IN THE SUPREME COURT OF IOWA

Supreme Court No. 13-0642

SZ ENTERPRISES, LLC d/b/a EAGLE POINT SOLAR,

Petitioner-Appellee/Cross Appellant,

v.

IOWA UTILITIES BOARD, A Division of the Department of Commerce, STATE OF IOWA,

Respondent-Appellant/Cross Appellee,

and

OFFICE OF CONSUMER ADVOCATE, a Division of the Iowa Department of Justice, INTERSTATE POWER AND LIGHT COMPANY, IOWA ASSOCIATION OF ELECTRIC COOPERATIVES, MIDAMERICAN ENERGY COMPANY, ENVIRONMENTAL LAW & POLICY CENTER, IOWA ENVIRONMENTAL COUNCIL, IOWA SOLAR/SMALL WIND ENERGY TRADE ASSOCIATION, IOWA RENEWABLE ENERGY ASSOCIATION, SOLAR ENERGY INDUSTRIES ASSOCIATION, and VOTE SOLAR INITIATIVE,

Intervenors.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE CARLA SCHEMMEL

APPELLANT/INTERVENORS INTERSTATE POWER AND LIGHT COMPANY AND MIDAMERICAN ENERGY COMPANY'S REPLY BRIEF

Deborah M. Tharnish, AT0007858
Scott M. Brennan, AT0001100
Sarah E. Crane, AT0010225
DAVIS BROWN LAW FIRM
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Tel: (515) 288-2500
Fax: (515) 243-0654

Paula Johnson, AT0009035
Senior Attorney-Regulatory
Alliant Energy Corporate Services, Inc.
200 First Street SE/PO Box 351
Cedar Rapids, IA 52406
Tel: (319) 786-4742
Fax: (319) 786-4533

Suzan Stewart, AT0007547
Managing Senior Attorney
MidAmerican Energy Company
401 Douglas Street/PO Box 778
Sioux City, IA 51102
Tel: (712) 277-7587
Fax: (712) 252-7396

ATTORNEYS FOR INTERVENORS
INTERSTATE POWER AND LIGHT
COMPANY & MIDAMERICAN
ENERGY COMPANY

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. SUMMARY OF THE ARGUMENT 1

II. THE DISTRICT COURT ERRED IN FAILING TO GIVE THE IUB DEFERENCE 3

III. EPS IS SELLING ENERGY TO THE PUBLIC AND IS, THEREFORE, A PUBLIC UTILITY 11

A. EPS Sells Electricity To The Public 11

B. Allowing Third-Party PPAs, As Urged By EPS, Would Adversely Affect The Statutory Scheme Currently In Place 16

C. Whether Or Not To Allow Third-Party PPAs Is A Legislative Question That Is Not Properly Addressed By The Courts 19

IV. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE TERM "ELECTRIC UTILITY" CAN POTENTIALLY ENCOMPASS A BROADER DEFINITION THAN THE TERM "PUBLIC UTILITY" 23

CONCLUSION 27

REQUEST FOR ORAL ARGUMENT 29

CERTIFICATE OF COMPLIANCE 30

CERTIFICATE OF FILING 31

CERTIFICATE OF SERVICE 32

ATTORNEY COST CERTIFICATE 33

TABLE OF AUTHORITIES

Cases

ABC Disposal Sys. Inc. v. Dep't of Natural Res., 681 N.W.2d 596, 602 (Iowa 2004) 10

AT&T Communications of The Midwest, Inc. v. Iowa Utilities Board, 687 N.W.2d 554, 560 (Iowa 2004) 5

City of Coralville v. Iowa Utilities Board, 750 N.W.2d 523, 527 (Iowa 2008) 5

Evercom Systems, Inc. v. Iowa Utilities Board, 805 N.W.2d 758, 762 (Iowa 2011) 4, 9

Eyecare v. Department of Human Services, 770 N.W.2d 832, 837 (Iowa 2009) 25

Hawkeye Land Co. v. ITC Midwest LLC, No. FCU-2009-0006, 2011 WL 4640860 (Iowa U.B. Sept. 30, 2011) 14

Iowa Dental Ass'n v. Iowa Ins. Div., 831 N.W.2d 138 (Iowa 2013) 8, 9, 10

Iowa Right to Life Committee v. Tooker, 808 N.W.2d 417, 429 (Iowa 2011) 10, 25

Iowa State Commerce Commission v. Northern Natural Gas Co., 161 N.W.2d 111, 113 (Iowa 1968) 12, 13, 14

In re IES Utilities and Interstate Power Company, No. TF-03-180, TF-03-181, 2004 WL 1950736 (IUB, July 22, 2004) 22

In re PURPA Net Metering Standard, No. PURPA Standard 11, 2006 WL 4585521 (IUB, Aug. 8, 2006) 22

Massachusetts Public Utilities Commission, Decision No. D.P.U. 08-75-A ... 22

MCC Telephony of Iowa, LLC v. Capitol Infrastructure LLC, FCU-2010-0015 (Iowa U.B. Mar. 30, 2011) 13

Mulhern v. Catholic Health Initiatives, 799 N.W.2d 104 (Iowa 2011) 24, 25

Natural Gas Service Co. v. Serv-Yu Co-op, 219 P.2d 324, 328 (Arizona 1950) 12

Ne. Energy Partners, LLC v. Mahar Reg'l Sch. Dist., 462 Mass. 687, 695, 971 N.E.2d 258, 264 (2012) 21

Necanisum Investment Co. v. Employment Department, 190 P.3d 368, 370-71 (Or. 2008) 25, 26

Nevada Power Co. v. Pub. Utilities Comm'n of Nevada, 122 Nev. 821, 825, 138 P.3d 486, 489 (2006) 22

Nevada Public Utility Commission, Order for Docket Nos. 07-06024 and 07-06027, 2008 WL 5159179 (Nev. PUC Nov. 26, 2008) 22

NextEra Energy Resources LLC v. Iowa Utilities Board, 815 N.W.2d 30, 36 (Iowa 2012) 3, 4, 7

North Carolina Utilities Commission v. Simpson, 246 S.E.2d 753, 756 (NC 1978) 13

Northern Natural Gas Co. v. Iowa Utilities Bd., 679 N.W.2d 629 (Iowa 2004) 12, 13

Office of Consumer Advocate v. Iowa Utilities Board, 744 N.W.2d 640, 642-43 (Iowa 2008) 4, 5

PW Ventures, Inc. v. Nichols, 533 So.2d 281 (Fla. 1988) 18, 19

Renda v. Iowa Civil Rights Comm'n, 784 N.W.2d 8, 10 (Iowa 2010) ..1, 3, 4, 8, 10

Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 419 (Iowa 2010 9

State v. Iowa District Court, 572 N.W.2d 587, 588 (Iowa 1997) 26

Windway Technologies, Inc. v. Midland Power Co-op, 696 N.W.2d 303, 308 (Iowa 2005) 20, 21, 22

Statutes and Rules

Colo. Rev. Stat. § 40-1-103(2)(c) 21

Iowa Code § 17A.19(10)(*l*) 3

Iowa Code Chapter 68A 10

Iowa Code § 68A.101(18) 11

Iowa Code § 68A.102 25

Iowa Code § 352.6(2)(b) 7, 8

Iowa Code § 390.1 24

Iowa Code 455B.301 10

Iowa Code § 455H.304(2)(d) 7, 8

Iowa Code Chapter 476 ..... 1, 4, 5, 7, 8
Iowa Code § 476.1 ..... 3, 5, 8, 9, 11, 12, 14-15, 24
Iowa Code § 476.1(3) 11
Iowa Code § 476.1(5) 2, 12, 18
Iowa Code § 476.22 ..... 3, 23, 24, 26
Iowa Code §§ 476.23-476.26 23
Iowa Code § 476.25 ..... 5, 6, 7, 17, 19
Iowa Code § 476.53(4) 4
Iowa Code 476.101(9) 5
Iowa Code § 476.103 ..... 4, 5
Iowa Code §§ 476.103(2)(a) 9
Iowa Code § 716(2)(6) 8
Iowa Code § 716.7(6) 7
O.R.S. § 757.005(1) 21

Other Authorities

http://roselawgroupreporter.com/2013/07/washington-times-examines-arizonas-aps-v-solar-industry-battle/ 23

http://www.azcc.gov/Divisions/Administration/About/Letters/5-23-13%20Retail%20Competition%2013-0135.pdf 23

http://www.mass.gov/eea/grants-and-tech-assistance/guidance-technical-assistance/agencies-and-divisions/dpu/net-metering-faqs.html#one 22

Alexandra I. Metzner, Were California's Electricity Price Shocks Nothing More Than A New Form of Stranded Costs?, 52 Am. U. L. Rev. 535, 536 (2002) 7

John S. Moot, Economic Theories of Regulation and Electricity Restructuring, 25 Energy L.J. 273, 275 (2004) 7

Judge Richard D. Cudahy, Whither Deregulation: A Look at the Portents, 58 N.Y.U. Ann. Surv. Am. L. 155, 175 (2001) 6

Professor Robert C. Fellmeth, Plunging into Darkness: Energy Deregulation Collides with Scarcity, 33 Loy. U. Chi. L.J. 823, 837 (2002) 6, 7

Robert Glennon & Andrew M. Reeves, Solar Energy's Cloudy Future, 1 Ariz. J. Envtl. L. & Pol'y 91, 96-97 (2010) 19

ARGUMENT

I. SUMMARY OF THE ARGUMENT.

As set forth in Interstate Power and Light Company ("IPL") and MidAmerican Energy Company's ("MidAmerican") opening brief, SZ Enterprises, LLC d/b/a Eagle Point Solar ("EPS") is acting as a public utility under Iowa's statutory scheme. None of the arguments put forth by EPS, the Solar Coalition, and the Office of Consumer Advocate ("OCA") (collectively, "Appellees") require a different conclusion. First, the IUB is entitled to deference. The Appellees ignore the significant authority entrusted to the IUB by the Iowa Legislature and suggest an overbroad reading of Iowa Supreme Court precedent that would hold the IUB is never entitled to deference in its interpretation of any part of chapter 476, a decision that would be at odds with the dictates of Renda, the Court's prior case law relating to the IUB, and the significant authority of the IUB to establish exclusive service territories.

Second, this Court should reject the efforts by Appellees to avoid discussion of what EPS does: sell electricity on a price-per-kilowatt-hour ("per-kWh"). Each of the Appellees asserts that EPS provides a different "service," but none acknowledges the actual sale of electricity. If this Court allows EPS to operate as proposed, it will be in direct contradiction to Iowa's statutory scheme, particularly the established exclusive electric territories. This Court should reject the

Appellees' arguments to cast this as a battle between renewable and traditional energy sources because any ruling by this Court will be applicable to all sales of energy set up on a customer's property, whether renewable or not.

Finally, the Court should not craft a judicial exception for EPS where the legislature has failed to do so. The significant efforts by all parties to identify the public policies at issue, the potential system-wide effects, and the comparisons to other states' regulatory systems only highlight the legislative nature of the question posed. Although self-generation is allowed under Iowa's statutory scheme because it is not a sale of electricity to the public, self-generation is naturally self-limiting. If an exception is to be created for the proposition set forth by EPS, it should be carefully considered and done by the Iowa Legislature, with the appropriate safeguards and limits. The Iowa Legislature has crafted an exception for sales to five or fewer made by one who is primarily self-generating, an exception that EPS admittedly does not fall within. See Iowa Code §476.1(5). Expansion of the type proposed by EPS is the province of the Iowa Legislature.

In addition, the Court should deny EPS' cross-appeal because the District Court correctly concluded that "electric utility" could be broader than "public utility," depending on the circumstances.

II. THE DISTRICT COURT ERRED IN FAILING TO GIVE THE IUB DEFERENCE.

In the petition for a declaratory order filed by EPS, the IUB was asked to interpret the statutory terms "public utility" found in Iowa Code section 476.1 and "electric utility" found in Iowa Code section 476.22. The District Court erred when it failed to give the IUB deference in its interpretation of both terms.

The IUB is entitled to deference in its interpretation of public utility and electric utility. Therefore, the Court may only reverse the IUB determination if it decides that the IUB's interpretation is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(*l*); NextEra Energy Resources LLC v. Iowa Utilities Board, 815 N.W.2d 30, 37 (Iowa 2012); Renda v. Iowa Civil Rights Comm'n, 784 N.W.2d 8, 10 (Iowa 2010).[1]

The Appellees engage in oversimplification and generalization in their effort to suggest the IUB is not entitled to deference. First, Appellees suggest that this

---

[1] EPS suggests in footnote 2 of its Response Brief that IPL engaged in an "odd mixing" of the standards. To the contrary, IPL and MidAmerican argued in a lengthy brief point that the IUB is entitled to deference and set forth that the proper standard would be reversal of the IUB interpretation only if it was irrational, illogical, or wholly unjustifiable. (See Argument section of IPL and MidAmerican Brief at 14-22). Unfortunately, in the standard of review summary, IPL and MidAmerican's opening Brief incorrectly referenced a correction of errors at law standard after stating the IUB was entitled to deference. Clearly, this was an inadvertent error. IPL and MidAmerican ask that the Court disregard that reference and, instead, consider the substantive arguments presented for why the IUB is entitled to deference and the standard of review whether the IUB interpretation was "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(*l*).

Court's decision in NextEra stands for the proposition that the IUB is essentially never entitled to deference for its interpretation of Iowa Code chapter 476. (See EPS Brief at 17; Solar Coalition Brief at 14-15; OCA Brief at 4). This suggestion would be a dramatic change in the precedents of this Court, and is simply incorrect. To the contrary, NextEra emphasized that "we look carefully 'at the specific language the agency has interpreted as well as the specific duties and authority given to the agency with respect to enforcing particular statutes.' " NextEra, 815 N.W.2d at 37 (quoting Renda, 784 N.W.2d at 13). Further, both Renda and NextEra emphasized that "broad articulations of an agency's authority, or lack of authority, should be avoided in the absence of an express grant of broad interpretive authority." Renda, 784 N.W.2d at 14; NextEra, 815 N.W.2d at 37. NextEra related to only one specific statutory provision within chapter 476: Iowa Code section 476.53(4). NextEra, 815 N.W.2d at 36.

The Appellees' efforts to make broad articulations based on NextEra should be rejected. As detailed in IPL and MidAmerican's opening brief, this Court has frequently and recently held that the IUB is entitled to deference in its interpretations of parts of Chapter 476. See e.g. Evercom Systems, Inc. v. Iowa Utilities Board, 805 N.W.2d 758, 762 (Iowa 2011) (holding IUB entitled to deference in interpretation of Iowa Code section 476.103 relating to unauthorized change in service); Office of Consumer Advocate v. Iowa Utilities Board, 744

N.W.2d 640, 642-43 (Iowa 2008) (holding IUB entitled to deference in interpretation of Iowa Code section 476.103 relating to unauthorized change in service); City of Coralville v. Iowa Utilities Board, 750 N.W.2d 523 (Iowa 2008) (holding IUB entitled to deference under section 476.1); AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board, 687 N.W.2d 554, 560 (Iowa 2004) (holding IUB entitled to deference in interpretation of section 476.101(9) relating to actions that disadvantage a customer).

In fact, the IUB has been delegated a significant amount of authority in many areas of Chapter 476. For example, when the Iowa Legislature established exclusive territories for public utilities, it did not draw any territories. See Iowa Code § 476.25. Instead, the legislature tasked the IUB with implementing the significant public policy behind exclusive territories and "establish[ing] service areas within which specified electric utilities shall provide electric service to customers on an exclusive basis." Id. The authority granted in section 476.25 is notable. The IUB alone determines which utilities are allowed to serve which customers in the State of Iowa. Enforcement of the Iowa Legislature's public policy decision to implement exclusive territories, over which the IUB has been delegated broad authority, is implicated in this case and was specifically cited by the IUB. (App. 1152).

Iowa Code section 476.25 explains that the Iowa Legislature considers exclusive territories to be "in the public interest" and will "eliminate or avoid unnecessary duplication of electric utility facilities" and "promote economical, efficient, and adequate electric service to the public." Iowa Code § 476.25. The Iowa Legislature had good reason for the exclusive territory statutory scheme, reasons that should not be forgotten as time passes. For example, California's energy crisis in the early 2000's after state-wide deregulation is well-documented. See e.g. Judge Richard D. Cudahy, Whither Deregulation: A Look at the Portents, 58 N.Y.U. Ann. Surv. Am. L. 155, 175 (2001) ("The California restructured system was put into operation at the end of March 1998. At first, it functioned satisfactorily with only minor problems, but, in the early summer of the year 2000, things began to unravel. Prices shot up dramatically in June and stayed high right into the autumn. Wholesale prices were generally much higher than retail prices, which were frozen for the two largest utilities-Pacific Gas & Electric (PG&E) and Southern California Edison (SCE). These companies began to lose large sums of money. Later, rolling blackouts were imposed on large areas of the state as a means of rationing the available wholesale electricity, which was in very short supply. High prices for power continued into the fall and winter, and the financial condition of the two largest utilities continued to deteriorate"); Professor Robert C. Fellmeth, Plunging into Darkness: Energy Deregulation Collides with Scarcity, 33

Loy. U. Chi. L.J. 823, 837 (2002) (tracing the doubling and tripling of rates in the wake of deregulation and the emergency legislative responses); see also Alexandra I. Metzner, Were California's Electricity Price Shocks Nothing More Than A New Form of Stranded Costs?, 52 Am. U. L. Rev. 535, 536 (2002); John S. Moot, Economic Theories of Regulation and Electricity Restructuring, 25 Energy L.J. 273, 275 (2004). While the causes, solutions, and lessons of the California experiment with deregulation can and are frequently debated, what cannot be denied is that the Iowa Legislature made a public policy choice when it decided to implement exclusive electric territories, that the choice was complex, and that the IUB's charge to establish exclusive territories demonstrates significant authority under chapter 476. See Iowa Code §476.25. Therefore, the suggestion that NextEra stands for the proposition that the IUB is entitled to no deference under all of chapter 476 is incorrect.

Second, the Solar Coalition argues that the IUB interpretation of "public utility" is not entitled to deference because the term "public utility" is found elsewhere in the code. (Solar Coalition Brief at 16). Contrary to the Solar Coalition's suggestion, the way in which public utility is cited elsewhere in the code actually supports the Appellants' arguments. The Solar Coalition points to three references in the Iowa Code to "public utility" and cites to Iowa Code sections 716.7(6), 455H.304(2)(d), and 352.6(2)(b). (Solar Coalition Brief at 16).

Notably, however, each of these code sections actually includes a reference to the specific definition of public utility in section 476.1. See Iowa Code § 716.7(2)(6) (referring to public utility including "as defined in section 476."); Iowa Code § 455H.304(2)(d) ("a public utility, as defined in section 476.1"); Iowa Code § 352.6(2)(b) ("public utility as defined in section 476.1"). Two of these statutory sections clarify how other laws will apply to public utilities. See Iowa Code § 352.6(2)(b) (permitting public utility property in "agricultural areas"); Iowa Code § 455H.304(2)(d) (limiting public utility liability for environmental claims while in the conduct of certain work). Therefore, it is clear the term public utility does not have an "independent legal definition that is not uniquely within the subject matter expertise of the agency." Renda, 784 N.W.2d at 14. Since the term "public utility" appears to exist within other statutes with reference to how it is defined in section 476.1, it is hardly a "term found in other statutes", and, therefore, the IUB is more likely entitled to deference in its interpretation. See e.g. Iowa Dental Ass'n v. Iowa Ins. Div., 831 N.W.2d 138, 143 (Iowa 2013) (asking whether a "term is found in other statutes").

The Solar Coalition compares public utility to general terms such as "paternity," "employee," and "dwelling." (Solar Coalition Brief at 16-17). Comparisons to "paternity," "employee," and "dwelling" only emphasize the distinction. None of these terms is a technical term. All of these terms are used in

a variety of legal contexts: paternity (divorce, custody, inheritance, birth certificates); employee (discrimination, wrongful termination, benefits, vicarious liability, workers compensation, tax); dwelling (criminal law, discrimination, tax). Meanwhile, as the Solar Coalition emphasized, public utility seems to refer back to section 476.1.

Third, EPS and the Solar Coalition argue that the IUB is not entitled to deference because "public utility" is defined in Iowa Code section 476.1. EPS and the Solar Coalition cite to Iowa Dental Ass'n and Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 419 (Iowa 2010). While both Iowa Dental Ass'n and Sherwin-Williams refer to a statutory definition as an "insurmountable obstacle," the Court's jurisprudence reveals that the true question is whether the term is "substantive," and agencies will be granted deference in interpretation of substantive terms even if there is a related statutory definition, as long as it is a substantive term and the definition is found within the same chapter. In Evercom, for example, this Court held that the IUB was entitled to deference in its interpretation of the term "unauthorized change in service." 805 N.W.2d at 762-63. Notably, however, "change in service" is defined within the same statute as "the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account." Evercom, 805 N.W.2d at 763 (citing Iowa Code § 476.103(2)(a)). Iowa Dental Ass'n cites Evercom with approval. Iowa

Dental Ass'n, 831 N.W.2d at 144. Similarly, in ABC Disposal Sys. Inc. v. Dep't of Natural Res., 681 N.W.2d 596, 602 (Iowa 2004), the Court held that the Iowa Department of Natural Resources (DNR) had authority to interpret the term "sanitary disposal project" in Iowa Code section 455B.301 and was, therefore, entitled to deference. This holding was cited with approval in Renda, which noted that ABC Disposal was an example of the interpretation of a "substantive term within the special expertise of the agency." Renda, 784 N.W.2d at 14. The important detail, however, is that "sanitary disposal project" is defined within the statute: Iowa Code section 455B.301 defines "Sanitary disposal project.[2]" Therefore, a statutory definition cannot always be an "insurmountable obstacle." Instead, the controlling question is clearly that the Court found "unauthorized change in service" and "sanitary disposal project" to be substantive terms at the heart of the agency's authority but did not believe "covered services" or "manufacturer" to be substantive terms. See also Iowa Right to Life Committee, Inc. v. Tooker, 808 N.W.2d 417, 429-30 (Iowa 2011) (granting deference to the Iowa Ethics and Campaign Disclosure Board in interpretations of portions of Iowa Code chapter 68A, including the definition of "political committee," a statutorily

[2] "Sanitary disposal project" means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director. Iowa Code § 455B.301.

defined term under section 68A.101(18)). The IUB is entitled to deference here because "public utility" is a substantive term at the heart of the IUB's authority.

III. EPS IS SELLING ENERGY TO THE PUBLIC AND IS, THEREFORE, A PUBLIC UTILITY.

The IUB correctly held that EPS would be operating as a public utility under Iowa Code section 476.1, should it operate as proposed in the third-party PPA. None of the arguments made by Appellees support a reversal of the Board's decision.

A. EPS Sells Electricity To The Public.

In considering whether EPS is acting as a public utility, the fundamental question is what EPS does with regard to the proposed third-party PPA. As the IUB explained: "Selling electricity on a per-kWh basis is a significant fact in determining that Eagle Point is selling electricity to the public for compensation; unlike a facilities lease, the product or service being sold is clearly kWhs of electricity." (App. 1153). Iowa Code section 476.1 defines public utility to include "any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for . . . furnishing . . . electricity to the public for compensation." Iowa Code § 476.1(3). When EPS operates pursuant to a third-party PPA, it sells electricity to the public.

As detailed in IPL and MidAmerican's opening brief, EPS falls within the definition of public utility, a determination that is further supported by an

exception also found in section 476.1 and under which EPS does not qualify. Iowa Code §476.1(5) exempts sales to five or fewer as long as the electricity is primarily generated for self-generation. See Iowa Code § 476.1(5). There is also a general exception for self-generation, as self-generation does not include sales to the public.[3]

Although Appellees spend considerable effort suggesting that it was somehow improper or inappropriate for the IUB to consider that EPS will be selling electricity by the kWh, that question is entirely consistent with the determination of whether EPS is acting as a public utility. In fact, the very first Serv-Yu factor, repeatedly emphasized by Appellees, is "what the corporation actually does." Iowa State Commerce Commission v. Northern Natural Gas Co., 161 N.W.2d 111, 114 (Iowa 1968).

Appellees incorrectly focus on whether or not the eight Serv-Yu factors, mentioned, but not expressly adopted, in Northern are rigidly applied. Instead, the proper analysis takes account of the context and actual decisions made in Northern and Northern Natural Gas Company v. Iowa Utilities Board, 679 N.W.2d 629 (Iowa 2004) ("Northern II"). For example, Northern II cites to Northern in holding that a successor in interest was subject to the IUB's jurisdiction as a public utility.

[3] Oddly, EPS claims in footnote 4 that IPL and MidAmerican's arguments are "absurd" because an ice cream stand is not a public utility. (EPS Brief at 47 n.4). Surely, the ice cream stand is not selling electricity by the kWh.

Northern II, 679 N.W.2d at 634. Northern II does not work through a list of eight factors with disregard to the big picture. Instead, Northern II cuts straight to the heart of the question and emphasizes a few notable points from Northern, most of which are applicable here. For example, Northern II emphasized that

> although the [Northern] case dealt with the question whether there were enough direct sales by Northern to the public to make its rates and methods of operation a public concern and public interest, **the practical analysis we adopted made it clear that we ultimately look to the nature of the particular business operation to determine if a public utility exists.**

Northern II, 679 N.W.2d at 634 (emphasis added). In addition, the Northern II Court explained that the Northern Court "rejected the notion that a business could avoid state regulation of a public interest through its operational methods and practices." Id.; see also North Carolina Utilities Commission v. Simpson, 246 S.E.2d 753, 756 (NC 1978) (discussion of Northern, among other cases, and noting that "whether any given enterprise is a public utility within the meaning of a regulatory scheme does not depend on some abstract, formulistic definition of 'public' to be thereafter universally applied. What is the 'public in any given case depends rather on the regulatory circumstances of that case").

The IUB has similarly refused to allow companies involved in utility related work to avoid the IUB's jurisdiction. In MCC Telephony of Iowa, LLC v. Capitol Infrastructure LLC, FCU-2010-0015, 2011 WL 1227580, at * 17 (Iowa U.B. Mar. 30, 2011), the IUB held that the owner of lines in the call path for communications

is a public utility because it is "sufficiently involved in the furnishing of voice service to the public for compensation to qualify as a public utility." EPS cites to Hawkeye Land Co. v. ITC Midwest LLC, No. FCU-2009-0006, 2011 WL 4640860 (Iowa U.B. Sept. 30, 2011), an IUB decision, to illustrate a prior IUB citation to Northern. EPS fails to note the substantive discussion of section 476.1 and Northern found in Hawkeye Land Co. In Hawkeye Land Co., the IUB noted the Iowa Supreme Court's "broad" definition of public utility. Hawkeye Land Co., 2011 WL 4640860, at *20. As Hawkeye Land Co. explained, the IUB follows Iowa Supreme Court precedent by "considering the public interest and how it is affected by the utility service in question." Hawkeye, at *19.

The IUB's decision here is consistent with Northern and its progeny because it emphasized the nature of EPS' particular business operation with the City of Dubuque (sales of electricity to the public), refused to allow EPS to avoid regulation through operational choices, and considered the public interest, particularly in the exclusive territorial zones of electric utilities. (App. 1152-1154).

To avoid the IUB's appropriate analysis of the public interest, Appellees work to shift the concept of what EPS does, and, specifically, what "service" EPS provides. Each of the Appellees argues that EPS provides a different "service," but notably, none of them address the real fact - the "service" is sales of electricity to

the public. EPS argues that EPS's business is "to install solar panels." (EPS Brief at 26). The District Court also adopted this position and held that EPS's "primary business is to install solar panels." (App. 1187). However, the facts, as limited by EPS' Petition for Declaratory Order, do not state that EPS' "primary business is to install solar panels." Instead, the Petition states that EPS "is in the business of providing design, installation, maintenance, monitoring, operational, and financing assistance services." (App. 623 at ¶ 1). The Petition further states "The City will be charged by EPS on a price-per-kWh for the electric output of the solar facility for the entire package of services." (App. 625 at ¶ 7d). The facts as pleaded do not support the argument of EPS and the conclusion of the District Court. In addition, the installation of solar panels is not the service at issue with regard to EPS' relationship with the City of Dubuque. If the City of Dubuque purchased solar panels and hired EPS to install them, clearly it would not run afoul of the definition of public utility because there would be no sale of electricity, only self-generation. Iowa Code § 476.1. However, by utilizing a third-party PPA, EPS will directly sell electricity to the City of Dubuque by the kWh.

The Solar Coalition separately argues that EPS provides "solar services" and oddly claims that "IPL does not provide any of the services offered by Eagle Point to retail customers in Iowa." (Solar Coalition Brief at 32). The Solar Coalition

misses the point. IPL does provide one very important service that is also offered by EPS: the sale of electricity.

The OCA takes a different position and states that EPS is primarily providing yet another service, arguing that: "the key service that Eagle Point proposes to provide through the PPA is financing." (OCA Brief at 10). Yet, again, this assertion is simply untrue. EPS is needed because of the electricity it provides. Without the electricity, the "financing" services would be pointless.

When viewed as a whole, most of Appellees' arguments are efforts to suggest that EPS is somehow different because it is selling electricity generated through a renewable means: solar. If this Court holds that EPS may sell electricity pursuant to the third-party PPA, however, that ruling will not be limited to solar energy. A company could set up a diesel generator on a third-party's property and sell the electrical output on a per-kWh basis to the property owner. Therefore, the fundamental issue is whether electricity can be sold pursuant to a third-party PPA, not a question of whether EPS may provide solar services.

B. Allowing Third-Party PPAs, As Urged By EPS, Would Adversely Affect The Statutory Scheme Currently In Place.

Appellees suggest that the Court should essentially create an exception for EPS's proposed business model because the Appellees see no harm. They argue there is no practical difference between a customer who hires a company to sell and install solar panels and then self-generates compared with a customer who

hires a company to install solar panels and then run the solar panels, selling the electrical output to the customer. There is a difference: one falls within Iowa's statutory scheme and one does not, as extensively detailed in IPL and MidAmerican's opening brief.

Further, the Appellees misunderstand where the practical difference takes place. The practical difference is important on the macro level. To allow EPS to sell electricity to the City of Dubuque without regulation or oversight by the IUB opens the door to sales of electricity through any company that wants to operate in such a manner. Companies could target large customers (commercial farming or livestock operations, large industrial complexes, medical facilities, big box stores) and set up what is essentially a utility on the customer's property through any variety of means (solar, wind farms, diesel generators). The Solar Coalition's brief before the District Court did not hide this possibility, noting that "Commercial retailers like Kohl's, Wal-Mart, Staples, and Home Depot use PPAs to control their energy costs and reduce their environmental footprint." (App. 1249). The energy companies establishing mini-utilities could offer lower rates and target the larger clients of the electric utility operating in that exclusive zone, particularly in rural areas, creating a situation where a utility was statutorily required to be capable of servicing the large client but only able to sell a small amount of electricity on a routine basis. See Iowa Code § 476.25 ("specified electric utilities shall provide . .

."). This is unfair to the customers purchasing electricity from the assigned electric utility that would be forced to subsidize the infrastructure needed to be able to serve the larger customer. Potential problems could include overloads if a large customer is suddenly unable to take advantage of the alternative electricity supplier and attempts to get all of its power from the grid.

Instead of the unfettered expansion possible under the District Court's ruling, the exceptions found in the Iowa Code for self-generation and sales to five or fewer are naturally self-limiting. See Iowa Code § 476.1(5). The Florida Supreme Court explained it well in PW Ventures :

> The expertise and investment needed to build a power plant, coupled with economies of scale, would deter many individuals from producing power for themselves rather than simply purchasing it. The legislature determined that the protection of the public interest required only limiting competition in the sale of electric service, not a prohibition against self-generation.

PW Ventures, Inc. v. Nichols, 533 S.2d 281, 284 (Fla. 1988). If a particular customer wants to seek out and establish a way to reduce its energy consumption, particularly through renewable means, it can do so. However, the real question is whether a third party energy company can set up mini utilities all over the state of Iowa, selling electricity by the kWh.

The potential effect of large-scale expansion without IUB regulation on Iowa's electrical system is not an unrealistic problem. If EPS, or any similarly situated company, is not able to provide electricity to a large customer at any given

moment, the assigned electric utility is required to do so. See Iowa Code § 476.25. Any gap in service from the limitations of solar technology will have consequences for the assigned electric utility. See e.g. Robert Glennon & Andrew M. Reeves, Solar Energy's Cloudy Future, 1 Ariz. J. Envtl. L. & Pol'y 91, 96-97 (2010) ("On the downside, however, PV systems present a major intermittency problem as PV cells are currently incapable of storing the energy they produce. Thus, when the sun is absent, either from uncooperative weather or darkness, PV cells are largely ineffectual"). While this result also occurs when a customer self-generates, as PW Ventures explains, self-generation is also self-limiting. 533 S.2d at 284.

C. Whether Or Not To Allow Third-Party PPAs Is A Legislative Question That Is Not Properly Addressed By The Courts.

Many of the arguments raised by Appellees are policy related. Appellees seek to cast the matter as a contest between traditional energy sources and renewable energy sources. This is a false distinction. The exception proposed by Appellees would apply equally to non-renewable energy sources. The question is, instead, can an energy provider—of any type of energy—sell electricity by the kWh to the public without being subject to regulation by the IUB.

The Solar Coalition makes a number of assertions regarding policy arguments and the implications of the judicially crafted exception it seeks. These

arguments frequently assume facts not in the record[4], for example, an assertion that "[a] distributed energy supply is also more reliable and less prone to disruptions and blackouts." (Solar Coalition Brief at 41). The opposite is just as likely true. In fact, EPS touts the ability of the City of Dubuque to rely on IPL's mandated provision of electricity to prevent blackouts or disruptions to the City of Dubuque (EPS Brief at 31, 36)—highlighting the imposition of costs of grid maintenance on IPL without the corresponding consistent purchase of electricity.

The extensive effort made to argue that allowing PPA's will not have an adverse impact on Iowa's unique statutory scheme only emphasizes the legislative nature of the question. It should be the legislature, not the courts, to take a gamble on whether introducing new statutory exceptions will have a positive impact and how to set limits on those exceptions. Windway Technologies, Inc. v. Midland Power Co-op, 696 N.W.2d 303, 308 (Iowa 2005) provides an illustration of the public policy decisions appropriate for legislative determination:

> In conclusion, we decline the opportunity to make a policy decision on whether net metering would be preferable in the situation before us. There are several reasons that support our decision: (1) the specialized and technical nature of the net-metering issue, (2) the absence of any meaningful guidance for case-by-case determinations of when net metering is appropriate and when it is not, (3) the broad precedential effect of requiring net metering in this case, which would be contrary to FERC's position that net metering is appropriate "in some situations," (4) the authority of the Iowa legislature and the

[4] The Solar Coalition also cites to Germany, claiming that Germany is experiencing lower peak demand spikes, but without any sort of citation.

> utilities board to require net metering for nonregulated utilities and their failure to do so, and (5) the authority of FERC to regulate the implementation of PURPA by nonrate-regulated utilities, including ordering net metering.

Windway Technologies, 696 N.W.2d at 308. The reasoning behind the Court's hesitance to require a new method of operation within the technical area of IUB regulation in Windway is equally applicable here. Just as in Windway, the area is specialized and technical, there is a lack of meaningful guidance for case-by-case determinations of when PPAs would be allowed, the decision would have broad precedential effect, and the Iowa Legislature has not acted.

The states cited by the Solar Coalition throughout its brief, and in footnotes 3 through 7, reinforce the legislative nature of what the Court is asked to do. First, and most importantly, some states referenced have legislatively created specific exceptions applicable to solar. See O.R.S. § 757.005(1) (specifically excluding "power . . . from solar or wind resources" from the definition of public utility); Colo. Rev. Stat. § 40-1-103(2)(c) (2009 Amendment to exempt solar generation from the definition of public utility under certain limitations, including equipment sized to no more than 120% of average annual consumption by the site, and located on the site of the customer's property). Second, at least one state referenced is deregulated and allows customer retail choice for electric power suppliers, a different statutory framework than Iowa. See e.g. Ne. Energy Partners, LLC v. Mahar Reg'l Sch. Dist., 462 Mass. 687, 695, 971 N.E.2d 258, 264 (2012) (noting

that 1997 legislation in Massachusetts changed from government-regulated monopoly to a "framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier"); see also Nevada Power Co. v. Pub. Utilities Comm'n of Nevada, 122 Nev. 821, 825, 138 P.3d 486, 489 (2006) (noting that Nevada deregulated in the mid-1990s, then reinstated some regulation after the energy crisis in early 2000s). Third, some of these referenced states and commission decisions involve net metering[5], an issue not applicable in this case. See Massachusetts Public Utilities Commission Decision No. D.P.U. 08-75-A; Nevada Public Utility Commission Order for Docket Nos. 07-06024 and 07-06027, 2008 WL 5159179 (Nev. PUC Nov. 26, 2008) (relying on NRS 704.766-704.775, statutes providing for a net metering program in Nevada). Finally, Arizona is distinguishable because the Arizona

[5] Net metering involves "measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator which is fed back to the electric service provider." Windway Technologies, Inc. v. Midland Power Co-op., 696 N.W.2d 303, 304-05, 308 (Iowa 2005). In the State of Iowa, net metering options are limited to a single customer's self-owned renewable generation of no more than 500 kW. See In re IES Utilities and Interstate Power Company, No. TF-03-180, TF-03-181, 2004 WL 1950736 (IUB, July 22, 2004); In re PURPA Net Metering Standard, No. PURPA Standard 11, 2006 WL 4585521 (IUB, Aug. 8, 2006). In other states, net metering can have a broader application. For example, in Massachusetts, net metering allows up to 2 MW, can be utilized by multiple customers on the same meter, and cannot exceed utility-specific caps in the aggregate.
See e.g. http://www.mass.gov/eea/grants-and-tech-assistance/guidance-technical-assistance/agencies-and-divisions/dpu/net-metering-faqs.html#one.

Corporation Commission appears to have broader powers than the IUB, see http://www.azcc.gov/Divisions/Administration/About/Letters/5-23-13%20Retail%20Competition%2013-0135.pdf (Arizona Corporation Commission soliciting public comment on whether to implement retail competition), and Arizona is currently addressing whether customers taking advantage of connection to the grid but using solar technology should be required to pay a fee for that service. See e.g. http://roselawgroupreporter.com/2013/07/washington-times-examines-arizonas-aps-v-solar-industry-battle/ (noting the "issue has taken on epic proportions as attack ads pop up, accusations fly, and unlikely alliances form").

These examples simply illustrate the legislative nature of the question. The Iowa Legislature is properly positioned to study the systems and effects in other states and countries, make policy judgments, and ensure that all consumers are protected.

IV. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE TERM "ELECTRIC UTILITY" CAN POTENTIALLY ENCOMPASS A BROADER DEFINITION THAN THE TERM "PUBLIC UTILITY."

EPS cross appealed the District Court's conclusion that an entity that is neither a "public utility" nor a "city utility" can still be an "electric utility" as that term is defined in Iowa Code § 476.22. Section 476.22 provides: "As used in sections 476.23 to 476.26, unless the context otherwise requires, *"electric utility"*

includes a public utility furnishing electricity as defined in section 476.1 and a city utility as defined in section 390.1." EPS argues that the statutory language "unless the context otherwise provides," qualifies the word "includes" in the statute and, therefore, must be interpreted as authorizing exclusions from the statutory language but not authorizing inclusions. (EPS Brief at 61-62). EPS's position is incorrect and is not supported by case law or as a matter of statutory interpretation.

The District Court correctly concluded that the explicit language in Section 476.22, specifically "unless the context otherwise requires," indicated that the IUB was correct in concluding that term "electric utility" as used in the exclusive service territory statutory provisions could potentially encompass a broader definition than the term "public utility" in Section 476.1. (App. 1197). Both the IUB and the District Court properly recognized that the specific statutory language used by the legislature could, in appropriate circumstances, encompass a broader definition of the term "electric utility" than the term "public utility".

As the District Court noted, Section 476.22 does not contain any mandatorily limiting language such as "only" or "is limited to" when defining an "electric utility". (App. 1194). The legislature could easily have used these terms if it wished to limit the term "electric utility" to only a public utility or a city utility. The legislature did not include this limiting language, and the Court should not add this language under the guise of statutory interpretation. See Mulhern v.

Catholic Health Initiatives, 799 N.W.2d 104 (Iowa 2011) (court may not extend, enlarge or otherwise change the meaning of a statute under the guise of construction); Eyecare v. Department of Human Services, 770 N.W.2d 832, 837 (Iowa 2009) ("When a statutory definition uses the word 'includes' as opposed to 'means,' as the case is here, the term is 'more susceptible to extension of meaning by construction than where the definition declares what a term means'").

In addition to the use of the word "includes" and the lack of any mandatory language in the statute, the IUB and District Court's conclusion is also supported by the use of the language "unless the context otherwise requires." The Iowa Supreme Court recently considered a statute containing the language "unless the context otherwise requires" in Iowa Right to Life Committee v. Tooker, 808 N.W.2d 417, 429 (Iowa 2011). The Court found that the definitional section of Iowa Code § 68A.102, which included the definition of "political committee", contained "an escape hatch" by the use of the terms "unless the context otherwise requires." The Court concluded that Iowa Right to Life does not become (or have to form) a political committee when the context indicates a different result would be appropriate. In other words, the statutory language "unless the context otherwise requires" provided an escape hatch for when the context indicates a different result from the general meaning would be appropriate. The District Court also cited Necanisum Investment Co. v. Employment Department, 190 P.3d 368,

370-71 (Ore. 2008), for the proposition that the phrase "unless otherwise required" means that in some situations the circumstances of a case may require the application of a modified definition of the pertinent statutory terms to carry out the legislature's intent regarding this statutory scheme.

A reading of the statute as a whole indicates that the most reasonable interpretation of Section 476.22 is that the legislature intended, in appropriate circumstances, to include within the definition of "electric utility" entities that are neither public utilities nor city utilities. See State v. Iowa District Court, 572 N.W.2d 587, 588 (Iowa 1997) (Court should read the statute as a whole and seek a reasonable interpretation that best effects the statute's purpose). The District Court and the Board both correctly concluded that an "electric utility" could include an entity that was neither a public utility nor a city utility.

However, the Board did not determine whether EPS was an electric utility because it was not necessary given the Board's conclusion that EPS was a public utility. Because the Board determined that an "electric utility" could encompass a broader definition than the term public utility (App. 1155), the Court should allow the Board to make this determination in the first instance, if the Court determines that EPS is not a "public utility." The Court should deny EPS's cross appeal.

CONCLUSION

This Court should reverse the District Court's ruling, find that the IUB is entitled to deference, and find that the IUB correctly held EPS would be acting as a public utility, and, therefore, as an electric utility.

Respectfully submitted,

Deborah M. Tharnish, AT0007858
Scott M. Brennan, AT 0001100
Sarah E. Crane, AT0010225
DAVIS, BROWN, KOEHN, SHORS
& ROBERTS, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Tel: (515) 288-2500
Fax: (515) 243-0654
E-mail: debtharnish@davisbrownlaw.com
scottbrennan@davisbrownlaw.com
sarahcrane@davisbrownlaw.com

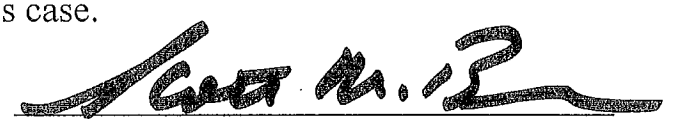
Paula Johnson, AT0009035
Senior Attorney-Regulatory
Alliant Energy Corporate Services, Inc.
200 First Street SE / PO Box 351
Cedar Rapids, IA 52406
Tel: (319) 786-4742
Fax: (319) 786-4533
E-mail: paulajohnson@alliantenergy.com

Suzan Stewart, AT0007547
Managing Senior Attorney
MidAmerican Energy Company
401 Douglas Street / PO Box 778
Sioux City, IA 51102
Tel: (712) 277-7587
Fax: (712) 252-7396
E-mail: SMStewart@midamerican.com

ATTORNEYS FOR INTERVENORS
INTERSTATE POWER AND LIGHT
COMPANY & MIDAMERICAN
ENERGY COMPANY

REQUEST FOR ORAL ARGUMENT

Counsel for Appellants/Intervenors respectfully request to be heard in oral argument upon submission of this case.



Deborah M. Tharnish, AT0007858
Scott M. Brennan, AT0001100
Sarah E. Crane, AT0010225
DAVIS BROWN LAW FIRM
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Tel: (515) 288-2500
Fax: (515) 243-0654
E-mail: debtharnish@davisbrownlaw.com
scottbrennan@davisbrownlaw.com
sarahcrane@davisbrownlaw.com

Paula Johnson, AT0009035
Senior Attorney-Regulatory
Alliant Energy Corporate Services, Inc.
200 First Street SE / PO Box 351
Cedar Rapids, IA 52406
Tel: (319) 786-4742
Fax: (319) 786-4533
E-mail: paulajohnson@alliantenergy.com

Suzan Stewart, AT0007547
Managing Senior Attorney
MidAmerican Energy Company
401 Douglas Street / PO Box 778
Sioux City, IA 51102
Tel: (712) 277-7587
Fax: (712) 252-7396
E-mail: SMStewart@midamerican.com

ATTORNEYS FOR INTERVENORS
INTERSTATE POWER AND LIGHT
COMPANY & MIDAMERICAN
ENERGY COMPANY

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

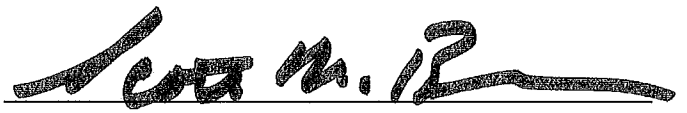
The Appellants/Intervenors' Reply Brief complied with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief used a proportionally spaced typeface and contained 6,712 words excluding the parts of the brief exempted by Iowa. R. App. P. 6.903(1)(g)(1). The brief complied with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because the brief had been prepared in a proportionally space typeface using Microsoft Word 2007 in font size 14 and Times New Roman type.

Scott M. Brennan, AT0001100
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Tel: (515) 288-2500
Fax: (515) 243-0654

ATTORNEYS FOR INTERVENORS
INTERSTATE POWER AND LIGHT
COMPANY & MIDAMERICAN
ENERGY COMPANY

CERTIFICATE OF FILING

The undersigned hereby certifies that on the 23rd day of September 2013, eighteen (18) copies of the Appellants/Intervenors' Reply Brief were filed with the Clerk of the Iowa Supreme Court, 1111 E. Court Ave., Des Moines, Iowa 50319.



Scott M. Brennan, AT0001100
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Tel: (515) 288-2500
Fax: (515) 243-0654

ATTORNEYS FOR INTERVENORS
INTERSTATE POWER AND LIGHT
COMPANY & MIDAMERICAN
ENERGY COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that on the 23rd day of September 2013, one copy of the Appellants/Intervenors' Reply Brief was served upon all parties to the above cause by depositing a copy thereof by regular U.S. Mail, postage prepaid, to each of the attorneys or parties of record herein as follows:

Phillip E. Stoffregen
James L. Pray
Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510

David J. Lynch
Gary D. Stump
Iowa Utilities Board
1375 East Court Avenue, Room 69
Des Moines, IA 50319-0069

Mark Schuling
Jennifer Easler
1375 East Court Avenue, Room 63
Des Moines, IA 50309

Dennis Puckett
Elizabeth Overton
Sullivan & Ward, PC
6601 Westown Parkway, Suite 200
West Des Moines, IA 50266

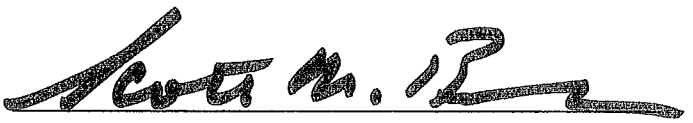
Joshua T. Mandelbaum
Bradley D. Klein
Environmental Law and Policy Center
505 Fifth Avenue, Suite 333
Des Moines, IA 50309

Scott M. Brennan, AT0001100
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Phone: 515-288-2500
Fax: 515-243-0654

ATTORNEYS FOR INTERVENORS
INTERSTATE POWER AND LIGHT
COMPANY & MIDAMERICAN
ENERGY COMPANY

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Appellants/Intervenors' Reply Brief was the sum of $191.54.



Scott M. Brennan, AT0001100
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Tel: (515) 288-2500
Fax: (515) 243-0654

ATTORNEYS FOR INTERVENORS
INTERSTATE POWER AND LIGHT
COMPANY & MIDAMERICAN
ENERGY COMPANY