STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. RPU-2009-0003

FINAL DECISION AND ORDER

(Issued December 14, 2009)

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I. PROCEDURAL HISTORY

On March 25, 2009, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) an application for determination of advance ratemaking principles for up to 1,001 MW of new wind generation to be built in Iowa from 2009 through 2012. The project is called the Wind VII Iowa Project (Wind VII). This is MidAmerican's seventh request for ratemaking principles for wind generation. The other six requests were approved in these dockets: Docket No. RPU-03-1, Docket No. RPU-04-3, Docket No. RPU-05-4, Docket No. RPU-07-2, Docket No. RPU-08-2, and Docket No. RPU-08-4. The prior requests ranged in size from 50 MW to 540 MW.

Ratemaking principles proceedings are conducted pursuant to Iowa Code § 476.53 (2009). Section 476.53 was enacted during the 2001 legislative session as part of House File 577. This section provides that when eligible new electric generation is constructed by a rate-regulated public utility, the Board, upon request, shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the new facility are included in electric rates. Wind VII, as proposed by MidAmerican, falls within the purview of § 476.53. Alternate energy production facilities, such as these wind facilities, were added to the list of eligible facilities for ratemaking principles by House File 391, enacted during the 2003 legislative session. Section 476.53(1) states that the General Assembly's intent in enacting ratemaking principles legislation is to "attract

the development of electric power generating and transmission facilities within the state ... ."

Accompanying MidAmerican's request for advance ratemaking principles was a Stipulation and Agreement (Settlement) between MidAmerican and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). The Settlement addressed 12 ratemaking principles, including cost cap and return on equity (ROE), and stated that MidAmerican had met the two conditions precedent (energy efficiency plan in effect and reasonableness of the proposed alternative) for receiving ratemaking principles.

The Board docketed the case on April 9, 2009. MidAmerican requested expedited treatment in order to be able to take full advantage of the federal production tax credit (PTC). The Board in its order set an intervention deadline of April 17, 2009; the Board said it would determine what additional process or procedures, such as a hearing, would be necessary to complete the review after the intervention deadline passed. The order also granted Interstate Power and Light Company's (IPL) petition to intervene.

NextEra Energy Resources, LLC (NextEra), filed a petition to intervene and objected to the Settlement on April 17, 2009. The Board granted the petition, set a procedural schedule, and required MidAmerican and Consumer Advocate to file additional information by order issued April 22, 2009. The schedule was subsequently modified by order issued April 29, 2009, which granted a joint motion

filed by all parties to modify the procedural schedule. The hearing was continued from May 18, 2009, to June 22, 2009.

MidAmerican and NextEra submitted prefiled testimony. Consumer Advocate filed testimony to address the Board's question regarding justification for the ROE in the Settlement. MidAmerican also addressed this question, as well as questions regarding system reliability and resource planning. IPL did not file prefiled testimony. On June 5, 2009, MidAmerican, Consumer Advocate, and NextEra filed rebuttal testimony.

On June 9, 2009, NextEra filed a motion to extend the procedural schedule and continue the hearing, which was set to begin on June 22, 2009. Also on June 9, MidAmerican filed a motion to strike certain portions of NextEra's rebuttal testimony. On June 12, 2009, the Board issued an order denying the motion to strike, stating that while the issues addressed in rebuttal were issues that NextEra did not initially address in its original testimony, they were all issues directly or indirectly tied to the ratemaking principles MidAmerican requested and most were issues the Board intended to raise at hearing. The Board noted that because of the tight time constraints in the procedural schedule, limited discovery was available prior to the time direct testimony was due, so a relatively liberal scope of rebuttal testimony was appropriate.

The Board said that discovery issues between MidAmerican and NextEra appeared to be at least in part responsible for NextEra's need to file expanded rebuttal testimony. While the motion to strike was denied, the Board continued the

hearing until August 10, 2009, and allowed the parties an opportunity to respond to each other's rebuttal testimony. Final testimony was to be filed on July 17, 2009. The Board also set a deadline of July 21, 2009, for any prehearing motions; none were filed. The Board also noted in that order that if MidAmerican had a shovel-ready project, it could file a separate ratemaking principle application or carve-out the project from the 1,001 MW total and the Board could rule on the smaller project in a shorter time frame.

Because of ongoing discovery difficulties between the parties, the Board's order required reports on discovery issues. The second and last report, filed on June 26, 2009, indicated that the parties had reached agreement as to what materials would be produced for discovery. No motions to compel were filed.

On June 26, 2009, the Board issued an order granting intervention to Iberdrola Renewable, Inc. (Iberdrola). The petition was filed out of time, but Iberdrola said it was not aware its interests were impacted until it was notified that proprietary information it had provided to MidAmerican in response to a request for proposals was the subject of a data request. NextEra asked that Iberdrola's intervention be limited to discovery matters, but the Board declined to limit the intervention, stating it was difficult to draw a bright line as to when issues are strictly related to discovery and proprietary information and when broader competitive issues come into play. The Board noted that competitive issues that impact Iberdrola might be considered at hearing and Iberdrola should be allowed to cross-examine witnesses and address competitive issues in its brief. Iberdrola did not submit prefiled direct testimony.

MidAmerican and NextEra filed final testimony on July 17, 2009. MidAmerican and NextEra each filed prehearing briefs on July 21, 2009; Consumer Advocate and Iberdrola did not file prehearing briefs.

A hearing was held beginning August 10, 2009. After the hearing, all parties had the opportunity to submit initial and reply briefs.

Although Iowa Code § 476.53(3)"d" allows the ratemaking principles proceeding to be combined with a proceeding for issuance of a certificate under Iowa Code chapter 476A, the two proceedings were not combined. MidAmerican noted in its request for ratemaking principles that it obtained a declaratory order in Docket No. DRU-03-3 (issued June 6, 2003) indicating that a 476A certificate was not necessary for another wind project when it was configured such that less than 25 MW of capacity was connected to each gathering line. Iowa Code §§ 476A.1 and 476A.2. MidAmerican believed all the relevant facts and law with respect to Wind VII are indistinguishable from those on which the declaratory order in Docket No. DRU-03-3 were based. MidAmerican concluded that it is reasonable to rely upon the declaratory ruling and that no 476A certificate is necessary for Wind VII.

II. INTRODUCTION

This ratemaking principles case raised issues that have not been addressed in prior ratemaking proceedings. NextEra and Iberdrola are independent wholesale power producers. They are not regulated by the Board under Iowa Code chapter 476. Independent power producers sell the electricity they generate into the

wholesale market, often pursuant to a long-term contract with a wholesale customer, and there are no limits or floors on their equity returns. Independent power producers have no obligation to serve retail customers.

MidAmerican is a rate-regulated electric utility subject to the Board's regulatory authority pursuant to chapter 476. MidAmerican has an obligation to serve all retail electric customers in its exclusive electric service territory. Iowa Code §§ 476.22 through 476.26. While MidAmerican also sells electric power it generates on the wholesale market, the Board determines how those wholesale revenues are shared with customers and the Board can set MidAmerican's allowed ROE. Rate regulation and the obligation to provide reasonable and adequate service to its retail customers set MidAmerican apart from NextEra and Iberdrola, although the companies compete in the wholesale market. Pursuant to Iowa Code chapter 476, the Board's primary responsibility with respect to electric utility regulation is to ensure that an electric utility such as MidAmerican provides reasonably adequate service and facilities to its retail customers at just and reasonable rates. Iowa Code §§ 476.6 and 476.8.

NextEra and Iberdrola contend that advance ratemaking principles should not be awarded to MidAmerican for Wind VII. They argue Wind VII is not reasonable when compared to other feasible alternatives. Both NextEra and Iberdrola would like to sell renewable energy to MidAmerican, either through a purchase power agreement (PPA) or by developing and selling a wind facility to MidAmerican. Ratemaking principles are not available for PPAs pursuant to the terms of § 476.53.

Because MidAmerican does not project a need for capacity to serve its retail customers until 2019, NextEra and Iberdrola view Wind VII solely as a vehicle for MidAmerican to increase its wholesale sales through the use of ratemaking principles, providing MidAmerican a competitive advantage in the wholesale market. NextEra and Iberdrola do not accept as sufficient justification the benefits of Wind VII for retail customers cited by MidAmerican, such as diversity of supply, access to relatively inexpensive energy, and environmental benefits, particularly with impending carbon regulation. NextEra and Iberdrola argue that the award of ratemaking principles would impose risks on MidAmerican's ratepayers that should instead be shouldered by shareholders.

MidAmerican and the intervenors appear to view the purpose and benefits of Wind VII differently, perhaps because of the differing responsibilities of the companies. MidAmerican's primary responsibility as a rate-regulated utility is to provide reasonable and adequate service at just and reasonable rates to retail customers; its participation in the wholesale market is secondary and the proceeds from wholesale sales are used, at least in part, to benefit Iowa retail customers. NextEra's and Iberdrola's primary focus in Iowa is the wholesale market.

MidAmerican is also in a unique situation among Iowa's rate-regulated utilities because its base electric rates are essentially fixed until the end of 2013. MidAmerican has been operating under a so-called rate freeze and revenue sharing agreement approved by the Board since 1996 (with some subsequent modifications).

As will be discussed later, the rate freeze impacts the potential costs to ratepayers of Wind VII and effectively reduces the ROE agreed upon in the Settlement.

MidAmerican and Consumer Advocate entered into a Settlement agreeing to 12 ratemaking principles and stipulating that the two conditions precedent to receiving ratemaking principles, which will be discussed in the following section, have been satisfied. Consumer Advocate filed testimony supporting the Settlement and outlining Wind VII's benefits to MidAmerican's retail customers. Consumer Advocate acts as attorney for and represents all consumers generally and the public generally in all proceedings before the Board. Iowa Code § 475A.2(2). Consumer Advocate does not represent any consumer or member of the public individually.

III. CONDITIONS PRECEDENT

Before determining applicable ratemaking principles for Wind VII, the Board must make two findings pursuant to Iowa Code § 476.53(3)"c." These are conditions precedent to a determination of ratemaking principles because if the Board cannot make these findings, the utility cannot receive ratemaking principles. First, the Board must determine that the public utility has in effect a Board-approved energy efficiency plan. Second, the utility must demonstrate that it has considered other sources for long-term supply and that the facility is reasonable when compared to other feasible alternative sources of supply.

1. Energy Efficiency Plan

With respect to the first condition precedent, MidAmerican has in effect a Board-approved energy efficiency plan. MidAmerican witness Stevens provided testimony regarding MidAmerican's current energy efficiency plan, identified as Docket No. EEP-08-2. The Board approved the plan on March 9, 2009. Mr. Stevens detailed the success of MidAmerican's plan, which includes reducing customer demand by 282 MW and customer energy usage by 1,082,000 MWh. (Tr. 656).

MidAmerican has a Board-approved energy efficiency plan and the Board has issued no orders finding that MidAmerican is not in compliance with any Board orders in its EEP docket. The first condition precedent is satisfied.

2. Reasonableness of the Facility

The second condition precedent is whether a utility has considered other long-term sources of supply and shown that the facility is reasonable when compared to other feasible supply sources. Iowa Code § 476.53(4)"c"(2). In making this determination, the Board must look at the need for the facility, that is, whether the facility is a reasonable alternative to meet one of the statute's goals, "to attract the development of electric power generating ... facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers ... ."

If a facility does not meet the needs of Iowa consumers, it is not eligible for ratemaking principles treatment. The Board addressed the meaning of this statement in a previous ratemaking principles proceeding for a wind facility with a nameplate capacity of up to 554 MW. The Board said:

> While MidAmerican has not demonstrated an immediate need for the wind facility (or any other generation facility) in the sense that it will be unable to meet customers' demand in 2007-2009 without the facility, the Board does not believe a determination of need requires a showing that the lights will go out if the facility is not built. That would not be a prudent planning criterion.

MidAmerican Energy Company, "Order Approving Stipulation and Agreement," Docket No. RPU-05-4 (April 18, 2006), p. 6. The issue of whether a proposed facility is reasonable was first addressed in Docket No. RPU-01-9. In its final order, the Board said:

> The ratemaking principles statute does not refer to "least-cost" alternatives. Instead, Iowa Code § 476.53(3)"c"(2) only requires that the "rate-regulated public utility has demonstrated to the board that it has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply." (Emphasis added). In a ratemaking principles proceeding, the Board does not have to conduct the least-cost analysis formerly required in a siting proceeding involving a public utility. The proposed facility need only be reasonable when compared to other alternative sources of supply.
>
> While cost remains a factor, elimination of the least-cost requirement is consistent with the intent of the ratemaking principles statute, which is to attract electric power generating facilities to this state. Elimination of the least-cost requirement now allows non-cost factors to play a role in the Board's decision that a public utility has satisfied this requirement as a condition precedent to receiving ratemaking principles. These non-cost factors, such as security and reliability, could in some cases be determinative.

Docket No. RPU-01-9, "Order," May 29, 2002, p. 6.

The Board will address three sub-issues that affect the parties' overall recommendation on whether the facility is reasonable. The three sub-issues are the need for the project, whether MidAmerican appropriately considered feasible alternatives, and NextEra's and MidAmerican's cost-benefit estimates. Although cost-benefit estimates relate to consideration of feasible alternatives, the Board will address the cost-benefit estimates separately. A fourth sub-issue, whether Wind VII presents any concerns regarding the adequacy, reliability, and operating flexibility of the transmission system from either a local or regional standpoint, is uncontested. No party disagreed with MidAmerican's testimony that Wind VII will present no transmission reliability concerns, particularly since MidAmerican is becoming a member of the Midwest Independent Transmission System Operator, Inc. (MISO). MISO can accommodate additional wind generation better than MidAmerican could have if it continued to operate its own system. Also, MISO's ancillary services market provides MidAmerican with more efficient and potentially less costly alternatives with respect to supplying reserves. While some transmission upgrades may be necessary at Wind VII sites, the Board does not have transmission reliability concerns relevant to this docket because MidAmerican will have to build required upgrades before additional wind is allowed to fully interconnect to the existing electrical network. (Ex. 47; Tr. 921-22).

a. Need for the Project

MidAmerican Position

MidAmerican acknowledged that it does not forecast a need for additional capacity to serve retail customers until 2019, but argued that the need for added wind generation cannot be measured solely by a generation capacity analysis. (Tr. 100-02). MidAmerican cited numerous benefits to its customers and the public generally from Wind VII.

First, MidAmerican said that Wind VII will help it meet environmental compliance needs. Because wind is a zero emission resource that reduces Iowa's carbon footprint and reliance on coal-fired generation, Wind VII is likely to assist in meeting future federal carbon legislation or regulations. MidAmerican noted that regulations to reduce other emissions (e.g., nitrogen oxides, mercury, and sulfur dioxide) are also likely and Wind VII will better enable MidAmerican to comply with such provisions of law. (Tr. 25-26; 46-47; 70-71; 100-02; 188-205; 701-02).

Second, MidAmerican stated energy from its wind generation, including Wind VII, is and will be its lowest cost energy and will be allocated to retail customers. (Tr. 67; 107; 616).

Third, MidAmerican's projections showed that Wind VII will delay additional capacity needs by one year, from 2019 to 2020. (Tr. 71; 606-07).

Fourth, MidAmerican said that wind generation is a reasonable choice for MidAmerican's customers due to the Settlement negotiated with Consumer Advocate, the rate freeze in place through the end of 2013 and current wind turbine

prices. Also, MidAmerican noted that it has agreed to use the revenues from PTCs, carbon credits, renewable energy credits, and wholesale revenues (over the depreciable life of Wind VII) to offset wind generation costs.

Fifth, MidAmerican argued that Wind VII will increase generation fuel diversity and reduce exposure to fossil fuel price volatility.

Sixth, MidAmerican said Wind VII contributes to economic development in Iowa and aids Iowa's and Governor Culver's renewable energy and greenhouse gas reduction goals.

Particularly with respect to the probability of federal carbon restrictions and federal or state renewable portfolio standards, MidAmerican said that there are compelling reasons for it to expand its wind generation resources, and that owning wind generation is a valuable means of compliance with new emission and carbon regulations. Unlike a PPA, the benefits from self-built and owned generation like Wind VII are for the life of the facility, not merely the term of a PPA. MidAmerican pointed out that NextEra and its consultant agreed that in a carbon-constrained environment, MidAmerican might find it economical to retire carbon-emitting resources. (Tr. 46-47; 100-01; 197-98; 701-02).

MidAmerican argued that NextEra focused too much on capacity needs in arguing that Wind VII is not needed. MidAmerican pointed out that the Board in Docket No. RPU-05-4, which dealt with ratemaking principles for Wind III, decided that prudent utility planning requires more than focus on immediate need. MidAmerican said that non-cost factors are important and that NextEra's approach is

narrow and shortsighted and would prohibit MidAmerican from acting now in preparation for likely legislation that will restrict or discourage carbon emissions.

While NextEra criticized MidAmerican for not identifying any coal facilities that would be retired if Wind VII were built, MidAmerican said its analysis shows a reduction in total emissions from its system due to the addition of Wind VII because its reliance on coal-fired generation would be reduced by 1.7 percent. (Tr. 179-80; 193-94; 611-12). MidAmerican also noted emission rates for other pollutants would be reduced. (Tr. 194).

MidAmerican pointed out what it viewed as an inconsistency in NextEra's position. On the one hand, NextEra argued that Wind VII was not needed. On the other hand, NextEra urged the Board to require MidAmerican to consider NextEra's alternative PPA.

Consumer Advocate Position

Consumer Advocate argued that meeting peak demands is not the only reason for building wind generation and that environmental compliance is a key benefit because Wind VII will be a zero emissions facility. Consumer Advocate noted that while the dollar cost of future carbon and renewable portfolio standard (RPS) compliance are not known, the compliance costs to retail customers will likely be enormous, with one estimate showing that passage of the proposed Waxman-Markey bill could increase MidAmerican's retail customers' electric bills by 25 percent. (Ex. 215). Consumer Advocate said building Wind VII between 2009 and 2012 is reasonable because after carbon or RPS legislation is passed, costs for wind

turbines, project sites, labor, and other wind-related expenses could increase dramatically. (Tr. 1036). Consumer Advocate pointed out that NextEra itself is seeking to take advantage of opportunities before passage of legislation, and rejecting Wind VII would effectively deny MidAmerican's customers the benefits of these possible bargains. (Tr. 1242-45).

NextEra Position

NextEra argued that MidAmerican's customers do not need Wind VII to meet any immediate capacity requirements, noting that MidAmerican itself said it does not need to add generating capacity to serve retail customers until 2019. (Tr. 659). NextEra maintained that this capacity shortfall was too far in the future to meet the definition of need. NextEra said any economic or environmental benefits could be achieved through generation by another provider.

NextEra also argued that Wind VII was not needed to meet MidAmerican's energy needs, pointing out that in recent Federal Energy Regulatory Commission (FERC) filings, MidAmerican's reports show that it sells about 40 percent of its generation to non-requirements or non-retail customers; given that 40 percent of MidAmerican's energy is sold at wholesale, there is no current retail need for additional energy. (Tr. 1066).

Because MidAmerican already has substantial wind generation, NextEra argued that these resources can be used to meet future environmental standards (which at this point are speculative, NextEra said) and that MidAmerican has complied with Iowa's RPS requirements contained in Iowa Code § 476.43. NextEra

said Wind VII is only designed to increase wholesale sales with additional generation subsidized by MidAmerican's ratepayers, and that MidAmerican's ratepayers should not be required to pay for what they do not need.

Iberdrola Position

Iberdrola viewed Wind VII as a vehicle for MidAmerican's ratepayers to support MidAmerican's expansion into the wholesale market unless MidAmerican committed in this docket to federal mandates, reduced fossil-fuel generation, and retired fossil-fuel plants. Iberdrola argued that § 476.53 was not intended to meet a projected capacity shortfall that is ten years away. Because MidAmerican bases its arguments for the need for Wind VII on potential carbon legislation, Iberdrola said MidAmerican should be required to make specific commitments to replace fossil fuel generation with this wind generation.

Board Discussion

Section 476.53 does not specifically require consideration of the "capacity need" or "energy need" for the Board to establish advance ratemaking principles for a proposed facility. As quoted in the introduction to the discussion on reasonableness of the facility, the Board in previous ratemaking principle proceedings has considered whether there are underlying needs and reasons to add generation to a utility's generation resource portfolio other than energy and capacity needs, and the Board believes that public policy factors and noncost factors play a role in determining need for a proposed generation project.

The determination of need for proposed new generation may vary among different utilities because of their individual circumstances and the type of generation that is being built. For example, a coal plant likely could not be justified as promoting environmental goals like zero emission generation (unless technology advances). A coal facility would likely have to be justified based on the capacity or energy needs of the utility's retail customers. Here, MidAmerican does not have an immediate need for additional capacity and it probably could not establish a near-term need for a new coal plant, but Wind VII meets its needs for compliance with environmental regulations (including any future carbon emission requirements), fuel diversity, and dispatch of less-expensive energy to retail customers. Wind VII also promotes economic development and Iowa's energy policy, two benefits that do not stop at MidAmerican's service territory boundaries.

The Board recognizes that renewable energy projects built by independent power producers such as NextEra and Iberdrola also provide economic and public policy benefits. However, MidAmerican is statutorily obligated to plan prudently by providing reasonable and adequate service to its retail customers at just and reasonable rates. Wind VII constitutes prudent planning to meet this continuing obligation. The Board does not believe MidAmerican should be required to wait until carbon legislation is passed to implement a compliance strategy, particularly when Wind VII provides other benefits to retail customers and the public generally, such as fuel diversity and a reduction in MidAmerican's total emissions. These benefits will accrue even if no carbon legislation is passed, but it is important to point out those

utilities that do not have significant amounts of low-carbon generation will face increased risks in future years, if carbon-constraining legislation or rules are passed.

MidAmerican has established the need for the facility and the benefits to retail customers. The next sub-issue to consider with respect to the second condition precedent is whether Wind VII is a feasible alternative.

b. Feasible Alternatives

MidAmerican Position

MidAmerican compared Wind VII with NextEra's PPA alternative and said the comparison demonstrated Wind VII is reasonable. In fact, MidAmerican said its analysis showed that over the life of Wind VII, the associated revenues should offset all the projected costs, meaning that there would be no net cost to ratepayers. (Tr. 289-93).

MidAmerican explained that the NextEra PPA alternative posed significant risk, such as construction risk, operation and maintenance risk, and net capacity factor risk. (Tr. 826-29). In addition, MidAmerican said that rating agencies would impute a substantive cost to MidAmerican if it selected the NextEra PPA because of the debt-like character of a PPA. MidAmerican also said there were other issues with the NextEra PPA, such as lack of performance standards, financial assurances of performance, term termination, and placement of all transmission risks, including obtaining transmission service, on MidAmerican.

MidAmerican pointed out that there appears to be agreement among the parties that wind generation is a viable option at this time in part because fossil-fuel

generation is not needed until at least 2019, with the real disagreement focusing on a comparison of Wind VII with NextEra's PPA alternative. MidAmerican noted that § 476.53 does not require a comparison to "all" feasible sources of supply, but only to feasible alternative sources of supply. MidAmerican argued that NextEra simply does not like the result of its comparison, which demonstrates the reasonableness of Wind VII when compared to other feasible sources of supply, including NextEra's alternative.

Consumer Advocate Position

Consumer Advocate pointed out that in compliance with previous Board ratemaking principles orders, MidAmerican analyzed generation options ranging from traditional fossil-fuel generation to non-traditional generation to meet its projected energy and capacity needs. Consumer Advocate said that MidAmerican appropriately concluded that additional peak-load capacity is not needed until 2019, based on current load forecasts. (Tr. 606-14). Consumer Advocate stated that fossil-fuel plants were also rejected for other reasons, including initial cost, impact on emissions, and the desirability to reduce MidAmerican's carbon footprint, while other renewable resources were rejected because those technologies are less economically-attractive than wind.

Consumer Advocate stated that while MidAmerican did not rely on formal competitive bidding for Wind VII, it did seek bids from turbine manufacturers and project developers and used the bids to develop its price caps. (Tr. 851-53).

Consumer Advocate argued that while § 476.53 allows for competitive bidding to satisfy the second condition precedent, it does not require competitive bidding. Consumer Advocate also cited MidAmerican's extensive knowledge, experience, and expertise in building nearly 1,300 MW of wind generation as providing support for a finding that MidAmerican has satisfied the condition. Finally, Consumer Advocate said that the cost of the NextEra PPA was shown to be greater than the cost of energy under Wind VII. (Tr. 328).

NextEra Position

NextEra argued that MidAmerican did not comply with prior Board orders in its ratemaking principles cases to provide a comprehensive comparison of Wind VII with other alternatives, and that MidAmerican admitted it did not compare any wind resource proposals and possibilities other than Wind VII, at least until NextEra intervened in the case. (Tr. 839-40). NextEra said its alternative, which combines asset sales of two wind farms (one currently operating and one in development) and PPAs, would provide MidAmerican with less risk.

NextEra argued that MidAmerican did not do a fair comparison of Wind VII with its PPA alternative because MidAmerican did not engage in commercial negotiations with NextEra but rather obtained a sample NextEra PPA through discovery. (Tr. 1150-53). NextEra said this PPA did not represent its last, best offer and that MidAmerican failed to satisfy its statutory obligation to compare feasible alternatives.

Iberdrola Position

Iberdrola maintained that MidAmerican failed to compare Wind VII to other wind resources, including the NextEra alternative, and thereby failed to meet the statutory mandate. Iberdrola said MidAmerican's only effort at statutory compliance was a cursory gesture at competitive bidding and that MidAmerican has no intention of acquiring resources it would not own. Iberdrola argued that if ratemaking principles are awarded, MidAmerican's ratepayers will bear the risk if Wind VII does not pay for itself, as projected by MidAmerican, and that PPAs can be used to create a much more favorable risk profile for ratepayers. (Ex. 46). Iberdrola asked that MidAmerican be required to obtain at least a portion of the requested 1,001 MW from a PPA to address concerns about discrimination against non-utility generation and competitive impacts or effects.

Board Discussion

NextEra and Iberdrola both criticized MidAmerican for not conducting a competitive bidding process that included other sources of wind power, including wind PPAs such as those offered by NextEra. NextEra and Iberdrola argued that such a competitive bidding process is required by Iowa Code § 476.53. It is not. Before determining what ratemaking principles to apply, Iowa Code § 476.53(4)"c"(2) requires that the Board must make the finding that:

> The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility, lease, or cogeneration pilot project facility is reasonable when compared to other feasible alternative sources of supply.

> The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility, energy sales agreement, or lease is a reasonable alternative to meet its electric supply needs.

(Emphasis added). The statute provides that a utility may establish reasonableness through a competitive bidding process, but is not required to do so. Also, MidAmerican indicated that it engaged in a competitive bidding process with turbine manufacturers and wind developers, and the information gained from that process was used to develop MidAmerican's "Cost and Term Cap" ratemaking principle. (Tr. 851-53).

In arguing that a competitive bidding process is required, NextEra and Iberdrola imply that MidAmerican must demonstrate that its facility is the least cost alternative. That implication is incorrect. The standard is that the facility is reasonable, not least cost. Reasonable can be taken to mean not unreasonable when compared to other feasible alternatives, which implies a certain degree of latitude. This is the comparison the statute requires, not a determination of the least cost alternative.

NextEra compared its proposed alternative with Wind VII in terms of costs and risks. Regarding costs, NextEra presented a comparative cost analysis which showed Wind VII as costing significantly more than NextEra's proposed alternative. (Tr. 1077-82; Ex. 205). However, MidAmerican noted that NextEra's cost analyses for Wind VII are erroneously based on the long-term wind investment cost used in MidAmerican's long-term resource planning process, rather than the more recent

near-term wind investment cost estimates used in determining MidAmerican's cost caps; also, the cost analyses for NextEra's proposed alternative do not include transmission costs whereas MidAmerican's estimates do. (Tr. 668-70). Transmission costs are an important cost factor when delivering wind generation from locations that are not located in the vicinity of major load centers.

In response to NextEra, MidAmerican presented an economic analysis that compares a NextEra PPA in 2010 with the revenue requirement for a Wind VII Iowa facility with an investment cost equal to the 2010 Cost Cap (Tr. 315-23—revised in Tr. 326-37). The analysis assumes the same transmission costs for both alternatives, and includes a cost estimate for the effect of the PPA on MidAmerican's capital structure. This analysis provides support for Wind VII as a reasonable option.

MidAmerican devoted much of its initial brief to a comparison of Wind VII with the NextEra alternative, implying that § 476.53 requires a utility to look at only two alternatives, its own and one other. This is too limited a reading, but MidAmerican in fact looked at various alternatives and filed a resource plan that compared Wind VII to various types of generation. MidAmerican also conducted a competitive bidding process with turbine manufacturers and wind developers. MidAmerican compared Wind VII with several alternatives.

Next Era complained that the PPA it submitted in response to its discovery request was not its last, best offer. However, it is the only offer in the record and it would not be reasonable to require MidAmerican to compare Wind VII to any possible negotiable permutation that NextEra might agree to in contract talks. Further, while

many terms of an offer may not have been the "last best," there is no reason in the record to believe that the figures provided by NextEra to calculate cost would have changed. This is bolstered by the fact that NextEra used these numbers in performing its own cost analysis. Before making a final determination of reasonableness, the Board will examine the cost-benefit estimates in more detail.

c. Cost-benefit Estimates and Reasonableness

MidAmerican Position

MidAmerican said it established the cost-effectiveness of Wind VII from many perspectives. Given MidAmerican's history of developing and operating multiple wind projects and bringing them in within the cost caps, and with operations and maintenance costs below projected levels, MidAmerican maintained it had the expertise to determine what constitutes a reasonable price for Wind VII. (Tr. 817-21). In addition, the competitive bidding process used with wind turbine vendors and developers provided an independent basis of support for MidAmerican's cost estimates. MidAmerican noted that the NextEra alternative proposal reinforced the reasonableness of Wind VII.

The intervenors argued that there was no proof that Wind VII would pay for itself over the life of the project, but MidAmerican argued that when NextEra corrected a flaw in its model, the results undermined NextEra's conclusion that Wind VII would not pay for itself. (Tr. 1356-57; Corrected Stoddard late-filed surrebuttal testimony, p. 8). Even using NextEra's own analysis of market prices, MidAmerican said that Wind VII is a reasonable alternative and carbon-free generation would be

available to MidAmerican's customers at a low cost. If a slightly less pessimistic scenario is used, MidAmerican stated the analysis finds that Wind VII is financially beneficial to customers.

MidAmerican pointed out that while NextEra used the conservative carbon price adopted by MidAmerican in its analysis, NextEra chose to update projected wholesale prices by incorporating the recession-driven current prices, but failed to update to reflect a higher cost of carbon. MidAmerican said this selective updating undermines NextEra's analysis.

Consumer Advocate Position

Consumer Advocate noted that MidAmerican analyzed the cost difference between the NextEra PPA and MidAmerican's self-build option, and found that the cost of NextEra's PPA option was about 10 percent higher than the cost MidAmerican's customers would pay under Wind VII; also, this analysis did not include the cost of energy MidAmerican's retail customers would pay for but never receive due to transmission constraints (typically a purchaser under a PPA must pay for the energy it has contracted for, even if it is not delivered due to the inability to put it into the grid because of congestion). (Tr. 328). Consumer Advocate also pointed out that wind projects have residual values, meaning that a PPA would impose additional costs on MidAmerican. (Tr. 763). Consumer Advocate said that after 20 years with MidAmerican facilities (the term of the NextEra PPA), MidAmerican's customers would continue to receive all capacity and energy benefits even after the facilities are fully depreciated, as well as energy resulting from reuse of the sites.

Consumer Advocate argued that consideration of residual benefits, which are difficult to quantify, supports the reasonableness of Wind VII.

Consumer Advocate agreed with NextEra and Iberdrola that wholesale electricity prices used in MidAmerican's 20-year analysis are higher than current prices. However, Consumer Advocate said their criticism of the prices used in MidAmerican's analysis are overstated because it is unlikely that electricity prices will remain at their current levels for 20 years, and noted that even NextEra expects wholesale electricity prices to rebound in 2012. (Tr. 983). As the economy improves, Consumer Advocate argued, MidAmerican's projected prices are likely to be representative of the 20-year period. (Tr. 1037).

Consumer Advocate also pointed out that MidAmerican's analysis relies on conservative estimates for carbon costs and does not include any of the Wind VII benefits to customers after 20 years. Consumer Advocate said these factors bolster its confidence in MidAmerican's analysis and its selection of Wind VII as a reasonable alternative.

NextEra Position

NextEra contended the revenue streams that MidAmerican projected for Wind VII are outdated, overstated, and irrelevant given current market conditions. For example, NextEra said that MidAmerican's commodity price projections are based on 2008 load projections, and wholesale electricity prices have dropped since then. NextEra argued that if current electricity wholesale prices are used, Wind VII is likely

to impose significant costs on MidAmerican's retail customers. NextEra pointed out that MidAmerican did not update its projections for current market conditions.

Iberdrola Position

Iberdrola said that the evidence cast considerable doubt on whether Wind VII could pay for itself because MidAmerican's 20-year analysis used projected wholesale electricity prices that are higher than current prices. Iberdrola also argued that MidAmerican's rate freeze is not guaranteed to last until 2013 and therefore it is not a certain benefit to ratepayers, meaning that the benefits of Wind VII could be overstated. Iberdrola said that MidAmerican and Consumer Advocate appear to have abandoned trying to justify Wind VII for any reason other than potential carbon legislation, and the Board should pause before approving a multi-billion dollar gamble with ratepayer funds in anticipation of unknown legislative outcomes.

Board Discussion

MidAmerican's two main justifications for Wind VII being a reasonable alternative are: 1) that it would provide MidAmerican and its customers economical carbon-emission-free generation for complying with potential future carbon and RPS requirements; and 2) separate from environmental compliance considerations, the potential long-term revenue benefits from the project will likely offset project costs, such that it is expected to have little, if any, net impact on customer rates. The first justification is based on a combination of qualitative and quantitative analyses that select wind generation over other types of generation. (Tr. 24-29; 33-36; 613-52). The second justification is based on a quantitative analysis that compares the

project's expected costs under the proposed ratemaking principles (including the depreciation term and ROE) versus the project's projected revenue benefits, over 20 years. (Tr. 289-93; 653-55).

NextEra criticized MidAmerican's cost-benefit analysis for being based on a generic 250 MW wind facility without reference to any specific site. The generic site reflects certain expectations about the type of site MidAmerican intends to develop, specifically a site with wind that produces electricity at a projected net capacity factor. MidAmerican's experience in building wind projects within the cost cap and achieving the desired capacity levels gives the Board confidence that MidAmerican will only select sites that are very likely to achieve its goals. (Tr. 818-19).

NextEra and Iberdrola also criticized MidAmerican's cost-benefit analysis for using overstated wholesale electricity prices based on outdated economic information, ignoring current markets and current data. NextEra conducted two alternative forecasts of wholesale electricity prices and revised MidAmerican's cost-benefit analysis for the representative 250 MW portion of Wind VII Iowa, adjusted for NextEra's alternative wholesale electricity price forecasts. Unlike MidAmerican's cost benefit analysis, NextEra's initial version of the analysis showed net cost increases for MidAmerican customers. (Tr. 1354-59). At the hearing, NextEra acknowledged an error in its modeling (Tr. 1382-91; 1423-25; Ex. 45) and agreed to file the corrections as a late-filed exhibit. (Tr. 1426-27).

On August 19, 2009, NextEra filed the corrections, including corrected pages of testimony at Tr. 1354 and Tr. 1356-61. The result is a reduction in the net costs shown in NextEra's analysis. Specifically, NextEra's corrected cost-benefit analysis shows the net impact of the generic Wind VII Iowa facility as ranging between a net cost of $0.003 per kWh and a net benefit of $0.002 per kWh of Wind VII production. Even under the worst case scenario presented by NextEra, negative customer impacts would be small. Thus, the cost-benefit analyses support a finding that Wind VII is reasonable, particularly compared with the NextEra PPA. (Tr. 328). While it may not be necessary in all ratemaking principle cases to compare the proposed facility with a PPA, here the comparison of Wind VII with the NextEra PPA provided additional support for selection of Wind VII as a reasonable alternative.

IV. REASONABLENESS AND IMPACT ON COMPETITION

NextEra and Iberdrola raised two issues regarding Wind VII's impact on competition that will be addressed separately because they relate both to the reasonableness of Wind VII when compared to feasible alternatives and to whether any ratemaking principles should be awarded for Wind VII. First, NextEra and Iberdrola contend the ratemaking principles are unreasonable because the principles shift too much of the risk to MidAmerican's retail utility customers for the benefit of MidAmerican's shareholders, for what is essentially a wholesale generation project. Second, they contend this shifting of risk cross-subsidizes MidAmerican's wholesale generation project, giving MidAmerican an unfair competitive advantage over

independent wholesale generators and having an adverse impact on competition in the wholesale generation market.

1. Whether Awarding Any Ratemaking Principles Is Reasonable

MidAmerican Position

MidAmerican argued that Iowa Code § 476.53, the advance ratemaking principles statute, fundamentally changed Iowa's regulatory policy regarding new electric generation in several ways. First, MidAmerican said the Board's regulatory perspective was changed from an after-the-fact prudence review to a review of forward-looking principles that apply in future rate proceedings. Second, MidAmerican noted the standard the Board applies was overall reasonableness, rather than a least-cost competitive bid standard. Third, MidAmerican pointed out the statute only applies to utility-owned generation, not PPAs. Fourth, under § 476.53(4)"b," MidAmerican said the Board is not limited to traditional ratemaking or cost recovery mechanisms.

Consumer Advocate Position

Consumer Advocate stated the proposed ratemaking principles will allow MidAmerican the flexibility to acquire wind resources as purchase opportunities arise in a market where distressed economic conditions are causing wind developers to sell their turbines at favorable prices. (Tr. 20-21; 792-94). Consumer Advocate pointed out that NextEra is also hoping to take advantage of such opportunities. (Tr. 1242-45). Consumer Advocate argued that utilities that act now to purchase wind resources are likely to acquire them for their customers at a lower cost than if

they wait until carbon or RPS legislation is enacted, when increased competition for available wind resources will likely drive up costs. (Tr. 930-31; 1076).

Consumer Advocate also stated that if MidAmerican purchases and installs wind turbines now, during the rate freeze, the net investment cost in rate base will be significantly reduced through depreciation before the investments are reflected in retail rates, with net investment cost being reduced by at least 14 percent. (Tr. 526; 933-34). Consumer Advocate noted that this unusual time lag will reduce the effective ROE to between 9.7 and 11.2 percent, instead of the nominal 12.2 percent listed in the Settlement, depending upon the precise timing of the investments. (Tr. 530).

Consumer Advocate pointed out that NextEra played down the time lag benefit because of the rate freeze by arguing that the rate freeze could end any time MidAmerican's earnings fall below a 10 percent ROE; however, under the current terms of the rate freeze (as extended in Docket No. RPU-07-2), this cannot happen until 2012 at the earliest, after MidAmerican's operating results for 2011 are known.[1] Consumer Advocate viewed the risk of a rate increase in 2012 or 2013 as minimal, based on MidAmerican's 2008 performance and its new opportunities for additional wholesale sales through its membership in MISO. (Tr. 933).

[1] That is, MidAmerican can seek a rate increase prior to 2014 only in the event its projected ROE for 2013 is below 10 percent "based on its 2011 actual Iowa jurisdictional electric cost of service plus pro forma adjustments … ." (Docket No. RPU-07-2, "Order Approving Stipulation and Agreement," July 27, 2007, p. 23); and MidAmerican's 2011 operating results will not be known until early 2012.

Consumer Advocate believed any negative impact on wholesale competition with Wind VII is outweighed by the benefit of giving MidAmerican customers low-cost wind generation to mitigate the costs of expected carbon or RPS legislation. Consumer Advocate contended that NextEra ignored MidAmerican's accounting and economic dispatch practice that assigns the lowest cost generation resources to meet the needs of MidAmerican retail customers first, and assigns the higher-cost energy to wholesale market sales. (Tr. 67). Consumer Advocate said that these factors mean that MidAmerican's retail customers will receive the benefit of low-cost energy from Wind VII, and any revenues from higher-priced wholesale sales will also benefit MidAmerican's customers, since the revenues will be recorded above-the-line. Consumer Advocate contended that the fact that substantial wholesale sales are made from regulated generation resources does not change the fact that they remain regulated resources used for the benefit of retail customers, and are a reason that the rate freeze has been in effect for such a long time.

NextEra Position

NextEra maintained that the proposed ratemaking principles impose additional downside risk on MidAmerican's retail customers, to the benefit of MidAmerican shareholders, with no likely offsetting benefits for customers through MidAmerican's revenue sharing mechanism. (Tr. 365-67). NextEra also suggested that MidAmerican's ROE is likely to drop below 10 percent as early as 2009, potentially triggering an end to the rate freeze before the end of 2013; MidAmerican has refused to rule out this possibility. (Tr. 515-17).

NextEra argued that the risks for Wind VII are significantly greater than they were for MidAmerican's previous wind projects. Unlike its previous wind projects, MidAmerican had not specified any sites. Further, in these principles MidAmerican proposed to exempt itself from double leveraging to include a cancellation cost recovery provision, to modify the revenue sharing mechanism to guarantee a minimum 10 percent ROE for the project during the remainder of the rate freeze and revenue sharing settlement, proposed cost caps that are based on a hypothetical rather than actual project costs, to use a much larger size cap, and finally to use a higher ROE than for any previous wind project. NextEra contended that these enhanced ratemaking principles mean that MidAmerican customers will take on a greater share of the project risks associated with Wind VII, including development risks, construction risks, operational risks, and market risks.

NextEra recommended that if the Board grants advance ratemaking principles for MidAmerican's proposed project, then the following additional principles and requirements should be included: 1) since MidAmerican claims that the revenue benefits of the wind project will exceed its costs and customer rates will not be affected, it should be a requirement that customer rates will never be affected by the project; 2) since MidAmerican claims that the wind project will enhance rate stability for its customers, the ROE trigger provision for ending the rate freeze should be eliminated and the rate freeze should be extended beyond 2013; 3) since MidAmerican claims that the wind project will provide low carbon emission benefits, MidAmerican should be required to decommission its coal-fired generation in tandem

with its wind generation additions; and 4) as MidAmerican seeks to acquire additional wind resources, MidAmerican should be required to balance its wind portfolio with PPAs. Also, for future ratemaking principles proceedings, NextEra recommended the Board clarify that: 1) the comparison of feasible alternatives to the proposed project should include alternatives of the same fuel type, including PPA-based projects; 2) the justification for proposed projects should be based on serving the direct needs of the utility's retail customers; and 3) proposed projects should be based on specific identified facilities and locations (as described in the Board's earlier proposed rules in Docket No. RMU-01-11).

Iberdrola Position

Iberdrola asked that the Board reject MidAmerican's ratemaking principles, which it claimed would impose substantially all of Wind VII's risks on MidAmerican's retail customers. Iberdrola recommended that if the Board adopts any ratemaking principles, it should also issue guidelines for future ratemaking principles proceedings, clarifying the proper balance of risk between utility customers and shareholders based on the types of ratemaking principles that would be applied in a normal rate case proceeding. That is, Iberdrola maintained that utilities should not be allowed to use advance ratemaking principles proceedings to engage in activities that are outside the normal and prudent scope of regulated utility activity, such as investing retail customer-backed funds in wholesale generation markets that are increasingly subject to volatile market forces. Iberdrola claimed that MidAmerican's

proposed ratemaking principles amount to a blank check that effectively removes Board oversight and involvement in too many areas of the project.

Iberdrola recommended the Board discipline the process for advance ratemaking principles by issuing the following specific policy guidelines for future ratemaking principles proceedings: 1) utilities should be required to identify reasonably specific sites and time frames for their proposed generation projects; 2) generation should be based on the needs of the utility's retail customers, and should be limited to a total capacity size of 250 MW; 3) the ratemaking principles should not be significantly more generous than what the Board has awarded in previous rulings; 4) for proposed facilities larger than 99 MW, utilities should be required to demonstrate the use of a competitive procurement process based on practices described by the National Association of Regulatory Utility Commissioners (Ex. 301); and 5) for proposed wind facilities, the comparison with other feasible alternatives should include a detailed comparison with other wind generation alternatives, including PPAs. Finally, Iberdrola noted that carbon reduction is one of the justifications for MidAmerican's project, but that this benefit is illusory without a specific commitment to reduce fossil fuel generation. Therefore, if the Board grants MidAmerican advance ratemaking principles, Iberdrola recommended the Board also require MidAmerican to make a specific commitment to replace fossil fuel generation with wind generation from Wind VII.

Board Discussion

Several of the objections and policy proposals put forth by NextEra and Iberdrola appear to be aimed at issues they have with § 476.53, which was clearly designed to provide an incentive for the construction and ownership of electric generation plants by rate-regulated utilities; the provisions of § 476.53 do not apply to PPAs. By allowing for both advance ratemaking principles and nontraditional ratemaking principles to encourage new construction, the statute clearly contemplates some shifting of cost recovery risk away from the utility and its shareholders.

The question is how much shifting of risk is reasonable. The answer depends on several factors. One factor is that Wind VII involves the development of a renewable energy resource, a state policy priority. Another factor is the purchase opportunity for wind turbines and other necessary equipment presented by the current economic downturn, and the belief by both Consumer Advocate and MidAmerican that future carbon or RPS regulation will at some point require sizable additional investment in renewable energy by MidAmerican. Backstopping any uncertainties about future carbon or RPS regulation are the revenue benefits of the project, estimated to offset most or all of the project costs under the proposed ratemaking principles (over time). As noted by NextEra, the current economic downturn causes some uncertainty about MidAmerican's future wholesale revenues. However, as discussed in Section III above, NextEra's version of MidAmerican's cost-benefit analysis of the Wind VII project adjusts for this wholesale revenue

uncertainty, and supports a finding that Wind VII and the proposed ratemaking principles (over time).

In reaching its decisions in this case, the Board continues to be mindful of MidAmerican's obligations to its retail customers. Future legislation is likely with respect to carbon restraints or an RPS and will probably require a utility like MidAmerican to make a substantial investment in renewable energy. MidAmerican is attempting to get ahead of these likely mandates in an effort to lower its compliance costs and begin projects at a time when the rate freeze will delay any rate impact.

MidAmerican's economic dispatch method ensures that the lowest cost energy is assigned to meet the needs of retail customers first; the fact that MidAmerican makes wholesale sales from its generation fleet does not change the fact that the sales are from regulated generation resources operated for the benefit of retail customers. Wholesale sales have played a part in MidAmerican being able to operate for the past 13 years without an energy adjustment clause while maintaining a base rate freeze and providing revenue benefits to retail customers through the revenue sharing mechanism. MidAmerican's wholesale sales have provided and will likely continue to provide benefits to MidAmerican's retail customers.

On the whole, and under the circumstances of this case, ratepayers are not bearing too much risk associated with the project. Wind VII reduces ratepayer risk associated with future carbon and/or RPS legislation; it provides economic development; and it provides low-cost energy with allows MidAmerican to continue to sell energy into the wholesale market which, in turn, allows MidAmerican to maintain

its rate freeze. Therefore, it is not unreasonable to award advance ratemaking principles pursuant to § 476.53.

2. Impact on Competition

MidAmerican Position

MidAmerican argued that NextEra's portrayal of Wind VII as a wholesale merchant project is wrong. Unlike Wind VII, MidAmerican said a wholesale merchant project is not subject to Board regulation, and is different from Wind VII in several other respects. (Tr. 68). MidAmerican said that focus of Wind VII is not wholesale power sales but, rather, about 1) meeting the long-term needs of MidAmerican customers for carbon-free generation resources at the lowest possible cost, and 2) managing those resources for MidAmerican customers over the long-term in a cost beneficial manner. MidAmerican pointed out that an increase in wholesale power sales due to the project would be made from MidAmerican's entire generation portfolio, rather than specific generation resources, and any associated net revenues (unlike those of a merchant generation project) would be recorded above-the-line for the benefit of MidAmerican's retail customers.

Responding to NextEra, MidAmerican stated that Wind VII is not about producing benefits for MidAmerican shareholders at the expense of Iowa customers. MidAmerican said it reinvests 97 percent of its earnings in Iowa, with a large part of that investment being in wind generation. (Tr. 151).

MidAmerican acknowledged that it would be competing with NextEra for the purchase of available assets and wind projects for which NextEra has expressed

interest. (Ex. 40, p. 5). However, MidAmerican asserted that competition does not produce adverse effects unless it increases prices, reduces output, or otherwise reduces customer benefits; and NextEra has provided no evidence that MidAmerican's proposed wind project would do any of these things. (Tr. 213-15). MidAmerican stated that it is the only party that has analyzed whether the Wind VII project would cause MidAmerican to gain undue market power in the MISO wholesale power market; and its analysis concluded that MidAmerican's presence in the 13-state Midwest ISO region is too small to constitute market power. (Tr. 233; 240).

MidAmerican noted that NextEra acknowledges that the market for renewable energy credits is larger than the MISO region. (Tr. 1161-63). MidAmerican explained that NextEra could have introduced its own evidence on market power, but chose not to, and did not contest MidAmerican's market power analysis. (Tr. 1375-76).

At the hearing, when challenged about the size of the Midwest market, MidAmerican said that NextEra countered that the wind development market in Iowa was small and would stay that way without significant transmission capacity additions. MidAmerican contended that if this is so, it means transmission is the limiting factor rather than market power, and wind development in Iowa would be limited regardless of whether MidAmerican builds its project or NextEra's project is built.

Consumer Advocate Position

Consumer Advocate maintained that Iowa Code § 476.53 does not regulate or even address the issues of competition and market power raised by NextEra and Iberdrola, which fall under the jurisdiction of FERC and federal anti-trust laws. Rather, Consumer Advocate contended that the purpose of Iowa Code § 476.53 is to provide incentives for rate-regulated electric utilities to build new generation for the benefit of Iowa retail customers, and does not include other considerations such as protecting merchant generators from the advantages Iowa utilities might gain from advance ratemaking principles, because the Board has no ratemaking jurisdiction over merchant generators or wholesale market prices.

Consumer Advocate argued that NextEra and Iberdrola make unsubstantiated claims, but provide no evidence that Wind VII will have any adverse impact on competition or result in MidAmerican gaining market power. (Tr. 214). Consumer Advocate pointed out that the evidence presented by MidAmerican shows the project will not cause MidAmerican to increase its market power in the wholesale power market. (Tr. 220-26). Consumer Advocate noted that NextEra witness Stoddard admits that his firm conducted a market power study for Iowa and nearby Midwest states, and suggests that NextEra's choice not to introduce the study lends credence to MidAmerican's market power evidence. (Tr. 1376).

Consumer Advocate also claimed that NextEra and Iberdrola present an unbalanced picture of the relative advantages of MidAmerican versus NextEra and Iberdrola. Consumer Advocate said that NextEra and Iberdrola: 1) have no

obligation to serve retail customers at reasonable prices; 2) have no limitation on their allowed rates of return; and 3) are free to build wind generation wherever and whenever conditions and profit potential are most favorable.

NextEra Position

NextEra said that MidAmerican's proposed wind project would stifle competition in the wind generation market, contrary to Iowa statutory law, Iowa case law, and public policy statements from the Governor's Office, the Department of Commerce, and the Board, all of which encourage competition in the development of wind generation by all market players. NextEra stated that even MidAmerican acknowledges that Iowa has benefitted from the distributed ownership of wind generation by several parties, and that the presence of NextEra and others is important for competitive and robust wind development in Iowa. (Tr. 129; 138-39). NextEra contended that its investments in wind generation have produced economic benefits for Iowa, and that MidAmerican has not been able to demonstrate that its Wind VII project would bring more economic benefits to the state than any other alternative. (Tr. 149; 345-46). NextEra argued that competition by multiple players in the Iowa market is likely to produce more economic benefits than a monolithic single-source scenario under MidAmerican.

NextEra claimed that the proposed ratemaking principles for Wind VII would create a clear potential for cross-subsidization of MidAmerican's competitive activities by MidAmerican's retail customers. NextEra explained that the economics of Wind VII are dependent on the revenue streams from the sale of wholesale electricity and

environmental attributes; if these revenues are less than projected, as would be the case under current market conditions, MidAmerican's retail customers would have to make up the difference. (Tr. 1356-61; 1411; 1424). NextEra contended that cross-subsidization of a utility's competitive activities by its regulated customers violates traditional regulatory principles and exposes the regulated customers to unnecessary risks and costs, and distorts the competitive market. (Tr. 1409-11).

NextEra said projects such as Wind VII distort the market because independent wind developers and marketers such as NextEra do not have direct access to pre-approved ratemaking principles, back-stopped by regulated utility rates, which protects MidAmerican from the risks of the wholesale market and discourages entry by independent wind generators. (Tr. 1345-46). NextEra alleged that each new wind project in the market reduces the expected profitability of subsequent projects as prices for energy and renewable energy credits decline and available transmission becomes fully utilized.

Regarding MidAmerican's assertion that its lowest cost power is assigned to retail customers and its higher cost power assigned to wholesale sales, NextEra responded that this ignores the pooled nature of utility generation. NextEra said that retail customers pay for these resources through their regulated rates, regardless of which power is assigned to retail customers. (Tr. 101; 115).

NextEra criticized Consumer Advocate for wrongly impugning the motives of NextEra and Iberdrola as competitors. NextEra believed this indicated that Consumer Advocate supports MidAmerican's competitive activities despite

MidAmerican's status as a regulated utility, and that Consumer Advocate supports MidAmerican over other competitors, contrary to Consumer Advocate's statutory responsibility to represent the public interest and consumers as a whole.

Iberdrola Position

Iberdrola argued that the ratemaking principles granted to MidAmerican should not include so many advantageous accounting treatments and rate recovery mechanisms, such that it gives MidAmerican a distinct advantage over non-utility wind developers and discourages competitive entry.

Board Discussion

NextEra and Iberdrola both assert that issuance of ratemaking principles in this proceeding will have a chilling effect on wind development in Iowa and will slow progress towards Iowa's renewable energy goals. The Board is not convinced that granting ratemaking principles to a rate-regulated utility with an obligation to provide adequate service at just and reasonable rates to retail customers will impact projects developed by other wind developers, who can sell their output in-state or out-of-state, with the only real constraint being transmission. No nexus was established in this proceeding between the costs and revenues associated with an independent power producer's project and the award of ratemaking principles to a rate-regulated utility. There is simply no persuasive evidence to back up the chilling effect argument. The Board's hearing process is an evidentiary process and not a legislative process; policy arguments that are not supported by substantial evidence cannot be used as a basis to frustrate the legislative intent of the ratemaking principles statute.

In effect, NextEra and Iberdrola appear to be asking the Board to choose between renewable generation developed by independent power companies and renewable generation developed by rate-regulated utilities. This is not a choice that must be made. Evidence in the record demonstrates there are substantial wind resources yet to be developed in Iowa and Iowa welcomes both utility and independent power developments. The Board has done what it can to facilitate the building of renewable energy in Iowa with its declaratory rulings, waivers of generation siting requirements, and efforts to expedite the transmission line siting process. These efforts have been made on behalf of both independent developers and rate-regulated utility developers. The Board sees no reason why both types of projects cannot continue to coexist and prosper, as they have done in the past, as Iowa continues to encourage renewable development. NextEra and Iberdrola have both been valued players in renewable energy development in Iowa.

The intervenors' arguments focused both on wholesale markets generally and the wind energy market in particular. MidAmerican described two assessment methods used by FERC for determining whether a supplier is able to exercise market power in wholesale electricity markets; these are the market share test and the pivotal supplier test. Under the market share test, suppliers with market shares less than 20 percent are presumed to not have market power. Under the pivotal supplier test, if total market demand can be met by entities other than the supplier, the supplier is presumed to not have market power. MidAmerican presents the market power tests conducted for MidAmerican's entry into MISO (Ex. 3), and a second

version adjusted to include MidAmerican's proposed 1,001 MW Project (Ex. 4). Neither set of tests show MidAmerican as having market power in the general wholesale market in the MISO region. (Tr. 223-27). NextEra or Iberdrola did not challenge the results of this analysis or present any evidence showing that Wind VII will allow MidAmerican to exercise market power in the Midwest region.

NextEra and Iberdrola also asserted that MidAmerican's proposed project would have an adverse impact on competition in the wind generation market (as opposed to the wholesale market generally), but provide no evidence to support this. At the hearing, NextEra's witness Stoddard was aware that his consulting firm (CRE) had conducted a market power analysis of the Midwest region (including Iowa), but seemed to know nothing about it, and the CRE market power analysis was not introduced as evidence. (Tr. 1375-76). Stoddard did not explain why NextEra chose not to introduce the results of the CRE market power analysis in a docket where NextEra's claim of market power was a central issue, but it is reasonable to conclude that NextEra would have done so if the analysis supported that claim.

The president of NextEra's parent company appeared to dismiss wind projects by rate-regulated utilities as having any impact on the independent power business, which is contrary to arguments advanced by NextEra in brief. (Ex. 40, p. 16). At the hearing, when asked to comment on the assertions in Exhibit 40, NextEra witness O'Sullivan did not appear to disagree with the president's assessment. (Tr. 1253-61). Also, in discussions that assumed a separate Iowa market with a smaller, finite capacity for wind development, NextEra witness O'Sullivan did not seem to disagree

with the proposition that increased wind development by MidAmerican would not preclude other developers from developing whatever other capacity might remain. (Tr. 1264-76).

When asked to respond to MidAmerican's market power analysis, NextEra's witness O'Sullivan stated the following:

> [T]he point we're trying to make in this filing and intervening in this matter is by definition of how you define that in the context of your question or statement might be true, but wind power is a variable intermittent commodity. It is not firm energy and capacity.
>
> And most of those models and those analyses that FERC does, especially in a large merger, worried about market power is somebody controls firm capacity and energy in a region or a subregion or in a market.
>
> Wind energy is a politically or policy-driven commodity and market. It is not a wholesale liquid market that trades by itself, and it needs special handling because there will be unintended consequences, and that's all we've been asking you to do as a group, with your expertise and all the data you have, is to think that through.

(Tr. 1282).

If wind generation is in part a politically-driven commodity, as NextEra suggests, impending carbon constraints and RPS standards should expand the role of renewable energy and wind generation, with opportunities for all developers. Beyond that, there is no persuasive evidence in the record challenging MidAmerican's market power analysis or indicating that Iowa's wind resources are so limited that allowing Wind VII to proceed will impede other developers. NextEra acknowledged it has options on various sites in Iowa for future wind projects. Also,

MidAmerican's entry into MISO on September 1, 2009, should lessen any market power concerns.

There is room for all players in this market, and the Board intends to encourage both rate-regulated and independent renewable development through its generation siting and transmission franchising activities.

Finally, because the Board wants to maintain a competitive environment in Iowa for all wind producers, it will take additional steps to ensure MidAmerican has not gained market power due to its development of Wind VII at a later time. See Section VI(3).

V. LEGAL ARGUMENTS OPPOSING ANY RATEMAKING PRINCIPLES

NextEra and Iberdrola made several legal arguments against approval of any ratemaking principles. First, Iberdrola and NextEra argued that approval of ratemaking principles would constitute a denial of equal protection under the 14th Amendment of the U.S. Constitution. Second, NextEra asserted that approving the proposed ratemaking principles would violate the Commerce Clause of the U.S. Constitution, which grants Congress the power "[t]o regulate commerce ... among several states." U.S. Const., Art. I, § 8. Third, Iberdrola alleged that the Board's exercise of its authority amounts to abdication of its authority to MidAmerican because the project is too ill-defined for the Board to test the reasonableness or justness of the ratemaking principles contested. Fourth, NextEra and Iberdrola claimed that awarding MidAmerican ratemaking principles would constitute

discrimination pursuant to Iowa Code § 476.43, which is the statute dealing with rates for alternate energy production facilities.

NextEra also argued the Settlement between MidAmerican and Consumer Advocate is invalid as a matter of law because the consideration exchanged is insufficient. (NextEra Initial Brief, pp. 44-45). This argument is without merit. The Board was not asked to adjudicate the validity of a contract and a ratemaking principles case is a contested case, with or without a settlement. Iowa Code § 476.53(4)"a." The Board's standard of review is not impacted by whether or not there is a settlement; the Board cannot approve a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

The four primary legal and constitutional claims will be addressed separately.

1. Equal Protection

Iberdrola Position

Iberdrola quoted the 14th Amendment of the U.S. Constitution, which provides: "No state shall deny any person within its jurisdiction the equal protection of the laws." Iberdrola cited numerous court decisions in its initial brief stating that equal protection means all persons similarly situated must be treated alike.

Iberdrola noted that there are two levels of scrutiny in equal protection cases. Because there are no suspect grounds or classes such as race, Iberdrola acknowledged that strict scrutiny does not apply in this case and a rational basis test is used. When economic legislation is involved, Iberdrola argued that the standard

for review is whether the legislation bears a rational relationship to a legitimate state interest.

In applying the rational basis test, Iberdrola said the courts use a two-step analysis. First, the court must determine whether the challenged state action has a legitimate purpose. Second, assuming a legitimate purpose, the court must decide whether the challenged classification promotes that purpose. Iberdrola cited Western & Southern Life Insurance Co. v. State Board of Equalization, 451 U.S. 648 (1981).

Iberdrola argued the double leverage principle, if approved, fails on equal protection grounds because of its discriminatory impact on MidAmerican's competitors. Iberdrola cited United Telephone Company v. Iowa State Commerce Comm'n, 257 N.W.2d 466, 481 (Iowa 1977), for the proposition that courts have held an agency's action in imposing double leverage was necessary to avoid discrimination against competitors that were not wholly-owned subsidiaries benefiting from double leverage. Unlike the first six MidAmerican wind projects, Iberdrola claimed that Wind VII does not promote a legitimate state interest. Iberdrola maintained that because MidAmerican admits it has sufficient capacity to serve its retail customers, Wind VII does not promote one of the purposes of § 476.53, which is to provide reliable service. Iberdrola argued that MidAmerican's attempt to subsidize its private investment in the wholesale market is not a legitimate public purpose.

NextEra Position

NextEra argued that because both it and MidAmerican supply electricity to the wholesale market, they are similarly situated and must be treated equally; awarding advance ratemaking principles to MidAmerican to prop up its earnings and support its wholesale market activities would violate the equal protection clause. While MidAmerican is a regulated utility, NextEra stated that once it enters into the wholesale market, it is subject to the same rules as any other private person.

NextEra claimed there is no rational basis for differentiating between regulated and non-regulated entities in fulfilling the purposes of Iowa Code § 476.53, since both MidAmerican and NextEra would supply power to the wholesale market. Also, NextEra pointed out that Iowa Code § 476.43 specifically prohibits discrimination against alternate energy producers like NextEra. NextEra concluded that harmonizing these two sections means that ratemaking principles should only be available for investment directly for the purpose of providing electric service to ratepayers.

MidAmerican Position

MidAmerican first pointed out that the Board has no jurisdiction to decide the equal protection issue because agencies cannot decide constitutional issues of statutory validity. Second, MidAmerican argued that an equal protection argument is unsupported by the law and facts because an equal protection challenge must start with a showing that MidAmerican and the intervenors are similarly situated; dissimilar

treatment of a person dissimilarly situated does not offend equal protection. City of Coralville v. Iowa Utilities Bd., 750 N.W.2d 523, 530 (Iowa 2008).

While there is some competition in the wholesale market between MidAmerican and NextEra and Iberdrola, MidAmerican stated that this fact alone does not mean they are similarly situated and the electricity market has numerous corporate structures (cooperatives, investor-owned, Federal government agencies, and others) among its participants. MidAmerican argued that its obligation to serve retail customers, with accompanying retail rate regulation by the Board, makes it different from merchant generators and that Wind VII is being proposed to address the needs of retail customers, not primarily for the wholesale market as alleged by NextEra. MidAmerican pointed out that environmental compliance issues are important to MidAmerican's retail customers.

MidAmerican also argued that even if NextEra and Iberdrola were found to be similarly situated to MidAmerican, the two intervenors failed to prove the second requirement for an equal protection challenge, i.e., that there is no rational relationship between the advance ratemaking principles and a legitimate state goal. MidAmerican cited the legislative goal as promoting sufficient generation to ensure reliable service to Iowa customers. With respect to the argument that the double leverage principle in particular violates equal protection, MidAmerican noted that Iowa Code § 476.53(4)"b" provides that "[I]n determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms." MidAmerican further noted that while the

Iowa Supreme Court said the Board's use of the double leverage concept was permissible, the Court did not say the use of double leverage was mandatory. United Telephone Company v. Iowa State Commerce Comm'n, 257 N.W.2d 466, 481 (Iowa 1977). Because of the legislative guidance regarding non-traditional ratemaking principles, MidAmerican concluded that there is no constitutional basis for challenging the double leverage ratemaking principle.

Consumer Advocate Position

Consumer Advocate said that under the Equal Protection clause of the 14th Amendment, both the United States and Iowa Supreme Courts have found a requirement that similarly-situated persons should be treated alike. When economic legislation is at issue, Consumer Advocate noted that the U.S. Supreme Court has held that the equal protection clause allows the state "wide latitude." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). Consumer Advocate stated that the rational basis standard used by the courts in evaluating economic legislation under the equal protection clause will be satisfied if there is a "plausible policy reason" for the classification. Racing Ass'n of Cen. Iowa v. Fitzgerald, 675 N.W.2d 1, 7 (Iowa 2004). Consumer Advocate pointed out that because a suspect class, such as a classification based on race, is not involved here, strict scrutiny is not required and the rational basis standard is used; if a suspect class were involved, the classification would be presumptively invalid and the classification would have to be shown to be narrowly tailored to serve a compelling governmental interest to survive an equal protection challenge.

Consumer Advocate argued that MidAmerican, on one hand, and Next Era and Iberdrola, on the other, are not similarly situated, giving such examples as MidAmerican being subject to rate regulation by the Board and MidAmerican having a legal obligation to serve without discrimination all retail customers in its exclusive service territory. In contrast, Consumer Advocate pointed out that NextEra and Iberdrola are not rate-regulated and they can choose to serve whatever wholesale customers they want to, either through the wholesale market or by purchase power agreements, with no regulation of their prices or equity returns by the Board. Consumer Advocate concluded that NextEra's and Iberdrola's attempts to find similarity by claiming that Wind VII is a merchant power plant are without merit because Wind VII is being built for the energy that it will produce for the benefit of MidAmerican's retail customers using a fuel source that will reduce MidAmerican's costs to comply with likely new environmental legislation.

Consumer Advocate also dismissed the argument that § 476.53 discriminates against NextEra and Iberdrola because they do not qualify for advance ratemaking principles under the statute, putting them at a competitive disadvantage. Consumer Advocate notes that the equal protection clause does not prohibit inequality and the Iowa Supreme Court has noted that a classification does not deny equal protection simply because in practice it results in some inequality and that practical problems of government permit rough accommodations. State v. Mann, 602 N.W.2d 785, 792 (Iowa 1999). Consumer Advocate further noted that it is not clear that any

disadvantages to NextEra and Iberdrola resulting from § 476.53 outweigh the advantages they have over MidAmerican.

Under the rational basis standard, the Board must determine whether the Iowa General Assembly had a valid reason to treat rate-regulated utilities differently than merchant generators. Consumer Advocate concluded there are valid reasons for the different treatment, including the General Assembly's conclusions that traditional ratemaking provided inadequate incentives for building new generation to ensure reliable service. Consumer Advocate pointed out that ratemaking principles were limited to rate-regulated utilities because those were the only companies subject to the Board's rate jurisdiction and therefore the only companies that could reasonably be influenced by the statute to build generation. Consumer Advocate cited the generation that has been built since the statute's passage as evidence of its success. Consumer Advocate argued that under the rational basis standard, Iberdrola and NextEra have not met their heavy burden of showing the statute unconstitutional by negating every reasonable basis upon which the classification may be sustained. Bierkamp v. Rogers, 293 N.W.2d 577, 579-80 (Iowa 1980).

Board Discussion

MidAmerican is correct that agencies cannot decide issues of statutory validity. Salsbury Laboratories v. Iowa Department of Environmental Quality, 276 N.W.2d 830, 836 (Iowa 1979). That being said, because the constitutional issues were raised before the Board, the Board will address those issues, even though its conclusions are not binding on any court.

The parties agreed that the rational basis test was the correct equal protection test to apply, but they disagreed on how that test related to the facts. The equal protection arguments raised by NextEra and Iberdrola are colored by their belief that MidAmerican's ratemaking principles application, if approved, would result in MidAmerican's ratepayers subsidizing its activities in the wholesale market. The record does not support the assertion that MidAmerican filed this application solely, or even primarily, to support its wholesale activities; rather, the wind generation would provide benefits to MidAmerican's retail customers, particularly if carbon emissions legislation is passed, as seems likely.

The equal protection argument fails for two primary reasons. First, MidAmerican and NextEra and Iberdrola are not similarly situated. MidAmerican is rate-regulated and has an obligation to serve all retail customers in its service territory. The intervenors are unregulated wholesale sellers with no regulatory obligation to provide power to anyone. MidAmerican, under the rate freeze settlements, must share wholesale profits with customers; there is no such restriction on NextEra and Iberdrola, who are not subject to any regulation of profits or rates of return. The Board is persuaded that Wind VII would provide significant benefits to MidAmerican’s customers. NextEra and Iberdrola have no such mechanism for sharing benefits with customers, so they are not similarly situated.

Second, even if it had been demonstrated that MidAmerican and the intervenors are similarly situated, the General Assembly determined that there were valid reasons for the different treatment, including the General Assembly's conclusion

that traditional ratemaking provided inadequate incentives for rate-regulated utilities to build new generation. Ratemaking principles were limited to rate-regulated utilities because those are the only companies subject to the Board's rate jurisdiction and therefore the only companies that could be reasonably influenced by the statute to build generation. Even if the Board wanted to, there are no incentives that it could give to NextEra and Iberdrola to build new generation because the Board has no jurisdiction over their rates or ROE levels. This further demonstrated that they are not similarly-situated with respect to MidAmerican. NextEra and Iberdrola have not met their burden of proof of showing § 476.53 unconstitutional. Bierkamp v. Rogers, 293 N.W.2d 577, 579-80 (Iowa 1980).

2. Commerce Clause

NextEra argued that the Commerce Clause, which provides that "the Congress shall have power ... to regulate commerce ... among the several states," limits the power of the states to erect barriers against interstate trade, and also denies the states the power to discriminate against or burden the interstate flow of articles of commerce. NextEra cited Brown-Foreman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573 (1986), where the Supreme Court adopted a two-tiered approach to analyzing economic regulation under the Commerce Clause. NextEra said that under Brown-Foreman, if a state statute directly regulates or discriminates against interstate commerce, it is generally struck down without further inquiry; if a statute only has indirect effects on interstate commerce, the Court looks

at whether the state's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits.

NextEra's argument was based primarily on a Seventh Circuit case which NextEra claimed is similar to the ratemaking principles case before the Board. In Alliance for Clean Coal v. Miller, 44 F.3d 591 (7th Cir. 1995) (Alliance) coal suppliers from western states sued the Illinois Commerce Commission and challenged an Illinois statute that encouraged Illinois electric utilities to burn coal mined in Illinois (in spite of the availability of cleaner-burning coal elsewhere) by permitting Illinois utilities to pass on to Illinois ratepayers the cost required to use Illinois coal and still comply with the federal Clean Air Act.

The Seventh Circuit found the statute discriminated against western coal by making it a less viable compliance option for Illinois generating plants. The Court dispatched Illinois' arguments that it had merely agreed to subsidize the cost of generating electricity using Illinois coal because Illinois was acting as a regulator, not a market participant. The Court noted that protection of local industry against out-of-state competition is the hallmark of what the Commerce Clause was designed to prohibit.

NextEra claimed the impact of MidAmerican's ratemaking application is discriminatory by seeking ratepayer subsidization of MidAmerican's operations. NextEra argued the subsidization benefits MidAmerican's wholesale market venture at the expense of other competitive suppliers in the wholesale electricity market. NextEra urged the Board to find that MidAmerican's manipulation of Iowa law to allow

it to obtain a competitive advantage in the wholesale electricity market violates the Commerce Clause.

MidAmerican Position

MidAmerican argued that Iowa's advance ratemaking principles statute does not implicate the Commerce Clause because there is no differential treatment of in-state and out-of-state economic interests; the differential treatment is between rate-regulated companies like MidAmerican and independent power producers like NextEra. MidAmerican pointed out the impact on NextEra would be the same whether it was an in-state or out-of-state independent power producer.

MidAmerican discounted the Alliance case. MidAmerican pointed out that in the Alliance case, the Illinois statute encouraged the use of Illinois coal by passing the costs on to ratepayers, having the same effect as a tariff or customs duty. Here, MidAmerican stated there is no such burden on commerce—energy produced by Wind VII will not be treated differently if sold inside Iowa or outside Iowa, nor will the energy produced by other companies. Finally, MidAmerican said that even if there were some marginal impact on interstate commerce, it would be outweighed by the state's legitimate interests in promoting economic development, protecting the environment, and ensuring that its citizens have reliable energy sources at reasonable prices, among other factors. MidAmerican noted that if a law is not discriminatory, it will be struck down only if the burden it imposes on interstate commerce is clearly excessive in relation to its local benefits. Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970). MidAmerican concluded that NextEra has failed to

prove any burden, let alone an excessive burden, on interstate commerce and that the record demonstrates Wind VII's long-term benefits to Iowa by providing reliable electric service at reasonable prices and promoting Iowa's economic development and environmental policies.

Consumer Advocate Position

Consumer Advocate pointed out that the Iowa Supreme Court has recognized the two-tier approach to analyzing state economic regulation adopted by the U.S. Supreme Court in Commerce Clause challenges. The Iowa Court said:

> When a state statute **directly** regulates or discriminates against interstate commerce, or when its **effect** is to favor in-state economic interests, we have generally struck down the statute without further inquiry. When, however, a statute has only **indirect effects** on interstate commerce and regulates evenhandedly, we have examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits."

Iowa Auto Dealers v. State Appeal Bd., 420 N.W.2d 460, 462 (Iowa 1988), quoting Brown-Forman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573, 579 (1986). (Emphasis added).

Consumer Advocate argued that Iowa Code § 476.53 does not directly regulate or discriminate against interstate commerce and only applies to Iowa's rate-regulated utilities, with any effect on interstate commerce being indirect. Consumer Advocate stated that because there is no serious question that the statute regulates evenhandedly and advances a legitimate state interest (to encourage rate-regulated utilities to construct needed generation and transmission for the benefit of retail

customers and the state as a whole), § 476.53 must be affirmed unless the burden on interstate commerce clearly exceeds the local benefits.

Consumer Advocate maintained there is no evidence in this proceeding showing a burden on interstate commerce, and that Wind VII is a proactive effort by MidAmerican to address future costs faced by its retail customers with impending carbon legislation; MidAmerican seeks to address those issues at a lower cost today than after legislation is passed, which will likely drive up the costs of compliance. Consumer Advocate pointed out that § 476.53 does not erect barriers to interstate commerce or disadvantage companies like NextEra, as evidenced by the 800 MW of wholesale wind generation it has built in Iowa without advance ratemaking principles and in spite of ratemaking principles previously granted to MidAmerican and IPL for wind generation projects.

In addition, Consumer Advocate noted that Wind VII will not result in MidAmerican having market power and therefore will not impact wholesale prices. (Tr. 220-26). Consumer Advocate stated that the fact that ratepayers will ultimately pay for Wind VII through electric rates is no different than any other utility-owned generation and imposes no burden on interstate commerce. Consumer Advocate concluded by stating that NextEra does not complain about burdens on interstate commerce or unfairness to MidAmerican's customers if MidAmerican's customers pay for projects purchased from NextEra.

Board Discussion

The parties agree on the two-tier analysis, but disagree on whether the statute directly or indirectly regulates interstate commerce. NextEra's reliance on the Alliance case is misplaced. In Alliance, the statute acted as a tariff on out-of-state coal because it provided for cost recovery of compliance costs if in-state coal was used. Here, § 476.53 does not directly regulate or discriminate against out-of-state companies. The statute allows rate-regulated utilities to seek advance ratemaking principles, but it treats independent wholesale power producers the same whether they are in-state or out-of-state, just as it treats rate-regulated utilities serving Iowa ratepayers the same whether they are based in-state or out-of-state. There is simply no direct regulation or discrimination against interstate commerce.

Because § 476.53 has, at most, an indirect effect on interstate commerce, the second tier of the analysis is used, that is, whether the state's interest is legitimate and the burden clearly exceeds local benefits. With respect to any indirect regulation, NextEra has not shown any indirect effect on interstate commerce and certainly the record does not show a burden on interstate commerce that clearly exceeds the local benefits of the ratemaking principles statute. Those benefits have resulted in construction of needed generation for Iowa's ratepayers, including emissions and carbon-free wind generation that benefits all Iowans, not just ratepayers of the utilities building the projects. There is no support in the record for finding that § 476.53 violates the Commerce Clause. Iowa Auto Dealers v. State Appeal Bd., 420 N.W.2d 460, 462 (Iowa 1988).

3. Delegation of Governmental Authority to a Private Entity

Iberdrola Position

Iberdrola claimed that the Board would abdicate its statutory duty to ensure that public utilities only charge just and reasonable rates by approving MidAmerican's ratemaking principles application because the project is too ill-defined for the Board to test the reasonableness or justness of the ratemaking principles requested. Iberdrola stated that MidAmerican's application does not pertain to any specific wind resources and that MidAmerican has not precluded any approach regarding the Wind VII project sites, including acting as its own general contractor, entering into an engineering, procurement, and construction contract, purchasing a wind project from a developer such as NextEra, or some combination of approaches.

Iberdrola argued that the intent of the ratemaking principles statute was articulated by the General Assembly and includes the development of generation and transmission facilities to ensure reliable electric service to Iowa consumers and providing economic benefits to the state. Iberdrola maintained Wind VII is not necessary for reliable service because MidAmerican projects no capacity shortfall until 2019 and is already selling 40 percent of the electricity it generates to the wholesale market. Iberdrola concluded that MidAmerican simply wants to expand its wholesale business with ratepayers funding the project.

Iberdrola noted that MidAmerican states it will assess the market over the next four years, including turbine prices, availability of renewable energy credits, and other factors, and then determine whether to proceed with a project. Iberdrola maintained

these policy assessments are for the Board, not MidAmerican, to make. In effect, Iberdrola claimed the Board is abdicating its ratemaking authority to MidAmerican, a private party.

MidAmerican Position

MidAmerican dismissed Iberdrola's argument as baseless, noting that the ratemaking principles statute by its very nature requires the Board to consider advance ratemaking treatment of generation that has not been completed. MidAmerican noted that there are over 1,500 pages of transcript and dozens of exhibits that the Board will consider and that if the Board grants MidAmerican's application, MidAmerican will implement the outcome, not decide the outcome.

Board Discussion

The Board is not persuaded by Iberdrola's arguments. The ratemaking principles statute is designed to give advance ratemaking principles, so by its very nature the Board must evaluate projects that have not been completed (or even begun). Iowa Code § 476.53(4). Iberdrola's argument that the Board is abdicating its responsibilities because MidAmerican has not determined its turbine sites is less persuasive when you consider most of the costs associated with wind development, such as turbine costs, are not site-specific. Further, there are several ratemaking principles being approved or modified that give the Board continued authority to monitor MidAmerican's progress. For example, in determining an appropriate cost cap, the Board is determining the maximum amount of investment that benefit from these principles; any overage would be evaluated under traditional standards in a

rate case proceeding. In determining ROE, the Board is deciding the return the investment will earn for its regulated life. Decisions on ROE, while perhaps based in part on the type of generation because the amount of risk may vary with the type of generation, have not been dependent of the exact site of the generation. For example, in the decision on the ratemaking principles for the Sutherland Generating Station 4 coal plant addressed in Docket No. RPU-08-1, there was no evidence or discussion that the ROE would be higher or lower if the plant were built in a different part of the state.

The Board, by approving MidAmerican's application and the Settlement, is not abdicating its responsibilities, but rather is setting parameters that MidAmerican must meet to receive the full benefit of the ratemaking principles. In fact, this is one way the Board regulates Iowa utilities.

4. Discrimination under Iowa Code § 476.43

Iberdrola Position

Iberdrola cited Iowa Code §§ 476.41 through 476.45, which it states reflect a public policy favoring the development of alternate energy production facilities. For example, Iberdrola noted that § 476.41 provides that "[I]t is the public policy of this state to encourage the development of alternate energy production and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use." Moreover, Iberdrola pointed out that § 476.43(1) mandates that, in setting rates for alternate energy production facilities, the Board

must do so under terms and conditions that are nondiscriminatory to alternate energy producers.

Iberdrola argued that MidAmerican's primary justification for Wind VII is inherently discriminatory—to provide benefits to MidAmerican's retail customers by making MidAmerican competitively advantaged as its sells excess renewable energy capacity in the wholesale markets. Iberdrola concluded that Wind VII is structured so that MidAmerican will be more likely to build its own facilities rather than purchase wind generation from other producers. Iberdrola maintained Wind VII has a greater discriminatory impact than MidAmerican's other wind facilities that received ratemaking principles because MidAmerican has no need for capacity until 2019. Iberdrola claims this is discriminatory both under § 476.43 and the equal protection clause.

NextEra Position

NextEra first pointed out that MidAmerican's wholesale price projections do not reflect current conditions and that, if current market prices were used, Wind VII would impose significant costs on MidAmerican's retail customers. NextEra called Wind VII a house of cards built upon an untenable foundation—inaccurate, outdated price information. Also, NextEra stated the project imposes unprecedented downside risks to ratepayers because no project sites have been selected, Board oversight of Wind VII's capital structure is eliminated if double leverage is approved, there is a guaranteed 10 percent return, and there is an annual cost cap.

NextEra concluded that the risks associated with Wind VII create the potential for cross-subsidization of its competitive wholesale activities, and that this distorts the competitive markets. As an alternate energy production facility under § 476.43, NextEra argued that Wind VII can only be owned by MidAmerican if it is on terms and conditions that are nondiscriminatory to alternate energy production producers and that the ratemaking principles requested, particularly elimination of double leverage, discriminate against other producers. NextEra stated MidAmerican failed to offer the project to others or conduct a competitive bid and that its ratemaking principles are merely an attempt to gain a competitive advantage in the wholesale market.

MidAmerican Position

MidAmerican stated that NextEra and Iberdrola failed to demonstrate the relationship between §§ 476.43 and 476.53 because there is none. Section 476.43 provides that, subject to § 476.44, the Board is to require utilities to purchase, on terms that are nondiscriminatory, energy from alternate energy producers. However, MidAmerican pointed out that it has fulfilled its purchase obligation under § 476.44, so §§ 476.43 and 476.44 are not at issue in this case.

Board Discussion

Section 476.43 by its terms is subject to § 476.44, which puts a cap on alternate energy production purchase requirements (MidAmerican's share of the statutory 105 MW limit). MidAmerican has met this commitment, so § 476.43 does not apply to this situation.

VI. RATEMAKING PRINCIPLES

MidAmerican asked for approval of 12 advance ratemaking principles that would govern the recovery of project costs and treatment of project benefits. NextEra and Iberdrola argued against the award of any ratemaking principles for three primary reasons. First, NextEra and Iberdrola maintained that MidAmerican did not satisfy the second condition precedent for obtaining advance ratemaking principles, which was addressed in Section III of this order. Second, they contended that the principles are unreasonable because too much of Wind VII's risk is shifted to MidAmerican's retail customers for the benefit of MidAmerican's shareholders, for what NextEra and Iberdrola view as essentially a wholesale generation project. Third, the two intervenors argued that this shifting of risk gives MidAmerican an unfair competitive advantage over independent wholesale power producers (such as NextEra and Iberdrola), which has an adverse impact on competition in the wholesale power market. The second and third concerns were addressed in the Board's earlier discussion of the impact on wholesale competition.

In addition to their arguments opposing the award of any ratemaking principles, NextEra or Iberdrola opposed several specific proposed ratemaking principles. The contested ratemaking principles are cost and term cap, size cap, ROE, cancellation cost recovery, double leverage, and revenue sharing. Each of the contested principles will be addressed separately after the Board has briefly discussed the uncontested ratemaking principles.

1. Uncontested Ratemaking Principles

Six of the ratemaking principles requested were uncontested. These are:

a. Iowa Jurisdictional Allocation. A portion of Wind VII will be allocated to Iowa in the same manner as prior MidAmerican wind projects that received advance ratemaking principles. This principle is consistent with prior cases, and allocates to Iowa customers most of Wind VII's costs and benefits because Wind VII was in response to Iowa legislation that promoted the expansion of rate-regulated utility-owned generation in Iowa.

b. Depreciation. The depreciable life of Wind VII for ratemaking purposes will be 20 years, which will be revised if the manufacturer changes the expected 20-year design life of any of the Wind VII turbines. This is similar to ratemaking principles for other wind projects, with a new provision allowing for a change in depreciation life to match any changes by the manufacturer.

c. Bonus Depreciation Benefits. As in the two previous MidAmerican wind cases, a contingent revenue sharing credit of $2,315 per MW for each Megawatt of Wind VII that qualifies for bonus depreciation will be used to offset the capital costs of Walter Scott, Jr. Energy Center Unit 4, without regard to whether the revenue sharing threshold is met. Because bonus depreciation only applies to projects that are placed in service in 2009, it is not likely to be used.

d. Renewable Energy and CO_2 credits and other, similar credits. Consistent with all other MidAmerican wind ratemaking principle dockets,

revenues from the sale of renewable energy credits or other environmental benefits from Wind VII will be recorded above the line in Federal Energy Regulatory Commission accounts (§§ 456 and 411.8), limited to the depreciation life of Wind VII. The projected credits are included in revenue sharing calculations. After the depreciation life of Wind VII, the Board will determine treatment of these credits and benefits in a rate proceeding.

e. Federal Production Tax Credit. Similar to the prior principle, these credits are recorded above the line during the depreciation life of Wind VII and included in the revenue sharing calculations. After the depreciation life of Wind VII, the Board will determine treatment of the credit in a rate proceeding.

f. Wholesale Sales Revenue. Consistent with prior proceedings, wholesale sales revenue is recorded above the line and included in revenue sharing calculations through calendar year 2013, after which the Board will determine treatment of the wholesale sales revenue in a rate proceeding.

The uncontested principles are consistent with prior proceedings and are reasonable. They are approved.

2. Cost and Term Cap

The Settlement includes a ratemaking principle for a cost and term cap. There are separate per-MW cost caps for completed projects placed in service in 2009, completed projects placed in service in 2010, and completed projects placed in service in 2011 and 2012. The per-MW cost cap increases over time. The principle

also provides that in the event that actual capital costs of a given Wind VII Iowa project site are lower than the projected capital costs, MidAmerican's rate base shall reflect the actual costs. In the event actual capital costs exceed the cost cap, MidAmerican shall be required to establish the prudence and reasonableness of such excess before it can be included in rates.

MidAmerican Position

MidAmerican said that the proposed cost caps are based on MidAmerican's experience in the wind generation market and on information gained from a competitive bidding process open to wind turbine suppliers and project developers with wind projects in MidAmerican's transmission interconnection queue. (Tr. 851-54). MidAmerican noted that information about NextEra's proposed alternative to Wind VII (after taking into account hidden costs such as transmission costs and the imputed cost of debt) further confirms the reasonableness of the proposed cost caps. (Tr. 328). MidAmerican said that the proposed cost cap begins at a lower level than the cost cap approved in MidAmerican's previous ratemaking principles proceeding for wind generation, and slightly exceeds this level for the years 2011-2012. (Tr. 54). MidAmerican also noted that at the hearing, NextEra appeared to acknowledge that MidAmerican could develop wind projects as reasonably as NextEra. (Tr. 1275-76).

MidAmerican explained that the cost cap principle does not guarantee cost recovery for project costs in excess of the cost caps because any excess costs would be subject to prudence review in a rate case. If project costs are lower than the cost

caps, MidAmerican said that customers will receive the benefit in the form of lower costs added to rate base.

MidAmerican designed the 2009-2012 term cap to coincide with the current end date for the federal production tax credit and to give MidAmerican the latitude to take advantage of any purchase opportunities that might arise during the 2009-2012 time frame. MidAmerican noted that while most of the previous ratemaking principles proceedings for wind generation have not included a term cap, the one that did include a term cap (Docket No. RPU-07-2) was for a time frame greater than six years.

MidAmerican argued that its prior record demonstrates that MidAmerican's main concern has been to add wind generation when it can do so economically, without exceeding cost caps. (Tr. 788-89). MidAmerican stated that it does not intend to time its wind additions to maximize what it can include in rate base after the rate freeze ends. If it did, MidAmerican noted that in terms of reducing net plant investment in rate base by 2014, there would be a reduction of 14 percent for plant added in 2012, versus a reduction of 25 percent for plant spread evenly across 2010-2012. (Tr. 526). Also, MidAmerican pointed out that the higher net plant investment cost for plant added in 2012 would be offset by higher revenue benefits over the life of the plant. (Tr. 412-14). However, to reduce concerns raised at hearing about the timing of MidAmerican's Wind VII additions, MidAmerican pledged to limit its wind facility additions in 2012 to no more than 500 MW.

NextEra Position

NextEra argued that unlike previous wind projects, MidAmerican's proposed cost caps are based on a hypothetical rather than an actual facility, and are based on modeled estimates of project benefits that are outdated and do not accurately reflect the current volatility of wholesale electric markets. NextEra claimed there were several deficiencies with MidAmerican's model, including: 1) limiting its available generation facilities to MidAmerican facilities only, and not including the broader Midwest ISO market; 2) assuming no new plant additions after the addition of Wind VII, even though retail customer load is assumed to grow by 1.6 percent annually; 3) operation of MidAmerican's combustion turbines at a much higher capacity factor in the later years of the analysis compared to the early years; 4) outdated and unrealistic assumptions for electric prices in regions outside MidAmerican's control; and 5) off-system sales price that do not vary with carbon prices. (Tr. 1336-38). If the assumed revenue benefits are overstated, NextEra argued that the cost caps will be set too high, and MidAmerican's retail customers will be required to make up the revenue difference.

Unlike previous MidAmerican wind projects, NextEra said the cost caps for Wind VII are fixed, rather than variable. NextEra argued that fixed caps do not allow for consideration of estimated benefits and costs on a project-by-project basis. Also, NextEra pointed out that the the cost caps are not absolute because excess costs over the cap can be recovered in a rate case if MidAmerican can justify the costs as prudent.

Regarding the 2009-2012 term cap, NextEra argued that the broad time frame gives MidAmerican the flexibility and incentive to time the plant additions to minimize accumulated depreciation and maximize net plant in rate base after the rate freeze, for the benefit of MidAmerican's shareholders. NextEra recommended that if the Board does not reject MidAmerican's proposed term cap, the Board should limit the time frame to 2010, because this would limit MidAmerican's investment authority and subject its wind project proposals to more frequent review.

Board Discussion

The first two proposed cost caps, for the 2009 and 2010 construction periods, are below the 2008 cost cap approved for MidAmerican's Wind VI project in Docket No. RPU-08-4. The third proposed cost cap, for the 2011-2012 construction period, is only slightly above the 2008 level. The cost caps include estimated costs for interconnection and transmission upgrades. MidAmerican is proposing fixed caps in this docket, so that the cap remains fixed for the respective construction periods regardless of whether estimated benefits change over time; in some of its prior cases, MidAmerican utilized soft caps, which could change according to potential changes in the project's expected revenue benefits.

MidAmerican projects that Wind VII will produce, over its 20-year depreciable life, revenue benefits equal to or greater than its costs. MidAmerican used an economic analysis similar to that used in prior cases, where it: 1) estimates levelized annual revenue requirements for a representative portion of the project over a 20-year depreciable life; 2) converts the levelized annual revenue requirements to an

equivalent levelized dollar-per-kWh cost; and 3) subtracts the estimated levelized dollar-per-kWh revenue benefits. The result is a net negative dollar-per-kWh, which means the estimated benefits of Wind VII exceed the estimated costs over a 20-year period.

MidAmerican has a history of completing its wind projects at total costs that are below the approved cost caps, which gives the Board some confidence that MidAmerican will build Wind VII at a reasonable overall cost within the cap. Also, the limited competitive bidding process utilized by MidAmerican supports the proposed cost caps. Moreover, the cost caps are not a blank check to MidAmerican because any costs over the cap can only be recovered in a rate case, where the reasonableness and prudence of the costs must be established or they will not be recovered. In addition, MidAmerican used a hard cap in this case, rather than a soft cap. MidAmerican used a cost-benefit analysis to support the reasonableness of its proposed cost caps. Even when this analysis is adjusted according to the input assumptions advocated by NextEra (corrected Tr. 1358), as discussed in Section III above, it confirms the general reasonableness of the cost caps.

Further, MidAmerican produced a late-filed exhibit detailing all the proposed wind projects in its territory, which are in its generation interconnection queue. (Ex. 47.) This exhibit demonstrates that there are thousands of megawatts of wind power being studied for development, including interconnection, in MidAmerican's territory. This provides further evidence to the Board that even though MidAmerican does not

have specific sites determined, it does have a general knowledge of where sustainable and cost-effective wind projects can be built.

MidAmerican has not identified specific locations for Wind VII, but MidAmerican's experience demonstrates that it will not build when the costs are prohibitive and outside the cap. Location is not critical for costs such as turbines and pads, but it can impact capacity factor and needed transmission upgrades. MidAmerican will have to balance the costs of transmission upgrades with available wind resources at a particular location in order to reach performance goals while staying within the approved caps, but it has shown in prior dockets that it can economically achieve projected capacity factors, which for Wind VII is projected at 37 percent. If cost caps are exceeded, achieved and projected capacity factors would be a relevant factor in determining prudency in a rate proceeding, although the Board recognizes that capacity factors of a site must be balanced with transmission costs.

There was no credible evidence that the cost cap levels proposed by MidAmerican are unreasonable. The evidence in this proceeding, including MidAmerican's history of building projects within approved cost caps, supports a finding that the proposed caps are reasonable.

Regarding the 2009-2012 term cap, MidAmerican's pledge to limit its wind facility additions in 2012 to no more than 500 MW reduces concern that MidAmerican might use the term caps to delay wind facility additions in order to maximize rate base before the end of the rate freeze. Also offsetting this concern is the fact that any

delays in wind facility additions reduce the likelihood of rate base increases through the revenue sharing principle, discussed below.

3. Size Cap

The size cap ratemaking principle provides that any ratemaking principles approved shall be applicable to all new MidAmerican wind capacity up to 1,001 MW for all project sites under the Settlement. MidAmerican said that the purpose of this ratemaking principle is to allow it to take advantage of opportunities to purchase large numbers of wind turbines or entire projects at attractive prices if available. MidAmerican pointed out that it needs large amounts of carbon-free wind generation to cost-effectively counter-balance the preponderance of coal-fired generation in its portfolio. (Tr. 640-41). Even with an additional 1,001 MW of wind capacity, MidAmerican said that the total proportion of wind versus fossil fuel-based generation will still be relatively small, in terms of accredited capacity. (Tr. 607; 610). MidAmerican added that it has demonstrated it can integrate and administer large amounts of wind generation in its portfolio, and the size cap is within MidAmerican's capabilities. (Tr. 807-08).

NextEra pointed out that MidAmerican proposed a much larger size cap (1,001 MW) than it has for previous wind projects, nearly double the highest capacity of any previous wind project approved for ratemaking principles (i.e., the 545 MW Wind III project), which increases the project risk for MidAmerican retail customers. NextEra noted that the total investment based on 1,001 MW could be as high as $2 billion.

Intervenors also argued that giving MidAmerican advance ratemaking principles for a project this large would give MidAmerican excessive market power. As previously discussed, there is no persuasive evidence in the record that MidAmerican has or will have market power in the region or that Wind VII will have a chilling effect on wind power development in Iowa. In fact, the evidence demonstrated that MidAmerican does not exercise market power in the wholesale market, and that the wind power potential in Iowa and the region is likely in the tens of thousands of Megawatts, if adequate transmission is built.

However, the Board recognizes that because a substantial part of Wind VII's investment might not occur for a period of years, circumstances could change. Therefore, while the Board will approve a size cap of 1,001 MW, MidAmerican will be required to make a compliance filing with the Board before it makes any substantial investment beyond the first 750 MW. MidAmerican will be required to update the market power analyses it submitted in this proceeding or any other market power analysis later requested by the Board. In order to ensure this filing requirement does not cause undue delay, the Board will evaluate that filing within 30 days after it is complete, and will allow the approval of the 1,001 MW to stand unless the Board finds there is substantial reason to further investigate market power.

With the compliance filing required for investment larger than 750 MW, the size cap principle is reasonable. While the investment is large, Wind VII has numerous potential benefits for MidAmerican's Iowa retail customers, particularly when carbon limits or carbon taxes become effective.

4. Return on Equity

While the ROE component of ratemaking principles agreed to in the Settlement provides for a 12.2 percent equity return on the portion of Wind VII included in MidAmerican's Iowa electric rate base, MidAmerican pointed out that due to accelerated tax depreciation and book depreciation, the effective ROE on this investment will likely be between 9.7 and 11.2 percent for the life of Wind VII. (Tr. 530). MidAmerican noted that the 12.2 percent nominal ROE is only 50 basis points higher than returns approved in prior wind settlements. (Tr. 295).

MidAmerican stated that it will be three to five years before Wind VII's investments are reflected in rates because of the rate freeze. (Tr. 31). Because revenue sharing is a part of the rate freeze, MidAmerican said that its customers have the opportunity to share earnings if MidAmerican earns above 11.75 percent during that period. MidAmerican noted that Wind VII is important now because its options could become more constrained or expensive once carbon legislation passes. (Tr. 1373).

Consumer Advocate supported the ROE contained in the settlement and noted the significant depreciation of Wind VII that would occur during the current rate freeze. (Tr. 933-34). Depending on when various portions of Wind VII are constructed, Consumer Advocate concurred in calculations provided by MidAmerican that the percentage of original cost that would be put in rate base ranges from 65 percent for projects completed in 2010 to 86 percent for projects completed in 2012.

(Tr. 526). Consumer Advocate agreed that the effective ROE for Wind VII was between 9.7 and 11.2 percent. (Tr. 530).

While the nominal return is a higher number than has been approved as part of recent wind settlements, Consumer Advocate argued that market conditions have changed since the last two cases, which were in 2005 and 2008. Also, Consumer Advocate pointed out that while NextEra believed the nominal return is too high in this instance, NextEra admitted that it required an actual levered ROE to be in "the teens or the twenties" before NextEra will actually proceed with a wind project, and that it would not be disadvantaged by a 12.2 percent award to MidAmerican. (Tr. 1111; 1370).

NextEra and Iberdrola argued against the Settlement's ROE because it was higher than returns approved in previous settlements and greater risks were being placed on ratepayers. (Tr. 1370). Also, Iberdrola pointed out that the return was substantially higher than the 10.1 percent approved as part of a recent gas rate case settlement, Docket No. RPU-08-3, and the 10.1 percent approved for IPL's Sutherland coal plant, Docket No. RPU-08-1.

NextEra and Iberdrola were also concerned about what they viewed as a 10 percent floor on the ROE. In fact, the record indicates that this was their primary concern in the ROE area. (Tr. 1130; 1283-84). The arguments regarding a supposed 10 percent floor on ROE will be discussed in the section on the revenue sharing principle below.

In reviewing the 12.2 percent return included in the Settlement, it appears to reflect at least three factors: the actual cost of capital, an incentive component for renewable energy, and a component to reflect the unusual time lag in this case between the time the investments will be made and the time they will be included in MidAmerican's Iowa retail rates (because of the rate freeze). MidAmerican and Consumer Advocate do not place values on the individual components in arriving at the nominal ROE, but they agreed at hearing and in brief that because of the time lag issue resulting from the rate freeze, MidAmerican's effective ROE on Wind VII investments will be in the range of 9.7 to 11.2 percent, depending upon when the project investments are made.

This midpoint of the effective ROE range, 10.45 percent, is consistent with recent Board decisions. For example, 10.45 percent is below the 11.7 percent ROE awarded to IPL in its only wind ratemaking principles proceeding, Docket No. RPU-07-5, but that case is over two years old. A 10.45 percent return is close to the 10.1 percent ROE recently awarded to IPL for the Sutherland coal plant, is close to the 10.1 percent ROE approved as part of a recent settlement in the Black Hills gas rate case, and is nearly identical to the return granted to Iowa-American Water Company in temporary rates in Docket No. RPU-2009-0004. It is important to note that the 10.1 percent ROE determined by the Board for Sutherland did not include any incentive for renewable energy, unlike ROEs agreed to in prior settlements for wind facilities. When all the factors are considered, the nominal ROE contained in the Settlement is reasonable and consistent with prior litigated cases and settlements.

The Board recognizes that the returns approved by the Board as part of prior settlements might appear to be higher than returns awarded in litigated cases, but it is important to remember that settlement returns are the result of global resolutions that are not of precedential value and most involve wind facilities that provide some externality benefits, such as no carbon emissions. In settlement discussions, for example, parties might agree to a higher ROE in return for a lower cost cap. Analysts and other outside parties sometimes focus on the ROE number in their analysis, but what is important is an examination of all issues to determine if the overall settlement is reasonable. In a settlement, focus on an individual element is often not helpful or meaningful because of the give and take that can occur in arriving at a reasonable overall settlement package.

5. Cancellation Cost Recovery

The cancellation cost recovery principle provides that if MidAmerican cancels any Wind VII sites for good cause, MidAmerican's prudently incurred costs shall be amortized over ten years beginning no later than six months after the cancellation, with the annual amortization being recorded above-the-line and included in MidAmerican's revenue sharing or revenue requirement calculations. However, the unamortized balance is not included in rate base for those calculations.

NextEra argued that this principle is a "get out of jail free card" that would automatically allow MidAmerican to recover any cancellation costs for parts of Wind VII that are started, but not completed. (Tr. 1146). However, this is a mischaracterization of the principle, which is actually a statement of current law.

Because the principle refers to "prudently incurred costs" and cancellation for "good cause," MidAmerican will only obtain cost recovery of any cancellation costs after review of those costs in a proceeding in which some or all cancellation costs could be disallowed if they were found to be imprudent or good cause was not established for cancellation of an individual project site or sites. A similar principle was adopted in Docket No. RPU-08-1, although there the amortization period was only five years. The longer amortization period would not involve any increased carrying costs, since the unamortized balance would not be included in rates.

The Board notes that this cost recovery principle does not apply to any costs incurred by MidAmerican in 2009 because MidAmerican has agreed that it would not seek recovery of those costs, which it characterized as relatively small. (Tr. 837, 880). The Board will approve the cancellation cost recovery principle for costs incurred in 2010 and beyond. The principle is reasonable and a restatement of current Board policy with respect to project cancellation costs; the prudency of such costs must be established before any recovery.

6. Double Leverage

The Settlement includes a ratemaking principle that provides double-leverage adjustments would not apply to Wind VII in future MidAmerican rate cases, subject to certain conditions. The principle provides:

> As long as any equity infusion coming directly or indirectly from MidAmerican Energy Holdings Company to MidAmerican does not exceed approximately 50 percent of the capital required for the addition of Wind VII to the MidAmerican portfolio, such infusion will not be a justification

for, nor used as an argument to support, a double leverage adjustment to MidAmerican's revenue requirement.

In looking at a rate-regulated utility's capital structure, the Board traditionally considers the capital structure of the utility company, which includes debt, or the first layer of leverage, as well as any debt at the parent holding company level that could be used for a capital infusion into the utility, which is the second layer of leverage. A double leverage adjustment imputes that debt of the subsidiary to the parent company. Without the double leverage adjustment, the subsidiary utility company could earn a higher rate of return, as affected by the capital structure of the parent company, than any utility company not in such a position.

The Board has rejected utility efforts to avoid double leverage adjustments in several cases, including Docket Nos. RPU-02-3, RPU-02-8, and ARU-02-1. The Iowa Supreme Court affirmed the Board's use of double leverage on two occasions, although it is important to note the Court did not mandate that double leverage be applied in all situations. General Telephone Co. of the Midwest v. Iowa State Commerce Comm'n, 275 N.W.2d 364, 369 (Iowa 1979); United Telephone Co. v Iowa State Commerce Comm'n, 257 N.W.2d 466, 479-480, 482 (Iowa 1977).

The Board made a narrow exception to the application of double leverage in an Iowa Electric Light and Power rate case. In Docket No. RPU-89-3, the utility provided four factors that demonstrated how the parent's debt did not result in an increase in the utility's common equity. In other words, it was shown that the parent company's debt did not support the utility's capital structure. (Docket No. RPU-89-3,

"Final Decision and Order" (4/30/1990), pp. 47-49). In Docket No. RPU-91-9, one of the factors changed so the Board once again applied double leverage to the utility. No other exceptions to the application of double leverage for actual debt at the parent level have been made by the Board.

MidAmerican did not request a waiver of double leverage as a principle in its past ratemaking principles cases. However, MidAmerican said that because it is unknown at this time how much capital will be invested in Wind VII, and MidAmerican may not be able to generate enough internal capital to fund Wind VII along with other funding obligations, MidAmerican might need a capital infusion from its parent company, MidAmerican Energy Holdings Company (MEHC). MidAmerican said this infusion will help MidAmerican maintain the financial metrics needed to retain its current single-A bond rating.

NextEra and Iberdrola both objected to any waiver of double leverage, arguing that allowing an equity infusion from MEHC without application of double leverage would raise equity returns on Wind VII to 15 to 21 percent, well above the ROE provided for in the Settlement. The intervenors also cited Board precedent applying a double leverage adjustment when there is an equity infusion from the parent holding company. Iberdrola also argued that application of double leverage violated the Equal Protection clause; the Board addressed Equal Protection arguments in Section V(1) of this order.

MidAmerican has not presented sufficient evidence to justify departing in a Settlement from the Board’s longstanding precedent of applying a double leverage

adjustment when there is an equity infusion from the parent holding company to the regulated utility. This is particularly true because MidAmerican acknowledged at hearing that the principle was less important than when it was originally proposed because an investment opportunity was not pursued in 2009 where the double leverage exception would have been important and much of MidAmerican's short-term debt has been "cleaned-up." (Tr. 349). While the Board is willing to consider departing from precedent if the facts of a particular case warrant, the Board does not believe it should do so where the evidence supporting the departure is largely based on a potential opportunity that did not materialize. If utilities in a future ratemaking case or other docket have specific facts rather than speculative scenarios that they believe warrant a departure from the application of double leverage, the Board will hear those arguments and revisit the application of double leverage at that time. The Settlement's double leverage principle is unreasonable and will not be approved.

7. Revenue Sharing

One of the requested principles provides that MidAmerican's revenue sharing related to Wind VI will be calculated as follows:

a. Total MidAmerican Iowa electric revenue sharing (including Wind VII results) will be calculated consistent with the methodology approved by the Board in Docket No. RPU-03-01 and further extended thereafter.

b. To the extent the total MidAmerican Iowa electric ROE falls below 10 percent in any revenue sharing year prior to 2014, MidAmerican will

be allowed to record revenue sharing in order to increase the Wind VII ROE from the overall calculated MidAmerican Iowa electric ROE to 10 percent.

c. The calculation shall be based on the difference between the overall MidAmerican Iowa electric ROE and 10 percent, multiplied by the equity portion of the Wind VII rate base, with that result grossed-up for income taxes.

d. Rate base shall consist of the Iowa electric portion of Wind VII plant in-service less accumulated depreciation and deferred income taxes.

e. The equity portion of the Wind VII rate base shall be based on the Iowa electric Wind VII rate base as defined in item "d" above multiplied by the 13-month average common equity ratio as determined pursuant to the annual revenue sharing calculation.

f. The Wind VII revenue sharing for any year in which the total MidAmerican Iowa electric ROE falls below 10 percent shall be recorded as a credit to FERC account 407.4—Regulatory credits and a debit to FERC account 101—Electric plant in-service.

NextEra objected to the principle, characterizing it as guaranteeing MidAmerican a minimum 10 percent ROE for the Iowa portion of Wind VII during the remainder of the rate freeze and revenue-sharing settlement period (2009-2013), increasing Wind VII's risk for MidAmerican's Iowa retail customers. In other words, NextEra claimed the principle set a 10 percent ROE floor for the Iowa portion of Wind VII, although its witness at hearing expressed some doubt about whether he

understood the working of this principle. (Tr. 1169-72). NextEra also noted that MidAmerican had not sought this principle in prior ratemaking dockets.

MidAmerican said the characterization of the principle as a 10 percent floor for ROE was incorrect. MidAmerican pointed out that if the 10 percent were a floor, MidAmerican would be allowed to automatically increase its customer rates whenever Wind VII's ROE drops below 10 percent. However, MidAmerican explained that the ratemaking principle did not operate in that fashion. Instead, it provides that in the event MidAmerican's overall ROE drops below 10 percent before the end of 2013 (which could trigger the end of the rate freeze), the ratemaking principle allows MidAmerican to record revenue sharing such that Wind VII will be shown to achieve a 10 percent ROE for that year. (Tr. 504-08; 513-14). MidAmerican said that the principle is designed so that a lower ROE for Wind VII will not contribute to the premature end of the rate freeze.

MidAmerican's cost estimates project that Wind VII will have no long-term impact on customer rates. However, this principle deals with the possibility of reduced overall revenues in the short-term, during the project's early years. In effect, MidAmerican is proposing the functional equivalent of a deferred minimum 10 percent ROE for Wind VII during the current rate freeze and revenue-sharing settlement period (2009-2013). In practice, this deferral would involve: 1) determining the additional amount of revenue (if any) needed to ensure a 10 percent ROE for Wind VII in the revenue sharing calculation; 2) increasing net revenues by this amount in the revenue sharing calculation by crediting FERC

account 407.4—Regulatory Credits; and 3) deferring recovery of this additional revenue to future years by increasing Iowa rate base by the same amount by debiting FERC account 101—Electric Plant in Service. Any shortfall in ROE below 10 percent for Wind VII would be deferred to future years by increasing rate base by the same shortfall amount (in effect, converting the revenue shortfall to a deferred asset). If MidAmerican later has higher overall revenues in future revenue sharing years, the corresponding increase in ROE will be less due to the previous incremental increase in rate base, and the customers' share of revenue sharing will be a smaller (and MidAmerican's share larger) than it otherwise would have been. During the hearing, MidAmerican clarified that these rate base increases would also carry over to MidAmerican's next rate case. (Tr. 522-23).

This revenue sharing principle ensures that Wind VII will not contribute to a premature ending of the rate freeze. In fact, the treatment of Wind VII during the rate freeze period provides greater certainty that long-term revenues will be adequate to support the project and, therefore, provides added assurance that a general rate increase will not be necessary before the end of 2013. (Tr. 506-08). This principle is a form of insurance for MidAmerican's ratepayers and does not set a 10 percent ROE floor because there is no mechanism for immediately raising MidAmerican's electric rates simply because Wind VII Iowa project's ROE falls below 10 percent. The principle is reasonable and will be approved.

VII. REASONABLENESS OF SETTLEMENT

Subrule 199 IAC 7.2(11) provides that the Board will not approve a settlement unless it "is reasonable in light of the whole record, consistent with law, and in the public interest." As discussed previously in Section III, MidAmerican has satisfied the two conditions precedent in Iowa Code § 476.53(3)"c" and is therefore eligible for advance ratemaking principles. The ratemaking principles associated with Wind VII, as modified by the Board's discussion, are reasonable. The Settlement, as modified, is reasonable, in the public interest, and not contrary to any law. The Settlement will further the diversity of MidAmerican's generation resources, reduce its reliance on fossil-fueled generation, further the environmental policy goals of the state, will contribute to economic development, and position MidAmerican to meet ongoing and future environmental mandates and potential renewable mandates in a manner that will benefit its ratepayers. The Settlement's benefits to retail customers will help ensure that MidAmerican's current and future customers continue to enjoy adequate service and facilities at just and reasonable rates. Iowa Code §§ 476.6 and 476.8. The modifications to the Settlement imposed by the Board balance the Board's obligations to retail customers with its desire to foster wholesale competition and promote growth in Iowa's renewable energy market, with new projects both from rate-regulated utilities (if they benefit retail customers) and independent power producers.

MidAmerican will be conducting various transmission analyses for Wind VII for MISO and perhaps other entities. MidAmerican will be required to file all transmission-related studies, such as system impact studies, facilities studies, and

generator outlet studies, as they are completed. MidAmerican will also be required to file periodic project status reports for Wind VII every six months, including information on sites chosen for turbine installation, construction and installation status, transmission interconnection details, and any transmission additions or modifications necessary to complete Wind VII. The final report will be due when the last portion of Wind VII becomes operational.

VIII. FINDINGS OF FACT

Based on a thorough review of the entire record in these proceedings, the Board makes the following findings of fact:

1. It is reasonable to find that MidAmerican has in effect a Board-approved energy efficiency plan as required under Iowa Code § 476.6(19).

2. It is reasonable to find that MidAmerican has a need for Wind VII and that Wind VII benefits ratepayers by, among other things, enabling MidAmerican to meet current and future environmental regulations and likely carbon emission constraints, provide low-cost energy to retail customers, reduce MidAmerican's reliance on carbon-based generation, and diversify MidAmerican's supply portfolio.

3. It is reasonable to find that MidAmerican considered other long-term sources of electric supply and that Wind VII is reasonable, both for cost and non-cost reasons, when compared to other feasible alternative sources of supply.

4. There is no persuasive evidence for a finding that granting ratemaking principles in this proceeding will have a negative impact on Iowa wind projects developed by other wind developers.

5. There is no persuasive evidence for a finding that Wind VII would have an adverse impact on wholesale electric competition or the wind generation market.

6. It is reasonable to find that MidAmerican and NextEra and Iberdrola are not similarly situated for purposes of an Equal Protection analysis and that, if they were, there are valid reasons to treat the entities differently.

7. It is reasonable to find that § 476.53 has no direct effect on interstate commerce and any indirect effect is outweighed by the local benefits of the statute.

8. It is reasonable to find that § 476.53 is not a delegation of authority to a private entity.

9. It is reasonable to determine that MidAmerican is not proceeding under § 476.43 and therefore there is no basis for a finding of discrimination under that statute.

10. The six uncontested ratemaking principles are reasonable.

11. It is reasonable to approve the cost and term cap proposed by MidAmerican and contained in the Settlement.

12. It is reasonable to award ratemaking principles for 1,001 MW of wind generation, subject to the condition that MidAmerican make a compliance filing as described in this order before making any substantial investment beyond the first 750 MW.

13. It is reasonable to approve the ROE principle proposed by MidAmerican and contained in the Settlement.

14. It is reasonable to approve the cancellation cost recovery principle proposed by MidAmerican and contained in the Settlement.

15. Approving an exception to the application of double leverage as a ratemaking principle in this proceeding is unreasonable.

16. It is reasonable to approve the revenue sharing principle proposed by MidAmerican and contained in the Settlement.

17. The Settlement between MidAmerican and Consumer Advocate, subject to the conditions contained in this order, is reasonable, consistent with law, and in the public interest.

IX. CONCLUSIONS OF LAW

The Board has jurisdiction of the parties and the subject matter in this proceeding, pursuant to Iowa Code chapter 476 (2007).

X. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Advance ratemaking principles for Wind VII are awarded to MidAmerican Energy Company as detailed in the body of this order. MidAmerican shall notify the Board within 30 days of the date of this order whether or not it accepts the advance ratemaking principles awarded in this proceeding.

2. The Settlement filed by MidAmerican and the Consumer Advocate Division of the Department of Justice on March 25, 2009, is approved, subject to the conditions set out in this order including, but not limited to, the discussion related to the double leverage principle and the market power compliance filing.

3. Prior to making any substantial investment in Wind VII beyond the first 750 MW, MidAmerican shall file with the Board an update of their market power analyses submitted in this proceeding or any other market power analysis later required by the Board. The Board will evaluate MidAmerican's filing within 30 days after the Board issues an order deeming the filing complete, and the Board's approval of 1,001 MW of generation for ratemaking principles will remain unchanged unless the Board issues an order within the 30-day time frame finding that there is substantial reason to further investigate the market power. The Board's order deeming the filing complete or requiring additional information will be issued within 15 days after MidAmerican's initial filing.

4. MidAmerican shall promptly file with the Board copies of all transmission studies, system impact studies, generator outlet studies, or other studies it conducts to comply with any regulatory requirements.

5. MidAmerican shall file a status report on Wind VII on or before six months from the date of this order, and every six months thereafter, with the final report being due when the last portion of Wind VIII becomes operational. The report shall, at a minimum, contain the information identified in the body of this order.

6. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the briefs not specifically addressed in this order is rejected either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comments.

7. The unmodified portions of the Settlement between MidAmerican and Consumer Advocate approved by the Board are not, directly or indirectly, precedent in any current or future proceeding before the Board.

UTILITIES BOARD

/s/ Robert B. Berntsen

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 14th day of December, 2009.