



Iowa General Assembly

2012 Legal Updates

Legislative Services Agency – Legal Services Division

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ADVANCE RATEMAKING PRINCIPLES - WIND ENERGY APPLICATION

Filed by the Iowa Supreme Court

June 8, 2012

NextEra Energy Resources v. Iowa Utilities Board et al.

No. 10-2080

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Background. MidAmerican Energy Company (MidAmerican) filed an application with the Iowa Utilities Board (Board) for advance ratemaking principles applicable to the construction of a wind energy project involving the generation of up to 1,001 megawatts of wind energy. MidAmerican had previously applied for and received approval of ratemaking principles for six smaller wind energy projects. MidAmerican entered into a stipulation and agreement with the Office of Consumer Advocate prior to filing the application, and identified the following factors favoring expansion of its wind power generating capacity: the state's encouragement of renewable energy generation, positive experiences with prior wind energy projects, advantages to utility customers, favorable market conditions regarding turbine pricing, a projection that the project would pay for itself thereby mitigating a need to increase utility rates in the future, the likelihood of future carbon legislation at the federal level, and the company's goal of increasing energy source diversity. NextEra Energy Resources LLC (NextEra), an independent wholesale energy producer, filed a petition to intervene and objected to the stipulation, contending that ratemaking principles should not be applied. NextEra argued that MidAmerican was pursuing the proposed project as a vehicle to increase its presence in the wholesale energy market and that applying ratemaking principles would provide the company with a competitive advantage in that market while putting ratepaying customers at risk. The Board granted advance ratemaking principles for the project, which was affirmed by the district court.

Issues:

1. Whether statutory authority governing the application of advance ratemaking principles and alternate energy production was correctly interpreted and applied, and whether the Board's determinations in that regard was supported by substantial evidence.
2. Whether the application of statutory authority governing advance ratemaking principles to a utility that may compete in the wholesale energy market violates the Equal Protection Clause of the United States or Iowa Constitution.
3. Whether the application of statutory authority governing advance ratemaking principles to a utility that may compete in the wholesale energy market violates the Commerce Clause of the United States Constitution.

Analysis: Interpretation and application of statutory authority.

Iowa Code §476.53 requires the board to specify in advance applicable ratemaking principles when the costs of a proposed electric generating facility by a rate-regulated public utility are to be included in rates charged to customers. Prior to this determination, the Iowa Code section requires an applicant to demonstrate that the proposed facility is a reasonable alternative to meet its electric supply needs in comparison to other feasible sources of alternative energy. NextEra contended this requirement necessitates a determination by the Board that the utility's ratepayers "need" the electrical supply the proposed project will generate. The Court interpreted the requirement more broadly to encompass not only present capacity needs, but also compliance with present and future federal regulations, fuel diversity, the supply of less expensive energy to consumers, and the promotion of economic development and the state's energy policy. The Court thus concluded that the board had properly construed the requirement.

NextEra also contended that in determining whether a proposed facility is a "reasonable" alternative in comparison to

other feasible alternative energy sources, the Board should have required MidAmerican to compare the proposal to other generating facilities utilizing the same power source, and that the comparison should be performed prior to submission of the application instead of afterward. The Court disagreed, finding that the statute requires a utility to do no more than demonstrate the proposed facility is reasonable in comparison to other alternative sources for long-term electric supply, and that a utility is only required to perform a comparison prior to receiving approval of ratemaking principles.

The Court determined that substantial evidence supported the Board's findings relating to both the "need" and "other feasible alternatives" requirements. The Court additionally supported the Board's determination that the provisions of Iowa Code §476.43, relating to the ownership, purchase, and supplemental provision of alternate energy production facilities, was inapplicable due to a statutory exception contained in Iowa Code §476.44, which MidAmerican satisfied.

Equal Protection Clause. NextEra asserted that applying the advance ratemaking principles of Iowa Code §476.53 to facilitate a wholesale market endeavor violated the Equal Protection Clause at both the federal and state levels. The Court applied the rational basis test, under which a statute will be upheld if classifications drawn therein can be regarded as reasonable in light of their purpose. The Court determined that permitting rate-regulated public utilities to receive approval of advance ratemaking principles and to sell energy in the wholesale market is consistent with the legislative intent of Iowa Code §476.53, identified as mandating that "public utilities are to furnish electricity in an efficient, reliable manner" and that "(t)his implies [that] a public utility should strive to decrease the cost at which it supplies electricity to consumers while at the same time ensuring reliable service." The Court stated that "(t)he record establishes selling energy in the wholesale market allows MidAmerican to reduce rates at which its retail customers purchase energy," and that the proposed project "allows MidAmerican to meet the needs of its retail customers, which include maintaining a diverse fuel supply and acting in compliance with environmental regulations."

Additionally, it was recognized that "the general assembly was forced to limit its grant of advance ratemaking principles to rate-regulated utilities because they were the only companies subject to the State's ratemaking jurisdiction. Companies that did not provide energy to retail consumers in Iowa, like NextEra, were and still are, completely beyond the State's ratemaking influence. Such a difference is reasonable and consistent with the constitutional guarantee of equal protection."

Commerce Clause. NextEra contended that approving the application of advance ratemaking principles to MidAmerican in this instance favored in-state economic interests because an Iowa public utility operating in the wholesale market would derive a benefit that other energy providers in that market which do not serve retail customers in this state cannot obtain. The Court disagreed, stating that "(t)he Board's decision to grant advance ratemaking principles to MidAmerican does not affect NextEra or favor in-state economic interests. The Board's decision is entirely based on the fact MidAmerican is a rate-regulated utility in Iowa. The impact, or lack thereof, on NextEra would be the same if NextEra was located wholly within Iowa or completely outside Iowa because NextEra is not a rate-regulated Iowa utility." NextEra also contended that if energy generated by the project was placed in the wholesale market by MidAmerican, interstate commerce could be indirectly affected because that state-subsidized electricity would be directly competing with nonsubsidized electricity produced by NextEra and similar companies. The Court determined that "the burden on the wholesale market, if any, would be minimal" based on the proportion of energy to be produced by the project in comparison to the electric generation capacity in the energy market in which MidAmerican competes, and that the local benefits of the project would be significant.

Holding. The Court affirmed the judgment of the district court.

Concurrence (Special). Justice Edward Mansfield concurred in the result only, taking exception to, among other aspects of the majority opinion, a preliminary scope of review determination by the majority concluding that the General Assembly did not delegate to the board interpretive authority with the binding force of law with respect to interpreting specific terms in Iowa Code chapter 476, requiring the court to examine the Board's interpretation of Iowa Code §476.53 for the correction of errors at law. Justice Mansfield stated that "(h)istorically we have deferred to the Iowa Utilities Board's interpretations of §476.53 of the Iowa Code", citing a provision in Iowa Code §476.2 granting the board "broad general powers to effect the purposes of this chapter," and a previous decision recognizing the Board's interpretive authority.

LSA Monitor: Richard Nelson, Legislative Services Agency, Legal Services Division, (515) 242-5822.