

**BEFORE THE IOWA UTILITIES BOARD
DEPARTMENT OF COMMERCE
STATE OF IOWA**

IN RE:

**INTERSTATE POWER & LIGHT
COMPANY**

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DOCKET NO. GCU-07-1

POST-HEARING REPLY BRIEF

OF

**JOINT INTERVENORS COMMUNITY ENERGY SOLUTIONS, IOWA ENVIRONMENTAL
COUNCIL, IOWA FARMERS UNION, IOWA PHYSICIANS FOR SOCIAL
RESPONSIBILITY AND IOWA RENEWABLE ENERGY ASSOCIATION
(THE COALITION)**

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I. IOWA CODE §§ 476A.6(1) AND 476A.6(3) CANNOT REASONABLY BE INTERPRETED TO PRECLUDE THE BOARD FROM CONSIDERING THE REASONABLENESS OF AND THE NEED FOR SUTHERLAND 4 IN DECIDING WHETHER TO ISSUE A GENERATING FACILITY SITING CERTIFICATE.

A. The reasonableness of and the need for Sutherland 4 are directly relevant to the Board's decision under the plain language of Iowa Code §§ 476A.6(1) and 476A.6(3).

IPL's argument that the Board cannot consider the reasonableness of and need for Sutherland 4 is not supported by a plain language reading of the two decision criteria in Iowa Code §§ 476A.6(1) and 476A.6(3). As IPL notes at page 9 of its initial brief, in the absence of a statutory definition or an established meaning in law, words in a statute should be given their ordinary and common meaning. See Iowa Code § 4.1(38) (2007). When the text of a statute is plain and its meaning clear, it is not appropriate to search for meaning beyond the express terms of the statute. Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d 22, 25 (Iowa 1999). In addition, it is presumed that the legislature inserted every part of a statute for a purpose, and it is necessary to avoid interpreting a statute so as to render any portion of it redundant or irrelevant. Miller v. Westfield Ins. Co., 606 N.W.2d 301, 305 (Iowa 2000); T&K Roofing Co. v. Iowa Dep't of Educ., 593 N.W.2d 159, 162-63 (Iowa 1999). Contrary to what is urged by IPL in its initial brief, under the plain meaning and express terms of the individual decision criteria in Iowa Code § 476A.6, reasonableness and need are relevant and necessary factors for the Board to consider in deciding whether to issue a generating facility siting certificate for Sutherland 4.

1. Iowa Code § 476A.6(1) requires the applicant to demonstrate that Sutherland 4 would be consistent with the legislative intent as expressed in Iowa Code § 476.53. In turn, Iowa Code §

476.53 states that it is the intent of the legislature to “ensure reliable electric service to Iowa consumers and provide economic benefits to the state” in a manner that is “cost-effective and compatible with the environmental policies of the state.” The reasonableness of and the need for Sutherland 4 are relevant and necessary factors for the Board to consider in determining whether the facility would provide economic benefits to the state, whether the proposal for Sutherland 4 is cost-effective and whether the facility would be compatible with the environmental policies of the state. A 630 MW coal-fired generating facility that is constructed in spite of the fact that it not needed and not reasonable – both in economic and in environmental terms – would not serve any of these goals, all of which have been defined in express statutory language by the legislature. IPL does not explain how the converse could be true or why reasonableness and need are not relevant to these expressly stated elements of legislative intent. The Board cannot legitimately ignore relevant factors, including the reasonableness of and the need for Sutherland 4, in determining whether the proposed facility would be consistent with the plainly stated legislative intent of Iowa Code § 476.53.

2. Iowa Code § 476A.6(1) requires the applicant to demonstrate that Sutherland 4 would be consistent with the economic development policy of the state, as expressed in Title I, subtitle 5 of the Iowa Code. In turn, Title I, subtitle 5 of the Iowa Code states that the primary mission of the Iowa Department of Economic Development is to “enhance the economic development of the state.” Iowa Code § 15.101 (2007). The reasonableness of and the need for Sutherland 4 are relevant and necessary factors to consider in determining whether the facility would in fact enhance, or by contrast detract from, the economic development of the state. A costly but unnecessary coal-fired generating facility would detract from the economic development of the state by placing an unwarranted economic burden on consumers and by displacing present and

future opportunities to better enhance the economic development of the state through investment in more reasonable alternatives. IPL offers no explanation as to why this would not hold true or as to why reasonableness and need are not relevant to determining the net impact that Sutherland 4 would have on economic development in Iowa. The Board cannot legitimately ignore relevant factors of the reasonableness and need in determining whether the facility would enhance the economic development of Iowa, as expressly set forth in this decision criterion.

3. Iowa Code § 476A.6(1) requires the applicant to demonstrate that Sutherland 4 would not be detrimental to the provision of adequate and reliable electric service. IPL takes an improperly narrow view of this issue, arguing that any facility that generates electricity by definition complies with this requirement, regardless of the reasonableness of and need for that facility. Setting aside the fact that IPL's proposed statutory construction renders this requirement completely without substance or meaning, in violation of the most basic precepts of statutory interpretation, reasonableness and need are relevant to whether Sutherland 4 would be detrimental to the provision of adequate and reliable electric service in Iowa. IPL and the consumers of Iowa have a finite amount of financial resources to invest in meeting the electricity needs of the state – this is not disputed by IPL. The changing economics of coal, the environmental crisis of climate change and a rapidly changing regulatory environment all clearly point to a world where increased energy from renewable sources and improved demand side management will be required components of the generation mix. IPL instead has chosen to invest a substantial chunk of its own finite financial resources – and through future rate-making the resources of Iowa's consumers as well – in a traditional coal-fired generating facility. In a world where federal and state regulations will almost certainly require a substantially different generation mix than what IPL currently is proposing for Iowa, this decision places the utility and

the state well behind the curve. The question for the Board is not simply the amount of electricity being produced, but rather whether the source of that electricity is a wise investment of resources compared with available alternatives. The ability to provide adequate and reliable electric service in future depends on the wise investment of available financial resources in the best supply and demand management options now. IPL offers no argument to explain why the reasonableness of current investments would not impact future ability to provide adequate and reliable service. The Board cannot view IPL's proposal in an economic and regulatory vacuum and ignore relevant considerations of reasonableness and need in determining whether IPL's proposal is compatible with providing adequate and reliable electric service in the future.

4. Iowa Code § 476A.6(3) requires the applicant IPL to demonstrate that Sutherland 4 would be consistent with *reasonable* land use and environmental policies and consonant with *reasonable* utilization of air, land and water resources, considering available technology and the economics of available alternatives. Reasonableness is not only necessarily relevant to this decision criterion, it is explicitly included in the text of the statute itself, as is the requirement that Sutherland 4 be viewed in comparison to available alternatives when determining reasonableness. The need for Sutherland 4 is also directly relevant to whether the facility is in fact a reasonable use of land, air and water. If the 630 MW coal-fired generating facility is not necessary, then the related use of land, water, and above all, air, is certainly not reasonable. The statutory construction urged by IPL, which would preclude the Board from considering the reasonableness of Sutherland 4 – both in objective terms and in comparison to available alternatives – would improperly render the express language of this decision criterion meaningless and would thus be contrary to the most basic principles of statutory interpretation. IPL urges in its initial brief at page 11 that all requirements to demonstrate need and

reasonableness have, with House File 577, been effectively removed to Iowa Code § 476.53(4). However, a plain language reading of that code section does not bear out that conclusion. While Iowa Code § 476A.6(3) refers to land use and environmental policies and use of air, land and water resources, none of the criteria in section 476.53(4) contain similar language or requirements. IPL is urging the Board to ignore the explicit language of section 476A.6(3) under the guise of “legislative intent.” Given that House File 577 completely overhauled the siting process for electric generating facilities, had the legislature intended to remove such requirements entirely, surely it was free to have written section 476A.6(3) differently, without the language it now contains. The legislature chose not to do this, and the Board cannot legitimately ignore the express language of this code section or the relevancy of reasonableness and need in determining whether Sutherland 4 complies with the requirements of section 476A.6(3).

B. Because the text of Iowa Code §§ 476A.6(1) and 476A.6(3) is plain in allowing the Board to consider relevant factors of reasonableness and need, it is inappropriate to search for meaning beyond the express terms of the statute in order to exclude considerations of reasonableness and need from the Board’s decision.

The rules that govern statutory interpretation are well established. The first step in ascertaining the true intention of the legislature is to look to the statute’s language. Bernau v. Iowa Dep’t of Transp., 580 N.W.2d 757, 761 (Iowa 1998). When the text of a statute is plain and its meaning clear, it is inappropriate to search for a meaning beyond the express terms of the statute. Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d at 25. It is only when the language of a statute is ambiguous that it is appropriate to turn to the other rules of statutory construction. Lockhart v. Cedar Rapids Community Sch. Dist., 577 N.W.2d 845,

847 (Iowa 1998). After acknowledging this fundamental principle of statutory interpretation at page 9 of its initial brief, IPL proceeds to ignore its own argument and urge that the Board should be guided, not by a plain language reading of Iowa Code §§ 476A.6(1) and 476A.6(3), but rather by IPL's particular interpretation of the legislative history of those code sections. IPL's construction of the legislative history of section 476A.6 notwithstanding, as already set forth above, the plain language of section 476A.6 is clear with respect to the relevancy of the reasonableness of and need for Sutherland 4 in the Board's decision process. IPL's argument asks the Board to ignore the plain text of the statute, as written and enacted by the legislature, in favor of a questionable portrayal of legislative history. This is clearly inappropriate under the most fundamental rules of statutory interpretation, which dictate that the plain language of the statute should govern, and that other considerations such as legislative history should only be taken into account where the meaning of the statute is unclear or ambiguous.

C. IPL's construction of legislative intent from the legislative history of House File 577 ignores the plain text of Iowa Code §§ 476A.6(1) and 476A.6(3), negates the purpose of those code sections and creates an impractical and absurd rule for the Board to follow.

Even if the requirements of Iowa Code §§ 476A.6(1) and 476A.6(3) are considered ambiguous with regard to the relevancy of reasonableness and need, IPL's analysis of the legislative history and statutory construction of those two code sections still does not appropriately characterize the requirements of the decision criteria. The polestar of statutory interpretation is to give effect to the legislative intent of a statute. Harris v. Olson, 588 N.W.2d 408, 410 (Iowa 1997). The primary goal in giving effect to legislative intent is to look at what the legislature said, not what it might or should have said. State v. Schultz, (Iowa 1999). In doing so, it is inappropriate to construe a statute in a way that creates an impractical or absurd

result or to speculate as to probable legislative intent beyond what the language clearly states. State v. Sailer, 587 N.W.d2 756, 760 (Iowa 1998). It is presumed that the legislature intends a reasonable result when it enacts a statute. State v. Pace, 602 N.W.2d 764, 772 (Iowa 1999). It is also presumed that the legislature inserted every part of a statute for a purpose. Miller v. Westfield Ins. Co., 606 N.W. 2d at 305. These basic rules of statutory interpretation make clear that, in attempting to divine the intent of the legislature, it is still appropriate to look first to the plain text of the statute. The interpretation put forth by IPL – that the legislature intended to strip requirements of reasonableness and need from Iowa Code § 476A.6 – is not supported by the plain text of that code section, nor is it supported by comparing that code section with the plain text of Iowa Code § 476.53. IPL does not point to any hard evidence of legislative intent, but argues that the revision of the Iowa Code § 476A.6 decision criteria and the creation of criteria for ratemaking under Iowa Code § 476.53(4) must mean that the legislature intended to strip requirements of reasonableness and need from the siting process for generating facilities. Contrary to IPL’s assertions, the legislative history points to the opposite conclusion.

In 2001, the legislature completely revised the process for siting electric generating facilities and approving ratemaking principles. New criteria were created for each process that replaced the old decision criteria under section 476A.6. During this process of deliberate revision, the legislature chose the language that is now found in the three decision criteria of section 476A.6. As set forth above, reasonableness and need are directly relevant to the Board’s decision under the plain language of these criteria. The legislature could have written the decision criteria differently, to expressly exclude need and reasonableness, but chose not to do so. For example, the legislature could have stated that any siting application for a generating facility that will produce electricity in some quantity, employ people, follow zoning requirements

and obtain permits issued by IDNR shall be approved. The legislature did not state this, but set forth much broader requirements, and the Board must assume there was a purpose behind this legislative decision. IPL is asking the Board to ignore the plain language of the current decision criteria and to exclude relevant considerations of reasonableness and need, to the extent that express statutory language is rendered redundant and irrelevant. To do so would be inappropriate under the most basic rules of statutory interpretation. This Board should be guided by the plain language of the siting statute, giving effect to all its provisions and taking into consideration all relevant factors, including reasonableness and need.

II. IPL MISCONSTRUES THE PLAIN LANGUAGE REQUIREMENTS OF IOWA CODE § 476A.6(1) THAT SUTHERLAND 4 NOT BE DETRIMENTAL TO THE PROVISION OF ADEQUATE AND RELIABLE ELECTRIC SERVICE OR INCONSISTENT WITH THE LEGISLATIVE INTENT EXPRESSED IN IOWA CODE § 476.53.

A. The statutory requirement that Sutherland 4 not be “detrimental to the provision of adequate and reliable electric service” does place specific substantive requirements on the applicant that are neither recognized nor accounted for by IPL.

Iowa Code § 476A.6(1) requires the applicant to demonstrate that Sutherland 4 would not be detrimental to the provision of adequate and reliable electric service. IPL argues unpersuasively in its initial brief at page 11 that this express statutory requirement does not in fact require any substantive showing, arguing that “services and operations resulting from the construction of a generation facility cannot be detrimental to the utility’s ability to continue to provide adequate and reliable electric service.” If IPL’s argument is taken at face value, it urges the Board to presumptively conclude that every application for a generating facility siting

certificate *per se* meets this explicit statutory requirement. IPL’s argument directly contradicts the basic canon of statutory interpretation that statutory language should not be interpreted to render that language meaningless or superfluous. When Iowa Code § 476A.6 was amended in 2001, the language of subsection 1 was significantly amended and expanded. The language that IPL now argues is meaningless and without substance was included for an express purpose by the legislature. Based on the most fundamental rules of statutory interpretation, it would be inappropriate for IPL or the Board to conclude otherwise. The statutory history of the phrase “adequate and reliable electric service,” on which the substantive meaning of this statutory requirement hinges, is further analyzed and explained below in section IV.A of this reply brief.

B. The statutory requirement that Sutherland 4 be consistent with the “legislative intent” as expressed in Iowa Code § 476.53 is a separate and substantive requirement and not a mere restatement of other language in Iowa Code §§ 476A.6(1) and 476A.6(3).

Iowa Code § 476A.6(1) requires the applicant to demonstrate that Sutherland 4 would be consistent with the legislative intent as expressed in Iowa Code § 476.53. In turn, Iowa Code § 476.53 states that it is the intent of the legislature to “ensure reliable electric service to Iowa consumers and provide economic benefits to the state” in a manner that is “cost-effective and compatible with the environmental policies of the state.” IPL argues unpersuasively at pages 11-16 of its initial brief that the explicit statement of legislative intent is subsumed and effectively made irrelevant by other provisions of Iowa Code §§ 476A.6(1) and 476A.6(3). This argument is not supported by the rules of statutory construction and does not bear scrutiny under a plain language analysis of the relevant code sections. As has already been set forth above, when the text of a statute is plain and its meaning clear, it is inappropriate to search for a meaning beyond the express terms of the statute. Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc., 594

N.W.2d at 25. It is only when the language of a statute is ambiguous that it is appropriate to turn to the other rules of statutory construction. Lockhart v. Cedar Rapids Community Sch. Dist., 577 N.W.2d at 847. Furthermore, it is presumed that the legislature inserted every part of a statute for a purpose, and it is necessary to avoid interpreting a statute so as to render any portion of it redundant or irrelevant. Miller v. Westfield Ins. Co., 606 N.W.2d at 305; T&K Roofing Co. v. Iowa Dep't of Educ., 593 N.W.2d at 162-63. The legislative intent in Iowa Code § 476.53 has two primary goals: first, 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 second, to provide economic benefits to the state. Section 476.53 goes on to state that the development of electric power and transmission facilities should be implemented in a manner that is cost-effective and compatible with the environmental policies of the state. The statutory language of this code section is plain and its meaning clear. The phrases “cost-effective” and “compatible with the environmental policies of the state” are nowhere referenced back to Iowa Code § 476A.6(3) – as IPL urges – and in fact explicitly reference back to the development of electric power and transmission facilities under Iowa Code § 476.53(1). IPL does not point to any statutory language indicating a legislative intent to subsume these explicit requirements under other portions of the siting statute, and rules of statutory construction dictate that it would be inappropriate to do so. If the legislature had intended such an interpretation, it makes no sense to have included the current language of Iowa Code §§ 476.6(1) and 476.53(1)-(2) that IPL now seeks to strip of its content and relevancy. This Board must be guided above all by the plain language of Iowa Code § 476A.6 and must avoid any statutory interpretation that would rob the statute of its meaning or negate the purpose of the legislature in including these express requirements in the statute.

III. IPL MISCONSTRUES THE REQUIREMENTS OF IOWA CODE § 476A.6(3) THAT SUTHERLAND 4 BE CONSISTENT WITH REASONABLE LAND USE AND ENVIRONMENTAL POLICIES AND CONSONANT WITH REASONABLE UTILIZATION OF AIR, LAND AND WATER RESOURCES, CONSIDERING AVAILABLE TECHNOLOGY AND THE ECONOMICS OF AVAILABLE ALTERNATIVES.

At page 18 of its Initial Brief, IPL generously acknowledges that the Board is not “strictly prohibited” from any examination of the criteria of Section 476A.6(3). The thrust of IPL’s briefing on this statutory criterion is that the Board has only the most limited authority – far more limited than the statutory language plainly states – to consider whether:

[t]he construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives.

IPL asserts that Iowa Code § 476.1 works a restriction on the Board’s authority to conduct the review mandated by statute at Section 476A.6(3) to “specific factors with direct relevance to its jurisdictional authority over the rates and services of public utilities.” IPL does not state what these “specific factors” might be.

In reality, the legislature has spelled out those specific factors in the Public Utilities section of the Iowa Code at 476 and 476A. Section 476.1 actually states:

The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities *to the extent and in the manner hereinafter provided.*

(emphasis added). In other words, it is Section 476A.6(3) and the rest of the public utility regulation section of the Iowa Code that put structure and limits on the Board’s general authority

given at Section 476.1, not the other way around. To say that the Board does not have the specific authority spelled out plainly at Section 476A.6(3) because of the general authority granted at Section 476.1 is to reverse the inherent logic of the statute. Nothing in the legislative history suggests such a bizarre intent on the part of the legislature, and IPL cites no authority for its assertion other than the statute itself, which does not say what IPL claims.

The rest of IPL's briefing on Section 476A.6(3) repeats IPL's tired axiom that the Board should let other agencies usurp the legislature's clear directive for the Board – not some other party – to analyze and rule on the listed criteria. The Coalition has brought compelling evidence that IPL has failed to make the requisite showing under the plain language requirements of Section 476A.6(3). Further, in spite of the fact that Section 476A.6(3) does not require it, the Coalition has brought compelling evidence that failure to comply with Section 476A.6(3) will harm ratepayers in a number of ways. However, it is faulty logic to imply that, in order to prevail, the Coalition must prove damages to ratepayers or services from IPL's failure to comply with Section 476A.6(3). The evidentiary burden lies fully on the public utility. Office of Consumer Advocate v. Commerce Comm'n, 432 N.W.2d 148, 156 (Iowa 1988). It is IPL alone that must prove compliance with all statutory requirements for a generating certificate. IPL's contention that the criteria at Section 476A.6(3) "must be examined from the perspective of the regulation of rates and services by a public utility" is merely an attempt to shift the burden of proof to opponents of the Application. The language of the statute is clear, and IPL's only defense for its failure to make the requisite showing is that the Board lacks jurisdiction to consider such matters. This is not a serious legal argument, let alone a factual argument, and it should not guide the Board's decision.

IV. IPL'S APPLICATION DOES NOT SATISFY THE THREE DECISION CRITERIA FOR THE ISSUANCE OF A GENERATING FACILITY SITING CERTIFICATE, AND IPL'S ASSERTIONS TO THE CONTRARY ARE BASED ON MISCHARACTERIZATIONS OF BOTH THE SITING STATUTE AND THE EVIDENCE IN THE RECORD.

A. IPL's arguments misconstrue the substantive requirements of Iowa Code § 476A.6(1) and fail to demonstrate that Sutherland 4 would meet those requirements.

1. IPL has failed to demonstrate that the proposal for Sutherland 4 would have a net positive impact on economic development in Iowa when the costs and negative impacts of the proposal are fully taken into consideration. The list of purported economic benefits of Sutherland 4 outlined in the initial brief of IPL fails to demonstrate that Sutherland 4 would be a net benefit to the economy of Iowa. Iowa Code § 476A.6(1) requires a finding that the proposal for Sutherland 4 be "consistent with the economic development policy of the state, as expressed in Title I, subtitle 5." In turn, Iowa Code § 15.101 states that the mission of the Iowa Department of Economic Development is to "enhance the economic development of the state." The question before the Board is not simply whether Sutherland 4 would provide a discrete list of economic benefits for the state, but rather whether those benefits, when weighed against the likely costs (including the opportunity cost of displaced renewable energy and demand side management) and negative impacts of Sutherland 4, would have the net effect of enhancing economic development. Under a more complete analysis that takes into account the likely costs and negative impacts, it is apparent that IPL's proposal for Sutherland 4 would detract from economic development, contrary to the express economic development policy of the state expressed in Title I, subtitle 5 of the Iowa Code.

The list of economic benefits outlined by IPL in its initial brief includes: temporary employees and related spending in the Marshalltown community during construction, permanent employees for the facility, and the purchase of goods and services during the lifetime of the facility. By this definition of economic benefit, there is no proposal for an electric generating facility that would not meet the requirements of this decision criterion. Taking IPL's argument to its logical conclusion, any facility that would undergo construction, employ people and have on-going procurement needs would provide "economic benefits" and therefore meet this requirement. This improperly strips this decision criterion of any substantive meaning. IPL's analysis fails to recognize that a "benefit" is necessarily a relative concept and one that requires comparison to other alternatives and consideration of the negative impacts and missed opportunities that would accompany the purported benefits.

A further justification for the alleged "economic benefits" of Sutherland 4 apparently derives from IPL's projections of electric demand growth in Iowa. IPL puts forth the theory that electric demand will grow, and that as a result, Iowa's economy requires the increased electric supply that Sutherland 4 would supply. Setting aside the fact that IPL has not adequately considered alternate options for meeting that demand, the record does not demonstrate that IPL's assertions of future growth are accurate. The hard data that underlies IPL's projection of a 1.4 percent growth rate in electricity demand was never produced for the record. IPL economic witness Daniel Otto relies on this number without examining the figure for reliability or accuracy. This growth rate relies on overly optimistic projections of population growth, income growth and employment growth, none of which were substantiated for the record by IPL. Coalition finance expert Thomas Sanzillo provided testimony and exhibits demonstrating that external indicators from independent sources contradict IPL's growth projections for Iowa's

population and economy. Coalition economic expert Dr. Neil Harl testified that IPL's growth projections, particularly in the biofuels sector, are doubtful.

No hard data was produced to contradict any of this testimony from Coalition witnesses. IPL's own documents for the most recent 5-year historical period indicate that average growth has been substantially less than what the company projects going forward. (Coalition Exhibit 202, Schedule J, Attachment B) IPL witness Joseph Hillberry testified under cross-examination that the company's growth projections are in fact calculated by a third party consultant, Global Insight. (Transcript pp. 1890-91, 1893, 1899) Mr. Hillberry testified that these numbers come from Global Insight in final form and that he, as the IPL forecast specialist, has no familiarity with how the Global Insight numbers are derived. (Id.) While subcontracting data acquisition may have the advantage of taking growth calculations out of the hands of IPL, it has the distinct disadvantage of not allowing independent examination of the data underlying the growth projections that are ultimately incorporated into the IPL forecast. Not only were IPL witnesses unable to describe precisely how the growth numbers were derived or what data was taken into account, the company did not provide any documentation showing the data and economic indicators relied on by Global Insight to derive the projected growth rate. Far from rebutting the testimony of Coalition witnesses Sanzillo and Harl, IPL produced no independently verifiable evidence that its projected growth rate will hold up going forward. IPL fails to justify its own numbers in the face of external economic indicators that show decreasing growth rates in the future and historical data that shows slower growth rates in IPL's immediate past.

2. IPL's proposal for Sutherland 4 would not have a net positive impact on the provision of adequate and reliable electric service in Iowa. IPL's initial brief does not offer a logical theory as to the standard under Iowa law for "adequate and reliable electric service," nor has IPL proven

that Sutherland 4 will not be detrimental to such service. IPL argues that Board practice since the 2001 change in the statute is a sufficient guide to interpretation of the phrase “reliable electric service,” neglecting a long history of precedent that continues to apply to this phrase, and which pre-dates the current statutory formulation. Iowa utilities have long been required to provide “reasonably adequate service,” although there have been many debates since the dawn of regulation over what exactly this phrase means.¹ Because ensuring adequate and reliable service is at the very heart of the Board’s mission and mandate, the full meaning of this statutory phrase in its historical context is critical to the Board’s deliberations.

The electric utility industry was regulated because of its natural monopoly status, meaning that the economic laws of supply and demand function poorly if at all for electric utilities.²

The pursuit of least-cost operations has long been recognized by Iowa regulators. The goal is to obtain the minimum present value revenue requirement associated with the provision of ‘reasonably adequate service.’³

This, and nothing else, is the meaning of the phrase “cost-effective” at Iowa Code § 476.53(2), which IPL ignores in its analysis of this decision criterion. It is the basic rationale for regulating electric utilities.

More than a quarter of a century ago, enlightened regulators were warning of the systemic bias within electric utilities toward fossil fuels and against renewable energy sources that would have greater long-term benefits to society.

¹ Roger D. Colton, “Conservation, Cost-Containment and Full Energy Service Corporations: Iowa’s New Definition of ‘Reasonably Adequate Service’”, 34 Drake L. Rev. 1 (1984-1985)(hereinafter Colton 1984)(citing R. Schmalensee, The Control of Natural Monopolies 33-34 (1979)).

² Id. at 6-7.

³ Id. at 7 (citing Iowa Pub. Serv. Co., No. RPU-80-65 (I.S.C.C. Mar. 3, 1982); General Tel. Co v. Iowa State Commerce Comm’n, 275 N.W.2d 364, 367 (Iowa 1979); K. Howe and E. Rasmussen, Public Utility Economics and Finance 9-10 (1982)(on principles of establishing a revenue requirement); and Colton, “Excess Capacity: Who Gets the Charge from the Power Plant?”, 34 Hastings L.J. 1333, 1160-62 (1983)).

Despite the mounting evidence of the benefits of conservation and renewable energy technologies, financial investments continue to be directed toward conventional energy supplies. A major reason for this situation is that energy prices, based upon inappropriate theory, are inherently biased in favor of using fossil and nuclear fuels. More importantly, price comparisons offer only a single dimensional look at the full economic impacts that result from an expenditure for a given energy technology. For these reasons, other economic measures should be explored in determining optimal energy investments in the future.⁴

Likewise, we have known since 1982 (assuming 1982 dollars) that “solar hot water heaters with an annual cost of less than \$13-22 per million BTUs are more cost-effective than a new electrical power plant”, yet we persist in building the power plants instead of installing the more cost-effective solar hot water heaters.⁵ IPL’s assertions that its Application is “cost-effective” and consistent with Iowa’s “economic development” policies must be considered in the historic context of electric utilities’ failure to provide the lowest-cost alternative to consumers over decades.

If the Board looks farther back into history than the last five years (the time period covered by IPL’s briefing on generating certificates), it will find that its predecessor agency has declined to issue a certificate to construct a 650MW coal plant, finding:

The anticipated demand for electrical power provided by the Company does not justify the securing of the additional electric power sources as presently proposed nor does the Company’s forecasting methodology provide an adequate conceptual and methodological basis for demonstrating such demand for electric power.⁶

The Commission then directed the utility to “present evidence as to what it has done to encourage such things as energy conservation [and] improved load factor.”⁷

⁴ S. Laitner, “The Need for Innovative Community Financial Strategies That Offset the Failure of Price to Optimize Conservation Investments” (unpublished paper, presented to Symposium on Towards Northern Energy Self-Sufficiency: Biomass and Energy Conservation, Whitehorse, Yukon, Canada (Sept. 1983))(cited in Colton 1984, *supra* n. 1, at 9).

⁵ Community Action Research Group, Community Energy Management Strategies: The Potential for Economic Redevelopment in Tama County (July 1, 1982)(cited in Colton 1984, *supra* n. 1, at 9).

⁶ Iowa Electric Light and Power Co. Application for Certificate to Construct an Elec. Generating Facility, No. GCU-79-1 (I.S.C.C. Aug. 7, 1981).

⁷ *Id.* at 5.

IPL's assertion at page 13 of its Initial Brief that "it would serve a rate-regulated utility no benefit to include cost inefficiencies in any portion of generation facility design, since a prudence review could therefore prohibit any rate recovery of those cost inefficiencies" is disingenuous at best. What would not serve a rate-regulated utility is *getting caught* including cost inefficiencies in its generating facility design, and even that scenario is only likely to lead to an amended design. There is in fact a tremendous economic incentive for a rate-regulated utility to have inefficiencies approved by the regulator and made part of the rate base. Likewise, rural electric cooperatives have significant perverse incentives against improved efficiency due to federal government programs that subsidize construction of new electrical generation.

A fully contextualized understanding of this phrase should lead the Board to conclude that IPL has *not* shown that Sutherland 4 will not be detrimental to adequate and reliable electric service, which is the standard of proof. IPL indulges in a page or more of irrelevant purple language about the Coalition's "luxury" of criticizing this fatally flawed application, a role that is in fact protected (for good reason) by statute and by the Iowa and U.S. Constitutions. IPL wants desperately to draw attention away from the fact that the burden of proof does not lie with the Coalition. It would be an absurd waste of resources for the Coalition or other parties to offer alternative resource plans that the Board would have no authority to adopt. All the testimony and briefing offered by the Coalition supports our central case that Sutherland 4 is an inferior solution to an exaggerated problem and will ultimately damage ratepayers. One fact matters: IPL has an affirmative burden of proof that it has not met.

3. IPL has failed to show a genuine reserve margin deficit by 2013. Under cross-examination, IPL witness Kitchen acknowledges that IPL's projected 2013 reserve margin deficit of 175MW constitutes less than a third of IPL's eighteen (18) percent reserve margin. An 18%

reserve margin appears increasingly unreasonable as the Midwest Reliability Organization continues to modify its recommendations.⁸ In fact, the Midwest Planning Reserve Sharing Group (MPRSG), of which Alliant Energy is a member, issued its Preliminary Report on February 5, 2008, approving much lower planning reserve margin targets for the 2008-09 planning year.⁹ IPL's projected reserve margin deficit also fails to take into account some of the low-hanging fruit available in energy efficiency and DSM programming. IPL witness Holmes acknowledges that IPL has no corporate strategy whatsoever to pursue Combined Heat and Power (CHP) solutions for new biofuel facilities. Transcript at 1818-19. OCA witness Parker strongly recommends CHP as a uniquely appropriate efficiency strategy to meet the demand cited by IPL as justification for this generating certificate. Parker Testimony at 16-20; Transcript at 1223-24. As Parker's analysis shows, IPL has not made any meaningful attempt to use CHP at new biofuels facilities as a way to improve system efficiency and bolster the economics of distributed biofuels refineries. Id. IPL argues that it will have a reserve margin deficit, when it has not made a good faith attempt to meet new demand with a known, less expensive, and uniquely well-suited form of generation such as CHP. All IPL has demonstrated is that modeling that fails to consider superior alternatives will select Sutherland 4.

4. IPL's proposal for Sutherland 4 is not consistent with the express legislative intent of Iowa Code § 476A.6(1), which is separate and distinct from the other decision criteria of Iowa Code § 476A.6. As has already been fully set forth above, it is not appropriate to interpret an express statutory requirement so as to render the language of the statute meaningless or

⁸ The Coalition refers the Board to the Coalition's Motion to Dismiss, which relates to public statements made by IPL post-hearing regarding generating capacity, reserve margins, and other relevant information that IPL has withheld from the formal record and attempted to introduce via the media and in its post-hearing briefing in violation of other parties' due process rights. A copy of the MPRSG Preliminary Report from February 5, 2008 can be accessed at <http://www.midwestiso.org/page/Regulatory+and+Economic+Standards>.

⁹ The Coalition asks that the Board take administrative notice of this announcement (attached).

irrelevant. On the contrary, it is necessary to assume that the legislature inserted every part of the statute for a purpose. Miller v. Westfield Ins. Co., 606 N.W.2d at 305; T&K Roofing Co. v. Iowa Dep't of Educ., 593 N.W.2d at 162-63. IPL argues in its brief that the legislative intent element of Iowa Code § 476A.6(1) is subsumed in other statutory criteria – namely the requirements of section 476A.6(1) that relate to economic development policy and the provision of adequate and reliable electric service, and the requirements of section 476A.6(3). If the legislature had intended this result, it would not have included a separate and distinct element of the decision criteria relating to legislative intent. At the time the current version of Iowa Code § 476A.6 was drafted, the legislature composed entirely new decision criteria for siting electric generating facilities and purposefully chose the language for those criteria. It would be inappropriate for this Board, under the rules of statutory construction and basic tenets of common sense, to assume that some of the language was simply redundant and included for no particular reason as a justification to impose an interpretation that is outside the plain meaning of the statutory text. The interpretation and analysis urged by IPL is simply not supported by the language the legislature chose for Iowa Code §§ 476A.6(1) and 476.53.

B. IPL's arguments fail to substantively define the requirements of Iowa Code § 476A.6(2) or to demonstrate that Sutherland 4 would meet those requirements.

IPL's argument that Sutherland 4 will be constructed, maintained and operated pursuant to the provisions of the siting certificate and the requirements of the Iowa Code fails to define what is substantively required by this decision criterion. It is presumed that the legislature inserted every part of a statute for a purpose, and it is necessary to avoid interpreting a statute so as to render any portion of it redundant or irrelevant. Miller v. Westfield Ins. Co., 606 N.W.2d at 305; T&K Roofing Co. v. Iowa Dep't of Educ., 593 N.W.2d at 162-63. IPL's initial brief states

that the company is a public utility engaged in generation, distribution and sale of electricity that constructs, operates and maintains generating facilities. IPL also cites membership in MISO, MRO and NERC, and states that “IPL obviously cannot accomplish its current utility reliability, partner, and customer obligations without a willingness to abide by the regulatory bodies involved in its operations.” Setting aside that the provisions of a siting certificate and the requirements of the Iowa Code are separate and distinct from those of MISO, MRO and NERC, it is not apparent from IPL’s argument what utility proposing to construct and operate an electric generating facility would not comply with this decision criteria. The requirements that IPL acquire and comply with necessary permits and licenses and use good engineering practices are separate and distinct from the requirement that IPL construct, operate and maintain Sutherland 4 pursuant to the siting certificate and the Iowa Code. 199 IAC 24.10(2)(c)-(e) (2007). There is no separate substantive requirement in the argument set forth by IPL for this decision criterion, contrary to the principle of statutory interpretation that the legislature inserts every part of a statute for a purpose. As the party with the burden of proof, IPL is obligated to make a substantive showing under all three decision criteria, and is not excused from doing so by putting forth an interpretation of a decision criterion with no substantive requirements.

C. IPL’s arguments misconstrue the substantive requirements of Iowa Code § 476A.6(3) and fail to demonstrate that Sutherland 4 would meet those requirements.

The Coalition has already fully set forth its arguments on this point in testimony, exhibits, and in section IV of the Coalition’s initial post-hearing brief. Iowa Code § 476A.6(3) requires the Board to consider whether the construction, maintenance, and operation of Sutherland 4 would be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land and water resources, considering available technology and the

economics of available alternatives. As has already been argued, this consideration is separate from the criteria related to legislative intent in Iowa Code § 476A.6(1), indicating that this analysis should go beyond the stated legislative intent of that subsection (and vice versa). IPL's only response to this required statutory showing is to document compliance with environmental regulations. However, Iowa Code § 476A.6(3) is not simply a check-off procedure in which this Board notes compliance with IDNR permitting standards. It is necessarily something more, according to basic canons of statutory construction. Following fundamental principles of statutory interpretation, it is necessary to avoid a construction of the law that renders part of a statute superfluous, and it is presumed that the legislature intended a purpose for every part of a statute. Miller v. Westfield Ins. Co., 606 N.W.2d at 305; T&K Roofing Co. v. Iowa Dep't of Educ., 593 N.W.2d at 162-63. It would be superfluous for this Board to be assigned a review of "reasonable land use and environmental policies" that consisted solely of a referral to IDNR for permitting. The legislature could have framed their selection criteria as an express requirement to obtain all regulatory permits, but instead chose the language of the current Iowa Code § 476A.6(3), which presents much broader requirements. This is particularly relevant given that the legislature completely revised the criteria for siting electric generating facilities in 2001. Even the implementing provisions of the Iowa Administrative Code recognize that regulatory compliance is separate and distinct from the plain language requirements of section 476A.6(3). 199 IAC 24.10(2)(b),(d) (2007). For this statute and its implementing regulations to avoid being superfluous, the Board's analysis must have an independent purpose.

The question then becomes what the Board's standard should be for a showing of reasonable land use and environmental policies. The three subsections of IAC 199-24.10(2)(b)

provide some guidance as to what the standard should include, but they are not exhaustive. The ultimate determination of what reasonable land use and environmental policies are for the siting of an electrical generation facility rests with this Board. IPL would have the Board dispense with any consideration of what “reasonable utilization” might be, in favor of total deference to the Department of Natural Resources’ (IDNR) permitting processes. IDNR applies the precise language of the federal Clean Air and Water Acts in its permitting processes. This would preclude, among other things, the “reasonable utilization” analysis required in the siting statute, comparison with available alternatives and consideration of statutorily and administratively defined state environmental policies regarding the reduction of greenhouse gas emissions and renewable energy development. The only state agency with the authority to conduct this broader analysis is this Board. The Board must therefore conduct this analysis itself as part of the generating certificate approval process, and not pass the responsibility to another agency that does not conduct the analysis required by the Iowa Code. The consideration of reasonable land use, environmental policies and the reasonable utilization of air, land, and water resources by the Board is neither redundant nor irrelevant, and it would be inappropriate for the Board to conclude that the legislature intended it to be so. If the Board does not properly conduct this analysis, no agency will, and the purpose of this express statutory language will be improperly negated.

Conclusion

In an application for a generating facility siting certificate, the applicant carries the burden of proof. Pursuant to Iowa Code § 476A.6, IPL has the burden of demonstrating:

1. That Sutherland 4 would be consistent with the legislative intent expressed in Iowa Code § 476.53; consistent with the economic development policy of the state as expressed in Title I, subtitle 5; and not detrimental to the provision of adequate and reliable electric service.
2. That IPL is willing to construct, maintain, and operate Sutherland 4 pursuant to the provisions of the siting certificate and this subchapter of the code.
3. That the construction, maintenance, and operation of the facility would be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land and water resources, considering available technology and the economics of available alternatives.

Not only has the applicant failed to carry its burden of proof on these points, the statutory interpretation urged by IPL in its initial post-hearing brief would effectively strip the Board of much of its express statutory siting authority and improperly negate the substance and meaning of the statute as drafted by the legislature. The Board should be guided by the plain text of the siting statute, as it was actually written by the legislature, not as IPL might wish or imagine it to be. Under a plain language reading of Iowa Code § 476A.6 and the evidence in the record, the Board must deny IPL's application for a generating facility siting certificate for Sutherland 4.

Respectfully submitted,
PLAINS JUSTICE

By:



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ATTORNEYS FOR JOINT INTERVENORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of the foregoing instrument were served upon each of the parties of record to the above entitled cause, or their attorneys of record, by enclosing the same in an envelope addressed to each such party and, with postage fully paid, by depositing said envelope in a United States Post Office depository in Cedar Rapids, Iowa on the 25th day of February, 2008.

By:  _____

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