

**IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

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<p><b>Community Energy Solutions, Iowa Physicians for Social Responsibility and Iowa Renewable Energy Association,</b></p> <p style="text-align: center;"><b>Petitioners,</b></p> <p><b>v.</b></p> <p><b>Iowa Utilities Board</b></p> <p style="text-align: center;"><b>Respondent.</b></p>	<p style="text-align: center;">Case No. CV _____</p>
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**PETITION FOR JUDICIAL REVIEW**

Community Energy Solutions, Iowa Physicians for Social Responsibility and Iowa Renewable Energy Association (Petitioners), pursuant to Iowa Code § 17A.19, file this petition for judicial review of a final agency decision of the Iowa Utilities Board, and in support thereof state:

1. The Petitioners are a coalition of Iowa non-profit organizations that serve as advocates for renewable energy, public health and the environment on behalf of thousands of Iowa citizens, renewable energy producers, health care providers and electricity consumers.
  
2. The Respondent is the Iowa Utilities Board (IUB). Pursuant to Iowa Code Chapter 474, the IUB is the policymaking body for the utilities division of the Iowa Department of Commerce. The IUB has general supervision authority over all pipelines and all lines for the transmission, sale and distribution of electrical current for light, heat and power, pursuant to Iowa Code Chapters 476, 476A, 478, 479, 479A and 479B, and has other duties as provided by law.

3. This Petition challenges the final agency action of the IUB in the contested case proceeding *In re: Interstate Power and Light Company*, IUB Docket GCU-07-1. The Final Decision and Order (issued August 25, 2008, totaling 83 pages) and the Order Denying Application for Rehearing (issued January 27, 2009, totaling 16 pages) set forth the final agency action of the IUB in Docket GCU-07-1.

4. Docket GCU-07-1 was a contested case proceeding conducted pursuant to the IUB's authority under Iowa Code Chapter 476A to issue a certificate of public convenience, use and necessity, which is required prior to the construction of any electric power generating plant with a total capacity of 25 megawatts or more.

5. Docket GCU-07-1 consisted of an application by Interstate Power and Light Company (IPL) for a certificate of public convenience, use and necessity to construct a 630 MW coal-fired power plant near Marshalltown, Iowa (Sutherland Generating Station Unit 4, or SGS 4). On August 25, 2008, the IUB granted IPL's application, subject to certain conditions. On September 9, 2008, the Office of Consumer Advocate (OCA) filed an Application for Rehearing, requesting that the IUB reconsider its Final Decision and Order and deny IPL's application for a certificate of public convenience, use and necessity. On September 19, 2008, the OCA filed a Supplemental Application for Rehearing, stating additional grounds for the IUB to reconsider and reverse its Final Decision and Order. On September 26, 2008, the Petitioners filed a Joinder to the OCA Application for Rehearing, joining in the OCA request for reconsideration and stating additional grounds for the Board to reconsider and reverse its Final Decision and Order. On October 6, 2008, the IUB granted the OCA Application for Rehearing, for the purpose of taking additional time to consider the Application. On January 27, 2009, the IUB denied the OCA Application for Rehearing.

6. Venue lies with this Court pursuant to Iowa Code § 17A.19(2), which provides that proceedings for judicial review shall be instituted by filing a petition either in Polk County district court or in the district court in which the petitioner resides or has its principle place of business.

7. The Petitioners intervened jointly in Docket GCU-07-1 and participated as parties to that docket through the preparation of expert testimony, cross-examination of witnesses and the submission of legal briefs. The substantial rights of the Petitioners were prejudiced by the final agency action of the IUB in Docket GCU-07-1, as set forth below.

8. In the final order in Docket GCU-07-1, the IUB approved IPL's application for the construction of the SGS 4 electric generating facility. The approval was given subject to a requirement that IPL increase its renewable sources of electric generating capacity to 1,600 MW by 2028 and co-fire a certain percentage of biomass at SGS 4. The IUB purportedly included these requirements to further the necessary objective of mitigating the negative economic and environmental impacts of carbon dioxide (CO<sub>2</sub>) emissions produced by IPL's electric generating portfolio. The Petitioners had argued that IPL should rely on increased renewable electric generation and demand side management measures *in lieu of* SGS 4. However, no party proposed that IPL should construct SGS 4 *in combination with* co-fired biomass *and* 1,600 MW of renewable energy, or any similar plan. The IUB did not ask the parties to submit evidence or arguments on the merits of this proposal, its relative cost-effectiveness, or its relative efficacy in mitigating the negative economic and environmental impacts of IPL's CO<sub>2</sub> emissions. The electric generation portfolio approved in the final IUB order was fully proposed for the first time in the final order itself.

9. **The Iowa Code provides for judicial relief from a final agency action that is unconstitutional, beyond the authority of the agency or in violation of the law. Iowa Code §§ 17A.19(10)(a)-(b).** The final order of the IUB in Docket GCU-07-1 amounts to an unconstitutional violation of the due process rights of the Petitioners. The Petitioners did not have full and fair opportunity to address the merits of the electric generation portfolio approved by the IUB in its final order. The resource combination of SGS 4, co-fired biomass and 1,600 MW of renewable electric generation was not proposed prior to the final order itself, and the Petitioners did not have adequate prior notice that the IUB intended to consider such a proposal. The resource mix approved by the IUB, taken as a whole, has costs and benefits that are distinct from any of its component parts considered individually. The Petitioners were deprived of any meaningful opportunity to analyze and address these costs and benefits in evidence and arguments for the record. Further, the final order in Docket GCU-07-1 violates the statutory obligations of the IUB under Iowa Code Chapter 476A and Iowa Code § 476.53. The IUB has a general obligation to protect the interests of IPL's electric ratepayers and ensure that a proposed electric resource addition meets all the applicable statutory criteria. The IUB approved an electric generation portfolio in its final order without properly considering the interests of IPL's ratepayers, the relative cost-effectiveness of the entire plan in question, the relative efficacy of that plan in achieving the stated objective of reducing CO<sub>2</sub> emissions, or other criteria set forth by law. The electric generation portfolio ordered by the IUB in Docket GCU-07-1, taken as a whole, was not properly analyzed and considered under the requirements of the law. The result is a final order approving an electric resource mix that risks unreasonable harm to electric ratepayers, that has not been shown to be reasonable in terms of overall cost, and that has not been shown to be a reasonable means to mitigate the negative impacts of IPL's CO<sub>2</sub> emissions.

10. **The Iowa Code provides for judicial relief from a final agency action that is based on a determination of fact that is not supported by substantial evidence in the record when that record is viewed as a whole, that fails to consider a relevant and important matter that a rational decision maker would have considered, or that is the product of reasoning so illogical as to render the action wholly irrational. Iowa Code § 17A.19(10)(f),(i)-(j).** The final order in Docket GCU-07-1 is based on determinations of fact not supported by substantial evidence in the record when that record is viewed as a whole. In particular, the final IUB order is based on a determination that the most appropriate way to address the negative economic and environmental impacts of IPL's CO<sub>2</sub> emissions would be to construct SGS 4, co-fire biomass at SGS 4 and require 1,600 MW of renewable electric generation by 2028. There is no basis in the record to support this determination. The final IUB order does not address the relative efficacy of this resource mix in reducing CO<sub>2</sub> emissions, does not adequately address the relative cost of the resource mix as a whole, and implausibly states that if the biomass requirement is technically achievable then it can also be assumed to be reasonable in cost. The order does not quantify the CO<sub>2</sub> reductions that would be achieved or what level of CO<sub>2</sub> reductions are deemed sufficient. This is a wholly inadequate basis to justify the selection of this particular resource mix, yet the IUB bases its approval of SGS 4 on the assumption that IPL's CO<sub>2</sub> emissions will be effectively and sufficiently mitigated by the requirements for renewable electric generation and co-firing biomass at SGS 4. Further, the order fails to consider relevant and important matters that a rational decision maker would have considered. Such relevant and important matters include, whether the final IUB order reflects the most cost-effective way to mitigate CO<sub>2</sub> emissions, whether the final IUB order will reduce IPL's CO<sub>2</sub> emissions in sufficient quantity to adequately mitigate negative impacts, and what overall impact the mitigation strategy chosen by the IUB

will have on emissions and on IPL ratepayers. The IUB essentially chose SGS 4 in a vacuum that ignored the full risk of CO<sub>2</sub> emissions, and then tacked on some additional generation resources to mitigate CO<sub>2</sub> emissions, without regard to cost or efficacy. A rational decision maker would have considered these matters in full and developed a record with input from the parties to ensure that reasonable energy and capacity needs are met while achieving maximum mitigation of IPL's CO<sub>2</sub> emissions at minimum cost – even if doing so would mean downsizing, delaying or canceling plans for SGS 4. These factors all contribute to a final order that is the product of reasoning so illogical as to render the IUB's final action in this matter wholly irrational. Instead of simply requiring that IPL begin with a proposal for the best available resource options that also sufficiently mitigate the negative impacts of IPL's CO<sub>2</sub> emissions, the IUB first approved a heavily CO<sub>2</sub>-intensive resource, and then on its own developed an ad hoc proposal for renewable generation resources to mitigate CO<sub>2</sub> emissions, with little or no basis of evidentiary support for that proposal. There is no inherent logic to the process used by the IUB in reaching its final decision. As a result, the IUB approved SGS 4 while neglecting to perform a rational, comparative analysis that quantifies and analyzes the costs of CO<sub>2</sub> mitigation that the IUB recognizes will be necessary, particularly if a large coal-fired generating facility is added to IPL's electric fleet. This undermines the fundamental rationale for the IUB determination that SGS 4, as approved in the final IUB order, is a reasonable and necessary resource addition for IPL and its ratepayers.

11. **The Iowa Code provides for judicial relief from a final agency action that is unreasonable, arbitrary, capricious or an abuse of discretion. Iowa Code § 17A.19(10)(n).** The final IUB order is unreasonable, arbitrary, capricious and an abuse of agency discretion.

The final order is based, in part, on determinations that resource additions are needed to meet the

energy and capacity needs of IPL's electric customers and that those resource additions need to be calibrated to mitigate the negative economic and environmental impacts of CO<sub>2</sub> emissions from IPL's electric generating portfolio. The IUB recognized both the environmental harm of CO<sub>2</sub> emissions due to climate change and the economic harm that will accrue to utility ratepayers and the Iowa economy if those emissions are not reduced from current levels. With these fundamental considerations in mind, the IUB made an entirely arbitrary determination to approve an electric generation portfolio that includes SGS 4, 1,600 MW of renewable energy and co-firing biomass at SGS 4. While the IUB approved SGS 4 based on an assumption that 1,600 MW of renewable energy and co-firing biomass at SGS 4 would be sufficient to mitigate IPL's CO<sub>2</sub> emissions, there is no evidence in the record to support that conclusion, or to indicate that the resource mix chosen is reasonably cost-effective or a reasonable and effective means to address CO<sub>2</sub> emissions. On the contrary, evidence submitted for the record in a subsequent IUB docket indicates that IPL could more cost effectively meet energy and capacity needs and mitigate CO<sub>2</sub> emissions if no coal plant were built. *In re: Interstate Power and Light Company*, IUB Docket RPU-08-1 (Final Decision and Order issued February 13, 2009). The IUB had an obligation to perform a rational and reasonable analysis and to allow the Petitioners and other parties to submit relevant evidence and arguments addressing any proposal specifically under consideration. Instead, the IUB arbitrarily chose to approve a resource mix that was outlined for the first time in the final order. Even after the Final Decision and Order was issued on August 25, 2008, the IUB still had ample opportunity to address this discrepancy through the Application for Rehearing filed by the Office of Consumer Advocate and joined in by the Petitioners. The IUB took four months to consider this Application, but did not consider or ask the parties to submit any evidence or arguments addressing the merits of the specific resource

portfolio approved in the final IUB order. The final decision of the IUB was not supported by the agency record and is therefore an unreasonable, arbitrary and capricious abuse of agency discretion.

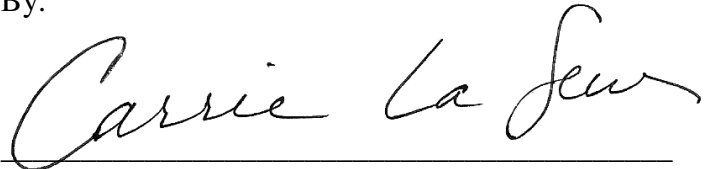
WHEREFORE the Petitioners respectfully request that the Court review the final agency action of the IUB in Docket No. GCU-07-1, reverse and vacate that action, and remand the case to the IUB with directions to correct the errors specified in this Petition. The Petitioners further request such other and further relief and the Court deems appropriate, including the assessment of costs in this matter to the Respondent IUB.

Dated this 26<sup>th</sup> day of February 2009.

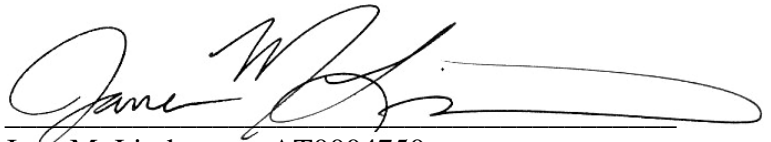
Respectfully submitted,

PLAINS JUSTICE

By:



Carrie L. LaSeur LI0018855



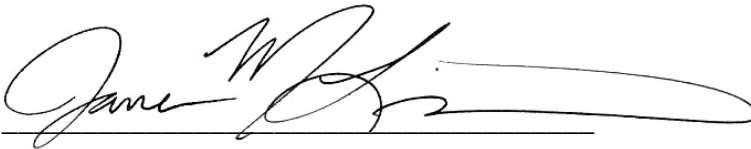
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ATTORNEYS FOR PETITIONERS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing instrument was served via U.S. mail on the 26<sup>th</sup> day of February 2009 on all parties named in this Petition for Judicial Review and all parties of record in Iowa Utilities Board Docket No. GCU-07-1, in accordance with Iowa Code § 17A.19(2) and the Iowa Rules of Civil Procedure.

By:  \_\_\_\_\_

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