project." CR at 862 (Question 21 of the March 11 Order at Attachment A); Appx. 1546. On April 1, 2022, IPL filed a response to the Board's March 11 Order containing hundreds of pages of additional responsive information for the Board, including 18 pages of narrative explanation and 13 attachments. In its response, IPL explained the market

conditions and risks, cost pressures, and commodity cost issues that limit the feasibility of PPAs as an alternative to utility ownership of the Projects. Specifically, IPL explained that:

> market conditions for PPAs across the US are challenging right now due to policy and commodity issues that are putting upward pressure on renewable project materials. Solar panels have been impacted by rising commodity prices as well as shipping prices.... BESS projects are also under similar pressure, with lithium prices continuing to rise. These increases would be reflected in any new PPA for a combined solar and BESS facility.

Id. at 1758 (Page 15 of the April 1 IPL Responses to Board Orders at 15); Appx. 1579; *see also* CCR at 1145; C-Appx. 461. In support of its responses, IPL submitted PPAs, supporting data and analysis containing forward-looking projections related to market price risk calculations and pricing forecasts. The Board erred in disregarding the substantial evidence presented by IPL addressing its consideration of PPAs.

IPL presented evidence demonstrating that owning the Projects has long-term benefits for IPL's customers compared to a PPA.[18] CR at 748 (Direct Testimony of Brent Kitchen); Appx. 748. These benefits include an option to repower the Projects when equipment reaches the end of its useful life by taking advantage of the existing interconnection agreement for each project as well as the substation, roads, land rights, and siting studies, all of which will already have been fully paid for as part of the transactions with developers. *See id.*; *see also* CR at 4658 (Rebuttal Testimony of Brent Kitchen); Appx. 1470. IPL will also have greater control over the design and equipment selection for each Projects through ownership compared to a PPA and will have the

[18] As a public utility, IPL is "required to furnish reasonably adequate service and facilities" to its customers. Iowa Code 476.8(1). By contrast, independent power producers "are unregulated wholesale sellers with no regulatory obligation to provide power to anyone." *In Re: MidAmerican Energy Co., No. RPU-2009-0003*, 2009 WL 4886420 (Dec. 14, 2009). In a capacity constrained market, it would be imprudent for the Board to effectively force IPL to rely on independent power producers such as NextEra to meet IPL's load obligations, where those independent power producers do not have the same regulatory obligation to meet load and who are not regulated by the Board. Cost-effective utility owned generation mitigates those risks.

ability to take advantage of future technological developments and cost reductions expected during the life of the Projects. *Id*.

The Board's decision is contrary to its own past precedent. In the approximately 20 advance ratemaking applications filed with the Board since Iowa Code section 476.53 was enacted in 2001, the Board has never denied an application on the basis that a utility decided to pursue ownership of projects in lieu of only contracting for their output via a PPA. Past board precedent also establishes that, under Iowa Code 476.53, utilities are incentivized to construct and own generation and that "the scales should be tipped" in favor of utility ownership.

The record demonstrates IPL cautiously and meticulously considered both the character and qualities of PPAs in the current market as alternatives to the Projects. IPL ultimately decided, given its need for capacity, the limited availability of solar PPAs in Iowa, and its statutory obligation to reliably serve its customers, that PPAs were a risky transaction in today's fluctuating and dynamic commodity market. IPL reasonably determined that, compared to PPAs, utility ownership has lower risk through control of the design, construction and operation of the Project, which is not available under a PPA. Utility-ownership also has long-term benefits such as the ability to leverage existing assets to repower the facility in the future.

The Board's decisions set forth in the Final Order violated multiple sections of section 17A.19(10). The Board is required to follow its own prior precedent unless it provides justifications that are credible and fair for deviating from the precedent. Iowa Code § 17A.19(10) at (h). It is required to follow the statute. *See id*. at (g) (prohibiting "[a]ction other than a rule that is inconsistent with a rule of the agency"); *see also id.* at (h) (prohibiting Board decisions that are inconsistent with prior precedent without the inclusion of fair justifications). It is required to consider "relevant and important" matters that "a rational decision maker in similar circumstances

would have considered prior to taking" the action in question. *See id*. at (j). As illustrated above, the Board's Final Order disregarded the evidence produced by IPL rendering the Final Order so illogical that it is irrational, unreasonable, arbitrary, capricious, and an abuse of discretion. *See id*. at (i), (n). IPL satisfied the requirements in Iowa Code section 476.53(3)(c)(2), and the Board's decision should be reversed as violative of Iowa Code section 17A.19.

E. The Board Applied an Incorrect Legal Standard by Requiring IPL to Compare the Projects to Speculative, Future Generation Projects that May Never Materialize

In its Final Order, the Board stated that "[s]ince the enactment of the IRA, the electric market has the possibility of significant change." CR at 7934; Appx. 853. The Board erroneously concluded that "[w]ithout additional analysis, including consideration of other generation resources or PPAs and issuance of an RFP, **and more certainty in how the electric generation market will function after the [IRA]**, IPL has not met the requirements in Iowa Code § 476.53(3)(c)(2) for consideration of advance ratemaking principles for the projects proposed in this docket." *Id*. at 7935 (emphasis added); Appx. 854. The Board's decision imposed a requirement on IPL to consider projects that do not yet exist and that may *never* materialize. The Board's ruling is directly contrary to the statute, which only requires IPL to demonstrate it has "considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other *feasible* alternative sources of supply." Iowa Code § 476.53(3)(c)(2) (emphasis added). Once again, the Board applied an incorrect legal standard for conducting the alternatives analysis under Iowa Code section 476.53(3)(c)(2).

The term "feasible" is to be given its dictionary meaning according to the Iowa Supreme Court. *NextEra Energy*, 815 N.W.2d at 41. The utility need not consider alternatives that are not "capable of being…utilized…successfully." *Id. (quoting Webster's Third New Dictionary* 483. Projects that do not exist cannot reasonably be considered "feasible." There is also no requirement

in the statute that IPL compare its very real Projects to nonexistent hypothetical projects or defer the construction of renewable generation based on speculation that future market conditions will produce different options. IPL cannot reasonably be required to identify, let alone select, projects that do not and may never exist.

Ultimately, the Final Order fails to acknowledge the substantial evidence provided by IPL to demonstrate that the Projects are, in fact, "a reasonable alternative to meet [IPL's] electric supply needs when compared to other feasible supply sources." Iowa Code 476.53(3)(2)(c). Iowa law does not require IPL to consider nonexistent projects that may never materialize. Nonexistent projects are not "feasible" within the meaning of the statute and the Board's denial of IPL's Application was in error and must be reversed.[19]

[19] *See* Iowa Code § 17A.19.10 (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational); *see also* (g) ("action other than a rule that is inconsistent with a rule of the agency"); (j) (prohibiting decisions that are the product of a "process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action", and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

II. CONTRARY TO IOWA CODE SECTION 476.53, THE BOARD'S PAST PRECEDENT, AND ADMINISTRATIVE RULES, THE BOARD ERRED IN DENYING ADVANCE RATEMAKING FOR THE BESS

A. The Board's Decision that a BESS Is Ineligible for Advance Ratemaking Principles Is in Direct Conflict with the Law and Its Own Recently Promulgated Rules; the Legislature, Not The Board, Has Authority to Decide Which Technologies Are Eligible

The Board erred as a matter of law in finding advance ratemaking principles should not be issued for the 75 MW BESS on that basis that "the BESS is unproven for large-scale, long-term use" and "untested in a large-scale application for long-term use," in violation of section 17A.19(10)(j). CR at 8052 (Order on Rehearing); Appx. 919. The Board is both legally and factually wrong in its conclusion and it cites no basis, authority or record evidence for this rejection of the BESS. The Board's decision completely disregards and fails to cite the rules it just adopted in 2020, in violation of section 17A.19(10)(g) (prohibiting actions inconsistent with prior rules) and (h) (prohibiting Board decisions that are inconsistent with prior precedent without the inclusion of fair justifications).

The Iowa Legislature in Iowa Code section 476.53 expressed the intent "to attract the development of electric power generating and transmission facilities within the state." *See* Section A of the Introduction, *infra*. As described above in section I.A in 2020 the Board adopted new rules in Chapter 41 that address Ratemaking Principles Proceedings. Following the review of comments by IPL and others, the definition of the term "Facility" ultimately adopted in the Board's rules expressly states: "[t]he term includes energy storage systems located at the site of an alternate energy production facility." 199 IAC § 41.1(3). In its Order adopting the new rules, the Board cited the law adopted by the Legislature and stated the following:

> Iowa Code § 476.53(3)(a) provides a discrete list of the types of electric generating facilities which are eligible for ARPs [advance ratemaking principles], including AEP [alternate energy production] facilities. AEP facilities are defined at Iowa Code § 476.42. They include several specific types of electric generating facilities,

> as well as "land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility." Energy storage systems located at the site of an AEP facility meet this definition because they are located at the project site and are convenient to the operation of the facility. Stand-alone energy storage systems may also be convenient to the operation of an AEP, but they are not located at the project site.

The Board in its own rules, after consideration of Iowa Code sections 476.42 and 476.53(3)(a), recognized that energy storage systems are a facility eligible for advance ratemaking. The Board's decisions ignore the laws adopted by the Legislature and the plain language of its own rules in violation of sections 17A.19(10)(g) and (h). The Board's Final Order is therefore arbitrary and capricious in violation of Iowa Code section 17A.19(10)(n).

The Board's decisions related to the BESS were also not consistent with its past precedents, and the Board did not specify credible and fair justifications for this deviation. *See* Iowa Code § 17A.19(10)(h). On July 26, 2022, the Board issued an Order Granting Request for Waivers and Application for a Certificate of Public Convenience, Use and Necessity Under Iowa Code Chapter 476A in Docket No. GCU-2021-0003 for the same 75 MW BESS that is the subject of this judicial review. In that Order, the Board found that the "proposed solar and BESS projects are consistent with multiple statutory provisions expressing legislative intent and policies of this state" specifically including Iowa Code § 476.53(1). *In Re: Duane Arnold Solar, LLC; Duane Arnold Solar II, LLC*, No. GCU-2021-0002, 2022 WL 3021728, at *8 (July 26, 2022). Similarly, on March 15, 2023, the Board issued an Order Granting IPL's Request for Waivers and Application for a Certificate of Public Convenience, Use and Necessity Under Iowa Code Chapter 476A in Docket No. GCU-2022-0004. *See In Re: Interstate Power & Light Co.*, No. GCU-2022-0004, 2023 WL 2582101 (Mar. 15, 2023). In that case, IPL requested a generating certificate for a proposed 50 MW solar energy generation facility and an associated 25 MW BESS adjacent to the city of Creston. *Id*. Iowa Code section 476A.6 provides that the Board shall issue a generating

certificate if the Board finds the facility's services and operation are consistent with the legislative intent expressed in section 476.53 and the "economic development policy of the state . . . and will not be detrimental to the provision of adequate and reliable electric service." Iowa Code 476A.6(1). In granting the Certificate, the Board necessarily found the BESS would not be detrimental. *See In Re: Interstate Power & Light Co.*, 2023 WL 2582101. In that Docket, the Board's Order granted IPL's request for a Certificate of Public Convenience and did not find the BESS was unproven or untested or that it did not meet the legislative intent expressed in section 476.53. *See id*. On April 21, 2023, the Board also granted a Certificate of Public Convenience, Use and Necessity for a BESS to Grand Junction Solar, LLC. *See In Re: Grand Junction Solar, LLC*, No. GCU-2022-0001, 2023 WL 3093924, (Apr. 21, 2023); *see also In Re: Duane Arnold Solar, LLC Duane Arnold Solar II, LLC*, 2022 WL 1015800.

The Board's Order erroneously disregarded its own rules and past precedent that the BESS is a proven, tested and industry standard technology. IPL's Application included a 75 MW utility-scale BESS that would provide additional capacity and enhance the reliability benefits and output of a portion of the solar generation. *See* CR at 63:4-5, 65:4-9 (Direct Testimony of Mayuri Farlinger); Appx. 63:4-5, 65:4-9. IPL witness Mayuri Farlinger offered direct testimony that the BESS was a "low-cost solution" that would "help improve the utilization of the solar generation facility by storing energy during periods of low demand and then injecting that energy during periods of higher demand to cost-effectively meet the needs of IPL's customers, providing enhanced reliability benefit with minimal incremental interconnection costs." *Id*. at 66; Appx. 66.

IPL witness Brent Kitchen addressed utility-scale BESS projects and offered the following testimony regarding the "important role battery storage is expected to play in MISO." He testified:

> A query of the MISO interconnection queue indicates 13,339 MWs of battery storage, which suggests that MISO queue applicants do not consider battery storage

> to experimental. IPL's proposal for a BESS is consistent with the market. A list of battery storage projects and summary of proposed capacity additions by state can be found in IPL Kitchen Rebuttal Exhibit 2.

CR at 4659 (Rebuttal Testimony of Brent Kitchen); Appx. 1471. Mr. Kitchen also testified the BESS provided important benefits in helping to meet peak load as it shifts later in the day as solar penetration increases. *Id*. A BESS also supports higher capacity accreditation rates when combined with wind and solar generation. *Id*. at 4939 (Sur-Rebuttal Testimony of Brent Kitchen); Appx. 1478; *see also* CCR at 7390 (Confidential Sur-Rebuttal Testimony of Brent Kitchen); C-Appx. 251.

The utility-scale BESS proposed in IPL's Application is consistent with Iowa's goals for the increased deployment of energy storage and the Board's adopted rules. Battery energy storage systems are a proven and fast emerging technology. *See* CR at 864–926 (Exhibit 8 to Direct Testimony of Ben Lipari (Synapse Energy Economics, Inc., *Energy Storage in Iowa: Market Analysis and Potential Economic Impact*, at internal pp.13–14, 36, 38–40 (Dec. 15, 2020))), 927–946 (Exhibit 9 to Direct Testimony of Ben Lipari (2019 Iowa Energy Storage Action Plan (Action Plan)); Appx. 757–819; 820–39. The 2019 Energy Storage Action Plan acknowledged the systems are popular as a stand-alone asset or paired with a renewable energy project. *Id*. at 934 (Action Plan); Appx. 827. The BESS aligns with the Iowa Storage Action Plan, which states "[p]olicymakers should feel encouraged to advance supportive storage specific policy proposals to further attract and grow the industry to Iowa." *Id*. at 940; Appx. 833.

The Action Plan recognized the following:

> Large-scale energy storage has the potential to provide several benefits, including:
>
> • Flattening peaks and valleys of electric generation by enabling energy companies to generate and store electricity at times of low demand and release it when demand is high.

• Reducing the operating time of peaking generators, which generally run only when there is a high demand and are a relatively expensive form of generation.

• Enhancing renewable energy's reliability by storing energy produced when wind speeds and sun exposure are high and using it later.

• Improving power quality and prolonging transformer life.

Id. at 942; Appx. 835.

Contrary to the Board's decisions, battery storage systems are not "unproven" and untested." BESS systems have been constructed and are operational throughout the state of Iowa and outside of Iowa.[20] *Id*. The Action Plan cites projects located at the Maharishi University in Fairfield, Iowa, a MidEnergy Cooperative project in northeastern Iowa and a MidAmerican Energy project in Knoxville, Iowa. *Id.* BESS systems are also eligible for investment tax credits from the federal government if certain requirements are met. All of this refutes the Board's unsupported position that the BESS is "unproven" or "untested." *Id*. at 935; Appx. 828. The Board's decisions are illogical, irrational, and arbitrary and capricious and must be reversed. [21]

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[20] Battery storage capacity in the United States is also projected to increase significantly by 2025 in states across the country. The United States Energy Information Administration has specifically observed:

> Before 2020, the largest U.S. battery storage project was 40 MW. The 250 MW Gateway Energy Storage System in California, which began operating in 2020, marked the beginning of large-scale battery storage installation. At present, the 409 MW Manatee Energy Storage in Florida is the largest operating battery storage project in the country. Developers have scheduled more than 23 large-scale battery projects, ranging from 250 MW to 650 MW, to be deployed by 2025.

Suparna Ray, *U.S. Battery Storage Capacity Will Increase Significantly By 2025*, U.S. ENERGY INFO. ADMIN. (Dec. 8, 2022), https://www.eia.gov/todayinenergy/detail.php?id=54939; *see, e.g.,* U.S. ENERGY INFO. ADMIN., BATTERY STORAGE IN THE UNITED STATES: AN UPDATE ON MARKET TRENDS 1 (2021) ("The number and total capacity of large-scale battery storage systems continue to grow in the United States, and regional patterns strongly influence the nation-wide market structure…"); Veronika Henze, *Global Energy Storage Market to Grow 15-Fold by 2030*, BLOOMBERGNEF (Oct. 12, 2022), https://about.bnef.com/blog/global-energy-storage-market-to-grow-15-fold-by-2030/ ("Rapidly evolving battery technology is driving the energy storage market…BNEF expects batteries to dominate the market at least until the 2030s, in large part due to their price competitiveness, established supply chain and significant track record.").

[21] *See* Iowa Code § 17A.19(10)(j) (prohibiting decisions that are the product of a "process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational

B. The BESS Is Reasonable When Compared to Other Feasible Alternative Sources of Supply

Despite granting IPL's Application for Rehearing on DAS I and DAS II, the Board unreasonably refused to allow rehearing on the BESS portion of the Project and failed to specify advance ratemaking. CR at 8055–56 (Order on Rehearing); Appx. 922–23. In connection with its Application, IPL submitted an Integrated Resource Plan which was resource-neutral comparison of feasible alternatives completed at the end of 2020. *Id*. at pp. 85–198; Appx. 85–198; *see also* Section I.B.3, *infra*. After the Integrated Resource Plan was completed, IPL performed supplemental analysis demonstrating the BESS would further enhance the reliability of IPL's generating fleet. *Id*. at 546, 551–564 (Exhibit 2 to Direct Testimony of Brent Kitchen); Appx. 546, 551–564. IPL witness Brent Kitchen also analyzed existing supply resources in MISO Zone 3. *Id*. at 741 (Direct Testimony of Brent Kitchen); Appx. 741; *see also* CCR at 38–165 (Confidential Exhibit 1 to Direct Testimony of Brent Kitchen); C-Appx. 154–165. The information provided by IPL demonstrated the BESS was reasonable when compared to other feasible alternative sources of supply.

Crucially, the BESS adds needed capacity and reliability benefits to the Project. CR at 4651–52 (Rebuttal Testimony of Brent Kitchen); Appx. 1463–64; *see also* CCR at 7271–72; C-Appx. 236–37. The inclusion of the BESS supports "the reasonableness of the Projects compared to other alternatives, and the fact that the Projects are needed to maintain safe and reliable service for IPL's customers." *Id.* at 4652; Appx. 1464. IPL witness Brent Kitchen also testified battery

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decision maker in similar circumstances would have considered prior to taking that action"); see also §§ (g) (prohibiting decisions inconsistent with prior rules); (h) (prohibiting Board decisions that are inconsistent with prior precedent without the inclusion of fair justifications), (i) (prohibiting decisions that are "the product of reasoning that is so illogical as to render it wholly irrational), and (n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion").

energy storage is expected to play an important role in MISO because there are evolving reliability challenges to the MISO footprint. "It is critical for IPL to maintain capacity through the winter months, which a BESS would support, and IPL must continue to manage its generating fleet and resource additions, including through addition of BESS technology, to overcome those challenges." *Id.* at 4651–52; Appx. 1463–64.

The Board erred in finding the BESS was not supported by the evidence as being a reasonable alternative and failing to view the entire Project as a whole in violation of section 17A.19(10) and the Board's decision must be reversed.[22]

III. THE BOARD'S FINDINGS OF FACT ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD MADE BEFORE THE BOARD

For the reasons set forth above and in the evidence presented by IPL to the Board in support of its Application, the Board's decision to deny IPL's Application and refuse to specify advance ratemaking principles is not supported by substantial evidence. A court must "reverse, modify, or grant other appropriate relief from agency action" that is "not supported by substantial evidence in the record... when that record is viewed as a whole." *NextEra Energy*, 815 N.W.2d at 42; Iowa Code § 17A.19(10)(f). The Iowa Administrative Procedures Act defines "substantial evidence" as "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the

[22] *See* 17A.19(10) (j) ("the product of a decision-making process in which [the Board] did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decisionmaker in similar circumstances would have considered prior to taking that action."). The Board's Order on Rehearing contains only a conclusory declaration that the BESS is unproven and untested, making it arbitrary, capricious, and unreasonable in violation of section 17A.19(10)(n) (prohibiting decisions that are "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion"). The Board provided no basis or authority for its conclusions. The Board's decision also disregards its past precedent and the rules it adopted by the Board in 2020 in violation of section 17A.19(10)(g) (prohibiting actions inconsistent with prior rules) and (h) (prohibiting Board decisions that are inconsistent with prior precedent without the inclusion of fair justifications).

establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). Viewing the record "as a whole" requires that a court weigh the adequacy of the evidence in the record in support of a particular finding "in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it." Iowa Code § 17A.19(10)(f)(3).

When this Court reviews the record as a whole, it is clear the Board's decision denying IPL's Application for advance ratemaking principles for the 200 MW of solar and the BESS was not supported by substantial evidence. Throughout the application and evaluation process, IPL has consistently provided more information than was required by statute or by the Iowa Supreme Court's interpretation of the statute in the seminal *NextEra Energy* case. That case summarized the requirement as follows: Iowa law "requires a utility to do no more than demonstrate its proposed facility is reasonable in light of the fact the utility cautiously thought about the character or qualities of alternative sources for long-term electric supply it could successfully utilize." *Id.* at 41. In support of its Application, IPL filed hundreds of pages of testimony, dozens of exhibits, an up-to-date market cost analysis and multiple financial analyses, and responded to hundreds of data requests, including numerous questions from the Board and third parties. The Integrated Resource Plan provided by IPL contained a resource-neutral comparison to other types of power generation and ultimately concluded that the retirement of an existing coal unit and its replacement with 400 megawatts of solar and the BESS would help Iowa customers avoid an estimated $300 million in customer costs over the next 35 years. When viewed as a whole, the record shows that IPL, a rate-regulated public utility, submitted evidence far in excess of the legal requirements so as to provide the Iowa Utilities Board with everything it needed to issue advance ratemaking principles as required by Iowa law. Neither the Board's finding that IPL was not entitled to

advance ratemaking, nor its factual findings regarding the BESS were supported by substantial evidence. Both are contrary to law and must be reversed.

IV. CONCLUSION

In the face of an undisputed need for additional capacity, the Board erroneously denied IPL's application for advance ratemaking principles for the 200 MW of solar and the 75 MW BESS portions of the Project. In order to fulfill the legislative purpose of attracting the development of generating facilities, Iowa law states that "[t]he board *shall* specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the electric power generating facility or alternate energy production facility are included in regulated electric rates…" Iowa Code § 476.53(3)(a) (emphasis added). The Board's decisions are contrary to the plain language, purpose and intent of the advance ratemaking statute in Iowa Code section 476.53 as well as the Board's own rules and past precedent. The Board's decisions place at risk critically needed renewable energy generation projects that will provide capacity and increase reliability for IPL's customers, as well as hundreds of good paying jobs, and millions of dollars of economic development and tax revenue for the state of Iowa. The Board's action was violative of Iowa Code section 17A.19(10), specifically subsections (c), (f), (g), (h), (i), (j), (j), (k), (l), (m), and (n), as detailed above.

IPL requests the Court reverse the decision of the Board as it relates to the 200 MW of solar and the 75 MW BESS and remand the proceeding to the Board with instructions to specify advance ratemaking principles for that portion of the Project consistent with Iowa Code section 476.53, and such other relief as the Court deems just and equitable under the circumstances.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 15, 2023 by:

- ☐ US Mail
- ☐ FAX
- ☐ Hand Delivered
- ☐ Overnight Courier
- ☐ Federal Express
- ☒ Other: EDMS

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