

II. ARGUMENT

A. The IUB’s conclusion that consideration of coal retirements and other compliance alternatives are outside the scope of Iowa Code § 476.6(19) is consistent with past IUB practices and precedent.

1. Standard of Review/Deference.

Authorities:

Iowa Code

Iowa Code § 17A.19(10)(h)

Iowa Code § 17A.19(10)(j)

Case Law

Office of Consumer Advocate v. Iowa Utils. Bd., 770 N.W.2d 334, 341 (Iowa 2009)

Finch v. Schneider Specialized Carriers, Inc., 700 N.W.2d 328, 332 (Iowa 2005)

Other Authorities

Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions* 69 (1998)

2. The IUB’s finding that coal plant retirement and other compliance alternatives are outside of the scope of Iowa code § 476.6(19) is consistent with past IUB practices and precedent.

Authorities:

Iowa Code

Iowa Code § 476.6(16)

Iowa Code § 476.6(19)

Agency Orders

EPB-2014-0156, *In re MidAmerican* (March 12, 2015)

EPB-2016-0156, *In re MidAmerican* (June 9, 2017)

EPB-2018-0156, *In re MidAmerican* (September 7, 2018)

a. EPB-2014-0156 is consistent with IUB’s current practices and precedent.

Authorities:

Iowa Code

Iowa Code § 476.6(20)(2013)

Agency Orders

EPB-2014-0156, *In re MidAmerican*, 2015 WL 1155934 (Iowa U.B.) (March 12, 2015)

- b. **EPB-2016-0156 is consistent with IUB's current practices and precedent.**

Authorities:

Agency Orders

EPB-2016-0156, *In Re MidAmerican*, 2017 WL 2591358 (Iowa U.B.) (June 9, 2017)

- c. **EPB-2018-0156 is consistent with IUB's current practices and precedent.**

Authorities:

Iowa Code

Iowa Code § 17A.19(10)(j)

Iowa Code § 476.6(12)

Iowa Code § 476.6(16)

Iowa Code § 476.6(19)(d)

Iowa Code § 476.6(20)(c) (2017)

Agency Orders

EPB-2014-0156, *In re MidAmerican*, 2015 WL 1155934 (Iowa U.B.) (March 12, 2015)

EPB-2018-0156, *In re MidAmerican*, 2018 WL 4354058 (Iowa U.B.) (September 7, 2018)

3. **Attempts to require a review of coal plant retirements and consideration of alternative compliance options for approval of environmental plans and budgets should be rejected.**

Authorities:

Iowa Code

Iowa Code § 17A.19(10)(h)

Iowa Code § 476.6(19)

Iowa Code § 476.6(19)(c)

4. **Since the IUB found that no factual dispute existed, the IUB's order contained sufficient information and is consistent with past IUB practices and precedent.**

Authorities:

Iowa Code

Iowa Code § 17A.16

Case Law

Brekke v. Iowa State Bd. of Educ., 449 N.W.2d 345, 346-347 (Iowa 1989)
Hurtado v. Iowa Dep't of Job Serv., 393 N.W.2d 309, 311 (Iowa 1986)

Agency Orders

EPB-2014-0156, *In re MidAmerican*, 2015 WL 1155934 (Iowa U.B.) (March 12, 2015)
EPB-2016-0156, *In Re MidAmerican*, 2017 WL 2591358 (Iowa U.B.) (June 9, 2017)
EPB-2018-0156, *In re MidAmerican*, 2018 WL 4354058 (Iowa U.B.) (September 7, 2018)

B. The IUB's interpretation of Iowa Code § 476.6(19) finding there were no material facts in dispute about MidAmerican's 2020 EPB was appropriate as interpretation of the law has been clearly vested to the IUB.

1. Standard of Review/Deference.

Authorities:

Iowa Code

Iowa Code § 17A.19(10)(c),(l), (n)
Iowa Code § 17A.19(11)
Iowa Code § 17A.19(11)(c)
Iowa Code § 476.6
Iowa Code § 476.6(19)
Iowa Code § 476.6(19)(a-d; f)
Iowa Code § 476.33
Iowa Code § 476.101(9)
Iowa Code § 479B.9

Case Law

AT & T Commc'ns of the Midwest, Inc. v. Iowa Utils. Bd., 687 N.W.2d 554, 561 (Iowa 2004)
Baker v. Bridgestone/Firestone, 872 N.W.2d 672 (Iowa 2015)
Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 256 (Iowa 2012)
City of Coralville v. Iowa Utils. Bd., 750 N.W.2d 523, 527 (Iowa 2008)
Doe v. Iowa Dep't of Human Servs., 786 N.W.2d 853, 857 (Iowa 2010)
Evercom Systems, Inc. v. Iowa Utils. Bd., 805 N.W.2d 758, 762 (Iowa 2011)
Hawkeye Land Company v. Iowa Utils. Board, 847 N.W.2d 199, 207-208 (Iowa 2014)
Iowa Dental Ass'n v. Iowa Ins. Div., 831 N.W.2d 138, 144 (Iowa 2013)
Irving v. Emp't Appeal Bd., 883 N.W.2d 179, 184-85 (Iowa 2016)
Mathis v. Iowa Utilities Board, 934 N.W.2d 423, 427-428 (Iowa 2019)
NextEra Energy Res. LLC v. Iowa Utils. Bd., 815 N.W.2d 30, 37 (Iowa 2012)
Office of Consumer Advocate v. Iowa Utils. Bd., 744 N.W.2d 640, 643 (Iowa 2008)
Puntenney v. Iowa Utilities Bd., 928 N.W.2d 829, 836 (Iowa 2019)
Renda v. Iowa Civil Rights Commission, 784 N.W.2d 8, 11 (Iowa 2010)
SZ Enterprises, LLC v. Iowa Utils. Bd., 850 N.W.2d 441 (Iowa 2014)
Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 253 (Iowa 2010)

Other Authorities

Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 63 (1998)

2. No relevant disputed material facts.

Authorities:

Iowa Code

Iowa Code § 476.6(19)(a)(3)

Case Law

Abbas v Iowa Insurance Division, 893 N.W.2d 879, 888 (Iowa 2017)

Greenwood Manor v. Iowa Dep't of Pub. Health, 641 N.W.2d 823, 834 (Iowa 2002)

Other Authorities

Arthur Earl Bonfield, *The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act*, 63 Iowa Law Review 285 (1977)

- a. There is not a factual dispute as to whether MidAmerican's 2020 EPB provided the necessary statutory information to support the IUB's approval.**

Authorities:

Iowa Code

Iowa Code § 476.6(19)

- b. The factual dispute regarding coal plant retirement is wholly irrelevant to the result in this case.**

3. The IUB appropriately interpreted Iowa Code § 476.6(19).

Authorities:

Iowa Code

Iowa Code § 17A.19(10)

Iowa Code § 476.6(19)

Iowa Code § 476.6(19)(a)

Iowa Code § 476.6(19)(c)

- C. Substantial evidence exists in the record to support the IUB's order approving MidAmerican's 2020 Emissions Plan Budget satisfying Iowa Code § 476.6 and Iowa Admin. Code r. 199-7 requirements.**

1. Standard of Review/Deference.

Authorities:

Iowa Code

Iowa Code § 17A.19(8)(a)
Iowa Code § 17A.19(10)(f)
Iowa Code § 17A.19(10)(l)
Iowa Code § 17A.19(10)(n)

Case Law

ABC Disposal Sys., Inc. v. Dep't of Natural Res., 681 N.W.2d 596, 603 (Iowa 2004)
Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 256 (Iowa 2012)
Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011)

2. Substantial evidence - approval of Emissions Plan Budget.

Authorities:

Iowa Code

Iowa Code § 17A.19(10)(n)
Iowa Code § 476.6(19)
Iowa Code § 476.6(19)(a)(3)
Iowa Code § 476.6(19)(a)(4)
Iowa Code § 476.6(19)(c)
Iowa Code § 476.6(19)(d)

Case Law

Al-Khattat v. Eng'g & Land Surveying Examining Bd., 644 N.W.2d 18,23 (Iowa 2002)
Citizen's Aide/Ombudsman v. Rolfes, 454 N.W.2d 815, 819 (Iowa 1990)
Doe v. Iowa Bd. Of Med. Examiners, 733 N.W.2d 705, 707 (Iowa 2007)
Greenwood Manor v. Iowa Dept' of Public Health, 641 N.W.2d 823, 831 (Iowa 2002)
S.E. Iowa Co-op. Elec. Ass'n v. Iowa Utils. Bd., 633 N.W.2d 814, 818 (Iowa 2001)

3. Substantial evidence - Application for Reconsideration denied.

Authorities:

Agency Rules

Iowa Admin. Code r. 199-7.27

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. Nature of the case and parties in the Agency proceeding.

This matter is a judicial review proceeding brought pursuant to Iowa Code § 17A.19 (2021)¹ to review the agency decision of the Iowa Utilities Board (“IUB” or the “Board”) approving a 2020 Electric Power Generation Facility Emissions Plan and Budget update (“2020 EPB”) filed by MidAmerican Energy Company (“MidAmerican”). Pursuant to Iowa Code § 476.6(19)(a)(3), other required parties include the Iowa Department of Natural Resources (“IDNR”) and the Office of Consumer Advocate (“OCA”), a division of the Iowa Department of Justice, who is an agency that acts as “attorney for . . . all consumers generally and the public generally” Petitioners Environmental Law and Policy Center, Iowa Environmental Council, and Sierra Club (“Environmental Petitioners”) became parties to this case through intervention. (CR pp. 40-42; 44-47; 77-78; 82-84).² Additionally, Facebook, Inc., and Google LLC (“Tech Intervenors”) also participated in this docket as intervenors. (CR pp. 79-80; 82-84).

B. Statutory requirements.

Iowa law requires each Iowa rate-regulated utility that owns an electric power generating facility fueled by coal to bi-annually file a multiyear emissions plan and budget (“EPB”) for managing regulated emissions from its facilities in a cost-effective manner. Iowa Code § 476.6(19)(a). Utilities with coal-fueled generating facilities file evidence that includes an Electric Power Generation Facility Budget, Electric Power Generation Facility Emission Plan, witness testimony, and supporting exhibits for the IUB’s consideration in a contested case proceeding. *Id.* at § 476.6(19)(a). All other parties may also file evidence. The IUB then

¹ All citations to the Iowa Code are to the 2021 edition unless otherwise noted.

² “CR” stands for the Certified Record filed in this docket. Each “CR” citation shall be followed by the referenced Certified Record Page number(s).

determines whether the utility's proposed EPB will achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards by considering if plan and budget reasonably balance costs, environmental requirements, economic development potential, and reliability of the electric generation and transmission system. *Id.* at § 476.6(19)(c). The IUB must either approve or reject the EPB within 180 days after the public utility's filing is deemed complete. *Id.* at § 476.6(19)(d).

C. Course of proceedings.

On April 1, 2020, MidAmerican filed with the IUB in Docket No. EPB-2020-0156 its proposed 2020 EPB, which included an Electric Power Generation Facility Budget Update and an Electric Power Generation Facility Emissions Plan, along with supporting testimony and exhibits, as well as later, updated information and amended filings, covering the period from January 1, 2020, through December 31, 2022. (CR pp. 7-39; 54-60; 64-66). Petitioners Environmental Law and Policy Center and Iowa Environmental Council filed a petition for intervention on April 10, 2020, and the IUB granted intervention on May 20, 2020. (CR pp. 40-42; 44-47). IDNR filed initial testimony on October 26, 2020. (CR pp. 67-69). On October 27, 2020, the IUB entered an order deeming MidAmerican's EPB application complete, establishing a procedural schedule, and providing notice of hearing. (CR, pp. 71-75). On November 4, 2020, Petitioner Sierra Club and Tech Intervenors filed petitions to intervene in the EPB proceeding, which the IUB granted on November 24, 2020. (CR pp. 77-80; 82-84). OCA, Environmental Petitioners, and Tech Intervenors also made filings including statements, initial testimony, and exhibits on December 17, 2020. (CR pp. 88-508, 509-517; 518-711). All parties filed various supplemental testimony and exhibits throughout the pendency of the case which will be identified with the certified record citation as specifically referenced herein as necessary.

Comments were filed in the docket by Iowa Association of Municipal Utilities (IAMU), Corn Belt Power Cooperative (Corn Belt), and Northwest Iowa Power Cooperative (NIPCO) on January 7, 2021. (CR pp. 734-738).

On February 4, 2021, MidAmerican and OCA filed a joint motion and proposed non-unanimous settlement agreement. (CR pp. 830-836). Environmental Petitioners filed comments on February 18, 2021 (revised comments filed February 28, 2021), and Tech Intervenors filed comments on February 18, 2021, (CR pp. 857-883; 897-923; 884-888) with OCA and MidAmerican replying to comments on February 25, 2021. (CR pp. 889-896; 924-940). The parties' other filings will be identified with the certified record citation as specifically referenced herein as necessary.

On March 16, 2021, the IUB issued an order establishing deadlines, requiring the filing of a joint statement of issues, and addressing outstanding motions and hearing protocols. (CR pp. 965-72). The parties filed a joint statement of issues on March 19, 2021. (CR pp. 973-977). On March 24, 2021, the IUB issued an order approving MidAmerican's 2020 EPB, denying MidAmerican and OCA's joint motion and non-unanimous settlement agreement, opening a separate docket, and canceling hearing. (CR pp. 979-991). On April 13, 2021, pursuant to 199 Iowa Administrative Code ("IAC") 7.27, Environmental Petitioners filed an application for reconsideration. (CR pp. 992-1012). Also, on April 13, 2021, and as amended on April 14, 2021, OCA filed a motion for rehearing and reconsideration. (CR pp. 1014-1027). On April 27, 2021, Tech Intervenors filed a response to motions for reconsideration (CR pp. 1028-1030) and MidAmerican filed a response to application for reconsideration and to motion for reconsideration and rehearing. (CR pp. 1031-1042).

On May 13, 2021, the IUB issued an order denying motion for reconsideration. (CR pp. 1043-1054). The information subject to this judicial review is found in Docket No. EPB-2020-0156, which is available to the public through the IUB's electronic filing system.

D. Statement of the facts regarding the IUB order.

In its March 24, 2021 order, the IUB found MidAmerican's costs associated with its electric power generating facilities fueled by coal were reasonable and MidAmerican's Emission Plan and Budget met federal and state emission requirements. (CR pp. 987-988). The IUB also found that the requests for further analysis regarding least-cost options for emissions controls, including retirement of coal facilities, fell outside the scope of an EPB docket and Iowa Code § 476.6(19). (CR pp. 986-988). Although the IUB concluded that least-cost options for emissions controls should not be analyzed in EPB dockets, the IUB did agree with Environmental Petitioners that those matters, as well as reliability and baseload generation, warranted further review given the rapid changes occurring to the national generation fleet and the February 2021 polar vortex. As such, the IUB opened SPU-2021-0003 to explore least-cost alternatives for MidAmerican's generating fleet, including the potential retirement of coal plants. (CR pp. 989-991). Additionally, the IUB did not approve MidAmerican and OCA's proposed settlement agreement as the agreement addressed several items that the IUB concluded should not be part of EPB dockets. (CR pp. 988-989).

II. ARGUMENT

A. The IUB's conclusion that consideration of coal retirements and other compliance alternatives are outside of the scope of Iowa Code § 476.6(19) is consistent with past IUB practices and precedent.

1. Standard of Review/Deference.

Allegations that an agency's actions should be reversed pursuant to § 17A.19(10)(h) because the agency failed to follow its prior practice or precedent are reviewed under the

unreasonable, arbitrary, capricious, or abuse of discretion standard. *Office of Consumer Advocate v. Iowa Utils. Bd.*, 770 N.W.2d 334, 341 (Iowa 2009) citing *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 332 (Iowa 2005) (quoting Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions* 69 (1998)).

Environmental Petitioners also identify a separate argument regarding Iowa Code § 17A.19(10)(j), whether the IUB's ruling is a product of the agency's failure to consider relevant and important matters in the record. Environmental Petitioners' law point appears to be integrated with their argument that the IUB did not follow its past practices and precedents when it ignored the coal plant retirement and least-cost options evidence in the record, and thus, the IUB's decision was unreasonable. As such, Iowa Code § 17A.19(10)(j) will be considered in this section.

2. The IUB's finding that coal plant retirement and other compliance alternatives are outside the scope of Iowa Code § 476.6(19) is consistent with past IUB practices and precedent.

The IUB's March 24, 2021 Order Approving 2020 EPB concluded that Environmental Petitioners and OCA's requests for further analysis of other items, including retirement of coal plants and least-cost options for emissions controls, fell outside the scope of the EPB proceeding and Iowa Code § 476.6(19). (CR pp. 986-988). Because the IUB found Environmental Petitioners and OCA's concerns appropriate for further consideration, the IUB opened Docket No. SPU-2021-0003 to evaluate the reasonableness and prudence of MidAmerican's procurement and contracting practices related to the acquisition of fuel for use in generating electricity pursuant to Iowa Code § 476.6(12), and to address a forecast of future gas requirements or electric generating needs pursuant to Iowa Code § 476.6(16). The IUB Order noted that Docket No. SPU-2021-0003 would allow interested parties, including Environmental Petitioners and OCA, to participate in an in-depth analysis of MidAmerican's long-term resource

plans. The docket would necessarily include discussion of least-cost options for generation, environmental requirements, reliability, baseload generation, and economic development potential. (CR pp. 989-991).

Environmental Petitioners and OCA argue the IUB's conclusion that alternative emission management options, such as coal plant retirements, are not appropriate in an EPB docket is erroneous given the IUB's past practices and precedent. Environmental Petitioners and OCA refer to several EPB dockets and subsequent orders in which they claim the IUB considered coal plant retirements and other options. (Pet. Brief p. 22-26; OCA Brief p. 22-23). Environmental Petitioners and OCA misstate the IUB's consideration of coal plant retirements in prior dockets. The IUB's "consideration" of coal plant retirements in previous EPB dockets includes reviewing either MidAmerican or Interstate Power and Light Company's ("IPL") filings that describe, as part of their own plan and supporting testimony, coal plant retirements or other compliance options. The IUB has not taken and considered evidence about coal plant retirements within an EPB docket beyond the filing utility's plan or supporting testimony; and there has been no EPB docket to date, except MidAmerican's 2020 EPB, where intervenors or OCA submitted evidence arguing that the IUB should order the utility to retire a coal plant or to utilize/examine alternative compliance options in order for the EPB filing to be approved.

Environmental Petitioners identify prior EPB dockets where retirement or other compliance options had been "considered" as part of the emission management strategy: MidAmerican dockets EPB-2014-0156, EPB-2016-0156, and EPB-2018-0156, and IPL docket EPB-2016-0150. (Pet. Brief p. 13). Environmental Petitioners argue that in those dockets, "the Board had approved coal plant retirements as compliance strategy and did not reject them as outside the scope of the EPB statute." (Id.)

To demonstrate that the IUB has followed its prior practices and precedent, the IUB will briefly discuss the identified EPB MidAmerican dockets and final orders below.

a. EPB-2014-0156 is consistent with IUB's current practices and precedent.

With regard to the IUB's final order for EPB-2014-0156, *In re MidAmerican*, 2015 WL 1155934 (Iowa U.B.) (March 12, 2015), the order resembles the IUB's final order in EPB-2018-0156, *In re MidAmerican*, 2018 WL 4354058 (Iowa U.B.) (September 7, 2018) (discussed below). MidAmerican, OCA, Environmental Law and Policy Center and the Iowa Environmental Council stipulated that MidAmerican's 2014 EPB complied with the Iowa statute, then Iowa Code § 476.6(20)(2013), and proposed a partial settlement agreement to the IUB for its consideration. However, in order to approve the partial settlement, the IUB still had to determine if MidAmerican's 2014 EPB satisfied Iowa Code § 476.6(20)(2013), based on the record. The IUB concluded:

MidAmerican's 2014 Plan Update adequately addresses costs, economic development, and reliability as provided in Iowa Code § 476.6(20)"c." Most of the projects in the 2014 Plan Update are continuations of projects previously approved. The primary drivers in the 2014 Plan Update are current and projected Environmental Protection Agency environmental standards and continuing efforts to meet particulate matter and mercury standards. While the 2014 Plan Update is specifically for the 2014-2016 time frame, MidAmerican has included a summary of controls it believes will be installed through 2023; these projections could change based on future regulatory requirements or changes in the allowance markets.

MidAmerican's 2014 Plan Update reasonably balances costs, environmental requirements, economic development potential, and reliability of the generation and transmission system. The Board will therefore approve the partial settlement. The settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

(Id. p. 5).

Both the 2014 and 2020 EPB dockets contain MidAmerican’s “Electric Power Generation Facility Budget Update” (public and confidential versions) that included an identical section “F” entitled “Other Plan Considerations” with the same subheadings entitled Economic Development, Transmission System Reliability, and Generation System Reliability. Except for information regarding creation of jobs, the text contained within each of the three subsections found in the 2014 and 2020 Budget Update are identical. Neither Environmental Petitioners nor OCA objected to any of these items or other items contained within the 2014 Budget Update as not being sufficiently detailed to support the IUB’s analysis of all factors and its approval of MidAmerican’s 2014 EPB.

Note that the March 12, 2015 final order did not include findings of facts and conclusions of law. This will be discussed in further detail within this argument at subheading 4.

b. EPB-2016-0156 is consistent with IUB’s current practices and precedent.

In EPB-2016-0156, *In Re MidAmerican*, 2017 WL 2591358 (Iowa U.B.) (June 9, 2017), the IUB’s order identified that MidAmerican had filed a motion to cancel the upcoming hearing, arguing that there were no disputed facts and therefore a hearing was unnecessary. There was no settlement filed in the docket. All parties agreed that no hearing was necessary; however, Environmental Petitioners made a separate argument there was a legal question as to whether MidAmerican must make a showing that the costs regarding the use of selective catalytic reduction (SCR) technology were reasonable for MidAmerican customers with regard to the Ottumwa Generating Station (jointly owned by MidAmerican and IPL, but operated solely by IPL) beyond information found in IPL’s EPB docket. (*Id.* pp. 3-4).

The IUB stated in its final order:

Here, DNR has provided testimony that the 2016 EPB meets environmental requirements. (Walker Direct at 2). The update has economic development potential because the required environmental installations create a significant number of jobs, and there is evidence in the record showing that the 2016 EPB takes into account the reliability of the electric generation and transmission system. (Electric Power Generation Facility Budget Update at 15-16). It is undisputed that all three of these factors weigh in favor of approving MidAmerican's 2016 EPB. There is also no dispute among the parties about the costs other than those related to the Ottumwa Generating Station.

...

While the Board agrees that MidAmerican cannot rely solely on the settlement to support the reasonableness of the technology in this case, the settlement is nevertheless evidence in support of the reasonableness of the technology. The Board approved of the use of SCR technology in IPL's EPB docket, which would tend to weigh in favor of it being reasonable in this docket as well since this docket involves the exact same facility and technology. There is also evidence in the record that MidAmerican agrees with IPL's analysis on the use of SCR technology at the Ottumwa Generating Station. (Whitney Rebuttal at 5).

Taken altogether, the balance of the costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system support a finding that MidAmerican's 2016 EPB is reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards.

(Id. p. 5-7).

Both the 2016 and 2020 EPB dockets contain MidAmerican's "Electric Power Generation Facility Budget Update" (public and confidential versions) that includes an identical section "F" also entitled "Other Plan Considerations" with the same subheadings entitled Economic Development, Transmission System Reliability and Generation System Reliability. Except for information regarding creation of jobs, the text contained within each of the three subsections found in the 2014, 2016 and 2020 Budget Update are identical. Both Environmental Petitioners and OCA did not object to any of these items or other items contained within the 2016 Budget Update as not being sufficiently detailed to support the IUB's analysis of all factors and its approval of MidAmerican's 2016 EPB.

Note that the June 9, 2017 final order did not include findings of facts and conclusions of law. This will be discussed in further detail within this argument at subheading 4.

c. EPB-2018-0156 is consistent with IUB's current practices and precedent.

In the IUB's final order for EPB-2018-0156, *In re MidAmerican*, 2018 WL 4354058 (Iowa U.B.) (September 7, 2018), the order differed in some respects from the IUB's final order in EPB-2014-0156 in that MidAmerican and OCA stipulated that MidAmerican's 2018 EPB complied with the Iowa statute, then Iowa Code § 476.6(20) (2017), and proposed a partial settlement agreement to the IUB for consideration. Environmental Petitioners did not intervene in EPB-2018-0156. The IUB found, as it did in EPB-2014-0156, that in order to approve the partial settlement, the IUB still had to determine if MidAmerican's 2018 EPB satisfied Iowa Code § 476.6(20) (2017) based on the record. The Board concluded:

Based on the stipulation in the Partial Settlement Agreement, DNR's filed statement and testimony, and its own independent review of MidAmerican's 2018 EPB and supporting material, including testimony regarding MidAmerican's compliance with federal ambient air quality standards and MidAmerican's approach to balancing costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system, the Board concludes the projects and associated budgets within the 2018 – 2020 period are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. The Board will, therefore, approve MidAmerican's 2018 EPB pursuant to Iowa Code section 476.6(20)(c).

(*Id.* at 6-7).

Similar to the analysis of the 2014 and 2016 EPBs immediately above, both the 2018 and 2020 EPB dockets again contain MidAmerican's "Electric Power Generation Facility Budget Update" (public and confidential versions), which included an identical section "F" also entitled "Other Plan Considerations" with the same subheadings titled Economic Development, Transmission System Reliability, and Generation System Reliability. The text contained within

each of the three subsections found in the 2018 and 2020 Budget Update are also identical. OCA did not object to any of these items or other items contained within the 2018 Budget Update as not being sufficiently detailed to support the IUB's analysis of all factors and its approval of MidAmerican's 2018 EPB.

Note that the September 7, 2018 final order did not include findings of facts and conclusions of law. This will be discussed in further detail within this argument at subheading 4.

As highlighted in these three prior MidAmerican EPB cases, the IUB has consistently followed its past precedents when it reviewed the record in MidAmerican's 2020 EPB to assess if the statutory requirements of Iowa Code § 476.6(19) had been met. In MidAmerican's 2020 EPB, the IUB concluded that coal plant retirements and alternative compliance options are more appropriately explored in other dockets given the statutory directives and shortened timeframes for issuing an EPB order. Just because a coal plant retirement was part of the investor-owned utility's EPB plan does not, in and of itself, create precedent that makes coal plant retirements a relevant inquiry to be litigated in an EPB docket.

In its Brief, OCA identifies the Environmental Law & Policy Center and Iowa Environmental Council's direct testimony from a witness describing the usefulness of IPL's Integrated Resource Plan ("IRP"). IPL's IRP was litigated as part of a different type of docket, namely Docket No. RPU-2019-0001, which is a rate case docket and is outside the confines of an EPB. (OCA Brief p. 7); Iowa Code § 476.6(19)(d). IPL's IRP stemming from a rate case docket suggests that other IUB dockets are more appropriate for the exploration of coal plant retirements and an in-depth analysis of alternative cost options. These other IUB dockets include the RPU docket associated with rate cases and SPU docket which is the docket opened by the IUB to address Environmental Petitioners and OCA's concerns. Docket No. SPU-2021-0003 will

evaluate the reasonableness and prudence of MidAmerican’s procurement and contracting practices related to the acquisition of fuel for use in generating electricity pursuant to Iowa Code § 476.6(12) and will address a forecast of future gas requirements or electric generating needs pursuant to Iowa Code § 476.6(16).

As such, the IUB suggests that Environmental Petitioners’ reliance on Iowa Code § 17A.19(10)(j) to argue that the IUB’s ruling was a product of a failure to consider relevant and important matters in the record is not supported by the IUB’s previous EPB orders or dockets considering retirement of coal plants. The IUB properly considered the information and found the information was not relevant to an EPB docket and belonged in a different IUB docket.

3. Attempts to require a review of coal plant retirements and consideration of alternative compliance options for approval of environmental plans and budgets should be rejected.

In their brief, Environmental Petitioners state:

EPB updates and past Board orders have considered and approved coal plant retirements as a part of a cost-effective plan to manage regulated emissions. The Board incorrectly asserted that alternative compliance options, including retirement of coal-fired generation units, “have not been raised in previous EPB dockets, and . . . the evidence filed by OCA and the Environmental Intervenors addressing these other options was outside the scope of an EPB proceeding.” (CR pp. 1050-51; CR p. 987.) The Board’s interpretation of the scope of the statute is inconsistent with the Board’s past practices and precedents and constitutes reversible error under the Iowa Administrative Procedure Act. IOWA CODE § 17A.19(10)(h) that the IUB erred in using its incorrect perception that certain compliance options were not previously considered to find that those options were outside of the scope of the statute.

(Pet. Brief p. 21).

Similarly, OCA argued in its brief that the IUB erred when it states that reasonable alternatives for emissions compliance were not raised in previous EPB dockets and it found those EPBs in compliance with the statute—past precedent demonstrates this finding is erroneous. (OCA Brief, p. 21).

The IUB states in its March 24, 2021 order:

OCA and the other intervenors argued that **MidAmerican should be required to look at multiple options, including retirement of coal facilities**, as part of the analysis of the balancing factors outlined in Iowa Code § 476.6(19)(c). **These issues have not been raised in previous EPB dockets**, and the EPBs in those dockets were found to be in compliance with the statute. Based upon the specific requirements in the statute which address compliance with state and federal emissions regulations and the approval of EPBs in previous dockets, the Board finds that the evidence addressing other options, filed by OCA and the intervenors, is outside the scope of an EPB proceeding under Iowa Code § 476.6(19).

(CR p. 987)(emphasis added).

Precedent demonstrates the IUB has not required IPL nor MidAmerican to review multiple options in its EPB dockets prior to the IUB determining if the plan's filings, including testimony, meet statutory requirements. As discussed above, prior IUB orders have approved EPB plans in which a utility has included a coal plant retirement or alternative compliance options as a cost-effective business decision reflected in its EPB filing. This is consistent with the IUB's statutory duty to review the plan which has been submitted and is before the IUB. However, Environmental Petitioners and OCA's positions argue the IUB should require a new component in addition to the utility's required filings beyond this type of business decision to consider multiple options suggested by various stakeholders and to choose from among those options prior to the IUB concluding that an EPB satisfies the statute.

Such an ambitious requirement ignores the difficulty that would arise if EPB dockets mandated consideration of multiple options including a broad, in-depth investigation into the appropriateness of coal plant retirements or least-cost alternative undertakings: the statutory limitations of EPB. Since Iowa law does not require investor-owned utilities to produce an integrated resource plan or to supplement review testimony after considering other stakeholder

suggested options, Environmental Petitioners and OCA's attempt to turn the EPB docket into an integrated resource plan review should be rejected.

Environmental Petitioners and OCA appear to downplay a very important distinction between what the IUB has approved in prior EPB dockets and what Environmental Petitioners and OCA are arguing should have been required in MidAmerican's 2020 EPB. Previously, the IUB has approved a utility's business decision for meeting federal and state emissions requirements. Environmental Petitioners and OCA interpret the EPB statute to necessarily require MidAmerican to assess additional alternatives likely to produce a dispute concerning long-term generation planning, which could include coal plant retirements and cost-effective alternatives related to the utility's generation and distribution decisions. Consideration of MidAmerican's long-term plans for meeting the generation needs of its customers involves more stakeholders than Environmental Petitioners and OCA and, as decided by the IUB, requires a separate docket to allow for a full review of MidAmerican's plans. An EPB docket cannot and should not house the latter review as it is beyond the scope of the statutory requirements.

Interested stakeholders, specifically IAMU, Corn Belt, and NIPCO, filed comments after Environmental Petitioners and OCA raised coal plant retirement concerns in MidAmerican's 2020 EPB docket in December 2020, and after the IUB deemed the filings to be complete. (CR pp. 734-738). These interested stakeholders understandably may not have adequately assessed the extent of their potential participation in the 2020 EPB docket since the previous dockets, in which MidAmerican identified a coal plant retirement within its filings, were approved without objection from Environmental Petitioners or OCA.

The IUB is in the best position to determine whether other, more comprehensive dockets are better vehicles to include all interested stakeholders, as well as to create an appropriate forum

to address secondary implications that will predictably arise from such a discussion. The EPB statute does not require this and does not allow time for a more comprehensive review.

Although Environmental Petitioners and OCA did not have issues with previous IUB decisions (discussed above) that had similar, fundamental approaches and conclusions utilized in the 2020 MidAmerican EPB analysis, Environmental Petitioners and OCA now call into question the IUB's analysis and review process. They claim the IUB did not follow its precedent in approving MidAmerican's 2020 EPB. The IUB requests that this Court reject Environmental Petitioners and OCA's claimed error.

4. Since the IUB found that no factual dispute existed, the IUB's order contained sufficient information and is consistent with past IUB practices and precedent.

“The absence of an express disposition of a material factual issue in an agency decision may be excused on judicial review if it is clear from the context of the issues considered and the disposition of the case what the finding was on that issue.” *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309, 311 (Iowa 1986). In *Brekke v. Iowa State Bd. of Educ.*, 449 N.W.2d 345, 346-347 (Iowa 1989), the Court cited *Hurtado* when it found no merit in a complaint that an agency did not make explicit findings and conclusions, noting that the relevant, uncontested facts were spelled out and the applicable statute and its interpretation by the agency was identified.

Environmental Petitioners and OCA argue that the IUB's order did not delineate findings of fact and conclusions of law and thus did not satisfy the requirements of Iowa Code § 17A.16 to separately state findings of fact and conclusions of law. (Pet. Brief p. 15-16, 30-31; OCA Brief pp. 23-24). In its March 24, 2021 order, the IUB identified that there were no disputed material facts regarding the statutory requirements. The IUB made findings based upon sufficient information in the record that addressed MidAmerican's EPB filings, its compliance

with the statutory requirements, no hearing being necessary, and issues raised by Environmental Petitioners being addressed in a new docket. (CR pp. 979-991).

The findings and conclusions in the IUB's order in Docket No. EPB-2020-0156 are consistent with the prior IUB orders in EPB-2014-0156, EPB-2016-0156 and EPB-2018-0156 detailed above. Environmental Petitioners and OCA did not object to the format of the final orders utilized by the IUB in those dockets or other dockets where the IUB has made findings as part of the decision and not separately enumerated. The IUB's order in this case, that did not include numbered findings of facts and conclusions of law, was consistent with past IUB orders and agency precedent described herein. The IUB's March 24, 2021 order clearly conveys the findings, conclusions, and disposition of all outstanding issues.

B. The IUB's interpretation of Iowa Code § 476.6(19) finding there were no material facts in dispute about MidAmerican's 2020 EPB was appropriate as interpretation of the law has been clearly vested to the IUB.

1. Standard of Review / Deference.

The "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of judicial review," i.e. if it involves an issue of: 1) findings of fact, 2) interpretation of law, or 3) an application of law to fact. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Systems, Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)). Here, the IUB interpreted Iowa Code § 476.6(19).

Where the legislature "clearly vested the agency with the authority to interpret specific terms of a statute, then [the Court] defer[s] to the agency's interpretation of the statute and may only reverse if the interpretation is 'irrational, illogical, or wholly unjustifiable.' If, however, the legislature did not clearly vest the agency with the authority to interpret the statute, then our review is for correction of errors at law." *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815

N.W.2d 30, 37 (Iowa 2012) (quoting *Doe v. Iowa Dep't of Human Servs.*, 786 N.W.2d 853, 857 (Iowa 2010)); see also Iowa Code §§ 17A.19(10)(c), (l); Iowa Code § 17A.19(11).

It is noteworthy that the *NextEra* Court identified that courts must determine whether the general assembly explicitly vested the Board with the authority to interpret specific terms in chapter 476. *NextEra Energy*, 815 N.W.2d 30 at 36-40. In *Mathis v. IUB*, 934 N.W.2d 423, 427-428 (Iowa 2019), the Court identified several cases that required a continued exploration of explicit provisions within Iowa Code chapter 476 that may still require deference³, or at least an analysis to determine if deference is appropriate. Additionally, in the absence of an express grant of interpretive authority, a court must determine whether the legislature has nonetheless clearly vested the agency with authority to interpret the statutes at issue. *Baker v. Bridgestone/Firestone*, 872 N.W.2d 672 (Iowa 2015) citing *Xenia Rural Water Dist. v. Vegors*, 786 N.W.2d 250, 253 (Iowa 2010).

To conclude that an agency was “clearly vested” with the authority to interpret a statute, a court must have a firm conviction from reviewing the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved, that the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretive power with the binding force of law over the elaboration of the provision in question. *Renda v. Iowa Civil Rights Commission*, 784 N.W.2d 8, 11 (Iowa 2010). (quoting Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 63 (1998)).

³ See *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179, 184–85 (Iowa 2016); *Iowa Dental Ass'n v. Iowa Ins. Div.*, 831 N.W.2d 138, 144 (Iowa 2013); *Hawkeye Land Company v. Iowa Utils. Board*, 847 N.W.2d 199, 207-208 (Iowa 2014); *SZ Enterprises, LLC v. Iowa Utils. Board*, 850 N.W.2d 441, 451–52 (Iowa 2014).

In *SZ Enterprises, LLC v. Iowa Utils. Bd.*, 850 N.W.2d 441, 450 (Iowa 2014), the Court included a thorough discussion of deference, including a list of IUB cases where the Court has granted deference to the IUB in a variety of contexts.⁴ The *SZ Enterprises* Court also identified two factors that weigh against affording an agency deference to interpret a law: an absence of clear indication that the general assembly intended deference and if the general assembly provides an agency with a definition of legal terms in a statutory provision. *Renda*, 784 N.W.2d at 11-12. Additionally, when a term is not defined in a statute, but the agency must necessarily interpret the term in order to carry out its duties, courts are more likely to conclude the power to interpret the term was clearly vested in the agency. *Id.* at 12.

With respect to the appropriate standard of deference to be accorded the IUB's decision interpreting Iowa Code § 476.6(19) pursuant to Iowa Code § 17A.19(11), the IUB suggests that the Court should defer to the IUB's interpretation of the EPB statute. The IUB is required to interpret Iowa Code § 476.6(19) to carry out its duties to review MidAmerican's EPB filing as a practical matter and to fulfill the IUB's statutory responsibilities. In a more recent case, *Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829, 836 (Iowa 2019), the Court concluded that deference was appropriate for the IUB's "public convenience and necessity" finding for issuance of a pipeline permit. The *Puntenney* Court found that the legislature clearly vested the IUB with the authority to interpret the phrase "public convenience and necessity" as used in Iowa Code § 479B.9. The Court described criteria that signaled the legislature clearly vested the IUB with the authority to interpret a particular phrase with one such criteria being that the Iowa Code itself

⁴ See, e.g., *City of Coralville v. Iowa Utils. Bd.*, 750 N.W.2d 523, 527 (Iowa 2008) (holding the IUB's interpretation of "rates and services" in § 467.1(1) was entitled to deference); *Office of Consumer Advocate v. Iowa Utils. Bd.*, 744 N.W.2d 640, 643 (Iowa 2008) (interpreting the "unauthorized-change-in-service" provisions in § 476.103); *AT & T Commc'ns of the Midwest, Inc. v. Iowa Utils. Bd.*, 687 N.W.2d 554, 561 (Iowa 2004) (per curiam) (holding the IUB's interpretation of § 476.101(9) was entitled to deference).

may indicate that the legislature wanted the IUB to have leeway in determining phrases. With regard to the phrase “public convenience and necessity,” the *Puntenney* Court wrote that the nearby, “phrase ‘unless the IUB determines’ seemingly affords the IUB deference.” *Id.*

Environmental Petitioners argue that the EPB statute is part of Iowa Code chapter 476, which, in general, does not clearly vest interpretive authority of the statute to the IUB and therefore, no deference is required. (Pet. Brief p. 19). Environmental Petitioners select the phrase “managing regulated emissions from its facilities in a cost-effective manner” and argue that the phrase is not specific to utilities. Environmental Petitioners argue that the terms do not require particular expertise to understand the context, and the IUB did not apply its subject matter expertise but instead applied a general understanding of the meaning of the phrase when it concluded that MidAmerican’s EPB plan and budget update met statutory requirements. Iowa Code § 476.6(19)(a). (Pet. Brief, p. 19). Similarly, OCA argues that the phrase “cost-effective compliance” necessarily requires a consideration of alternative options for compliance. (OCA Brief pp. 19-21). OCA also identifies that Iowa Code § 476.6(19)(a) requires a “collaborative effort” for EPB plans and updates. (OCA Brief p. 21).

The IUB disagrees that the phrase “managing regulated emissions from its facilities in a cost-effective manner” does not require the specific expertise of the IUB to make the statutory determination. The IUB is the regulatory agency that reviews the costs of providing utility service and actions of a rate-regulated utility in setting rates and determining the prudence of those costs. The review required by Iowa Code § 476.6(19) is the same review required by Iowa Code § 476.33 for setting rates. The term “cost-effective manner” is not a general term but one requiring the specific expertise of the IUB. The Iowa Supreme Court recognized that the IUB has expertise in certain areas. The *Puntenney* Court identified important criteria signaling that

the legislature clearly vested the IUB with the authority to interpret a particular phrase applies in this instance: the Iowa Code section itself indicates that the legislature wanted the IUB to have leeway in determining the meaning of several phrases found in Iowa Code § 476.6, including Iowa Code § 476.6(19). The language in Iowa Code § 476.6, both generally and throughout the section, and specifically in the EPB statute, Iowa Code § 476.6(19), indicates that the legislature clearly vested the IUB with interpretive authority requiring a deferential standard of review. Iowa Code § 17A.19(11)(c).

Iowa Code § 476.6 includes a wide variety of utility business functions that necessarily require the expertise of Iowa's regulatory body, i.e. the IUB: temporary and permanent rates and corresponding hearings; refunds; natural gas and electric supply and cost review; energy efficiency plans and implementation; water costs for fire protection; forecast filings; allocation of replacement tax costs; recovery of management costs; electric power generating facility emissions; preapproval of cost recovery for natural gas extensions; and federal tax reduction and corresponding customer benefits. See Iowa Code § 476.6. Given that this section contains numerous, critical utility obligations that require specific commission oversight and expertise, Iowa Code § 476.6 is starkly different from other portions of Chapter 476 that appear to include a variety of more general utility functions. The IUB's required expertise for the utility obligations contained within Iowa Code § 476.6 vests the IUB with authority to interpret the corresponding statutory terms and phrases.

Iowa Code § 476.6(19), the EPB provision, should be considered as a whole prior to analyzing whether Environmental Petitioners' identified phrase of "managing regulated emissions from its facilities in a cost-effective manner" clearly vests interpretive authority of the statute with the IUB. Iowa Code § 479.6(19)(a) provides that each Iowa rate-regulated public

utility that owns any electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for “managing regulated emissions from its facilities in a cost-effective manner.” The next three sections, §§ 476.6(19)(b-d), all begin with, “The IUB shall...”. In the final section, § 476.6(19)(f), the language even includes the words, “It is the intent of the general assembly” that in an EPB update, the IUB “may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.” These legislative directives all require or defer discretion to the IUB when reviewing whether a utility’s plan and budget manages regulated emissions cost effectively.

In summary, the appropriate standard of review for the IUB’s order subject to this judicial review is dependent on the aspect of the agency’s decision that forms the basis of judicial review. In this case, the standard of review is to be determined arising from the IUB’s interpretation of law. The IUB suggests that the legislature clearly vested the IUB with the authority to interpret Iowa Code § 476.6, as well as Iowa Code § 476.6(19), and that this Court defer to the IUB’s ruling unless the Court finds the ruling irrational, illogical, or wholly unjustifiable. Iowa Code §§ 17A.19(10)(c), (n). Alternatively, if the Court finds that the legislature did not vest the IUB with the authority to interpret phrases in Iowa Code § 476.6(19), the Court should still affirm the IUB decision on a review of correction of errors at law as the IUB properly applied the statutory requirements.

2. No Relevant Disputed Material Facts.

In its order, the IUB found that there were no disputed facts with regard to whether MidAmerican’s EPB satisfied Iowa statutory requirements. (CR pp. 987-988). As such, there was no statutorily required hearing in this contested case proceeding.

The underlying purpose of an evidentiary hearing is to adjudicate disputed facts pertaining to particular individuals in specific circumstances. Iowa Code § 476.6(19)(a)(3); *Abbas v Iowa Insurance Division*, 893 N.W.2d 879, 888 (Iowa 2017) citing *Greenwood Manor v. Iowa Dep't of Pub. Health*, 641 N.W.2d 823, 834 (Iowa 2002). If a statute refers to a hearing, a hearing is not required when there is no factual dispute.

Statutes will not be construed to require useless acts; to do so would obviously be foolish. When one recalls that the purpose of an evidentiary hearing requirement is to find facts - not to determine law or policy - it will become obvious that statutes interpreted to require an opportunity for an evidentiary hearing will not be read to require that opportunity in instances in which there is no factual dispute between the agency and the affected party. In those circumstances, an evidentiary hearing requirement makes no sense. . . Agencies are not, therefore, bound by statutory hearing requirements to accord such an opportunity in cases in which there is either no factual dispute, or the factual dispute is wholly irrelevant to the result in the case at hand.

Arthur Earl Bonfield, *The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act*, 63 Iowa Law Review 285, 321 (1977).

a. There is not a factual dispute as to whether MidAmerican's 2020 EPB provided the necessary statutory information to support the IUB's approval.

In its March 24, 2021 order, the IUB found MidAmerican's costs associated with its electric power generating facilities fueled by coal were reasonable and MidAmerican's EPB met federal and state emission requirements. (CR pp. 987-988). The IUB's order also found that the requests for further analysis regarding least-cost options for emissions controls, including retirement of coal facilities, fell outside the scope of an EPB docket and Iowa Code § 476.6(19). As such, no factual disputes remained. (CR pp. 986-988).

The purpose of the statute was to ensure that state and federal regulations would be satisfied using an effective cost approach. IDNR filed testimony confirming that state and federal regulations had been met. MidAmerican's Electric Power Generation Facility Budget

Update contained almost identical language regarding Economic Development, Transmission System Reliability, and Generation System Reliability utilized in three other MidAmerican EPB plans that were not questioned as to their statutory adequacy.

b. The factual dispute regarding coal plant retirement is wholly irrelevant to the result in this case.

The IUB's final order explained that the IUB did agree that the other matters identified by Environmental Petitioners and OCA warranted further review given the rapid changes occurring to the national generation fleet and the February 2021 polar vortex. As such, the IUB opened Docket No. SPU-2021-0003 to explore least-cost alternatives for MidAmerican's generating fleet, including the potential retirement of coal plants. (CR pp. 989-990).

Arguably, since the IUB opened a separate docket in order to adequately explore Environmental Petitioners and OCA's concerns, and since it is an ongoing, active docket at this time, the creation and continued use of a separate docket adequately addresses any prejudice to Environmental Petitioners and OCA's rights that they rely on as the statutory basis of this judicial review petition.⁵ The IUB again notes that the IUB is in the best position to determine whether other, more comprehensive dockets should be utilized to address the issues that are irrelevant to the EPB docket.

3. The IUB appropriately interpreted Iowa Code § 476.6(19).

Environmental Petitioners and OCA argue the IUB erred in its interpretation of various phrases found in Iowa Code § 476.6(19), including "collaborative effort" and a portion of "shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state

⁵ Iowa Code § 17A.19(10): The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because of the agency action.

environmental requirements and federal ambient air quality standards.” Iowa Code §§ 476.6(19)(a), (c). (Pet. Brief, p. 19, 31; OCA Brief pp. 19-21).

The IUB disagrees that its approach is not a reasonable interpretation of Iowa Code § 476.6(19). The EPB dockets allow for and facilitate collaboration between stakeholders. When bi-annual updates are filed, stakeholders can participate in the docket through either comments or intervention. Past EPBs generally included proposed partial settlements, sometimes just between the utility and OCA, although Environmental Petitioners have also been a party to a proposed partial settlement as well. While the EPB docket has limitations, the required filings facilitate collaborative discussions and negotiations between interested stakeholders both inside and outside the docket.

With regard to whether a plan is “reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards,” the IUB is directed to consider whether the update “reasonably balance(s) costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.” Iowa Code § 476.6(19)(c). The statute does not require the IUB to give equal weight to all components. The IUB is to balance the required statutory components of the plan to ensure the plan complies with state environmental requirements and federal ambient air quality standards. Iowa Code § 476.6(19)(c). The IUB adequately and reasonably balanced the statutory components in its March 24, 2021 order approving MidAmerican’s 2020 EPB.

C. Substantial evidence exists in the record to support the IUB's order approving MidAmerican's 2020 Emissions Plan Budget satisfying Iowa Code § 476.6 and Iowa Admin. Code r. 199-7 requirements.

1. Standard of Review/Deference.

“When reviewing a finding of fact for substantial evidence, [the Court] judge[s] the finding ‘in light of all the relevant evidence in the record cited by any party that detracts from the finding as well as all the relevant evidence in the record cited by any party that supports it.’” *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). “Evidence is not insubstantial merely because different conclusion may be drawn from the evidence;” in fact, evidence may be substantial and support the agency’s decision even if the court would have drawn a different conclusion than the agency did. *Id.* The reviewing court’s “task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.” *Id.*

The burden of demonstrating prejudice or the invalidity of an IUB action is on the person asserting invalidity. Iowa Code § 17A.19(8)(a). Factual findings by the agency must be accepted if supported by substantial evidence in the record. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting Iowa Code § 17A.19(10)(f)). “Substantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person to establish the fact at issue when the consequences resulting from establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)&(1). A district court’s review “is limited to the findings that were actually made by the agency and not other findings the agency could have made.” *Burton v. Hilltop Care Ctr.*, 813 N.W.2d at 256. “The agency’s decision does not lack substantial evidence merely because the interpretation of the evidence is open to a fair difference of opinion.” *ABC Disposal Sys., Inc. v. Dep’t of Natural Res.*, 681 N.W.2d 596, 603 (Iowa 2004).

Environmental Petitioners also identify a separate argument regarding Iowa Code § 17A.19(10)(n), a ruling is unreasonable, arbitrary, capricious, or an abuse of discretion. Environmental Petitioners appear to integrate this law point within their substantial evidence analysis when arguing that the IUB's decision was unreasonable for ignoring coal plant retirement and least-cost evidence they presented. (Pet's Brief pp. 33-38). As such, this section will be considered in the substantial evidence portion of this brief that follows.

2. Substantial evidence - approval of Emissions Plan Budget.

As detailed in the statutory overview above, EPBs are governed by Iowa Code § 476.6(19). When an EPB is filed, the IUB must either approve or reject the EPB within 180 days after the public utility's filing is deemed complete. Iowa Code § 476.6(19)(d). The IUB is required to consider an EPB through a contested case proceeding pursuant to Iowa Code Chapter 17A. Iowa Code § 476.6(19)(a)(3).

IDNR must determine "whether the [EPB] meets applicable state environmental requirements for regulated emission." Iowa Code § 476.6(19)(a)(4). The IUB is also required to determine whether the EPB will achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. *Id.* at § 476.6(19)(c). The IUB reaches its determination by considering whether the updated plan and associated budget "reasonably balance[s] cost, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system." *Id.*

The IUB found that the evidence provided by MidAmerican and IDNR shows that MidAmerican's 2020 EPB met applicable state environmental requirement and federal air quality standards. (CR pp. 987-988). Recall that MidAmerican's initial filing contained paragraphs addressing each of these statutory review points. (CR. p. 12). This information,

along with other filed testimony, allowed the IUB to find that MidAmerican provided sufficient capital expenditure information and Operating and Maintenance (O&M) expense information to assess whether the plan reasonably balances costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system as required by Iowa Code § 476.6(19)(c). (CR pp. 988). Due to these findings, the IUB issued an order approving MidAmerican's 2020 EPB in accordance with Iowa Code § 476.6(19). (CR pp. 979-991).

Environmental Petitioners argue the record in this case addressed some requirements of the EPB statute but did not address other requirements. (Pet. Brief p. 31-32). All parties agreed that MidAmerican's proposed plan met state and federal environmental requirements and no parties disputed the accuracy of MidAmerican's capital expenditure and O&M information for continuing to operate existing pollution controls at its coal plants. (CR p. 985). (See also CR p. 511 (referencing the O&M costs without dispute)). (Pet. Brief p. 31).

Environmental Petitioners and OCA argue that MidAmerican's filing did not provide information that would allow the IUB or parties to balance cost, environmental compliance, economic development, and reliability. However, see argument above regarding MidAmerican, Environmental Petitioners (if they were intervenors), and OCA agreeing that MidAmerican's 2014, 2016, and 2018 EPB Plans, including MidAmerican's Electric Power Generation Facility Budget Update, were satisfactory with these plans ultimately being approved by the IUB. The plans contained undisputed language that the proposed Economic Development, Transmission System Reliability, and the Generation System Reliability were appropriate. See also additional arguments above that no parties disputed the accuracy of MidAmerican's capital expenditure and

O&M information for continuing to operate existing pollution controls at its coal plants. (CR p. 511, 985). (Pet. Brief p. 31-32).

It appears Environmental Petitioners and OCA came to a different conclusion than the IUB. The IUB concluded that MidAmerican's capital expenditure and O&M information for continuing to operate existing pollution controls at its coal plants is adequate to support the cost requirement found within the statute that gives the IUB statutory discretion to balance the elements. Iowa Code § 476.6(19)(c). A differing opinion is not sufficient to win a substantial evidence argument. As such, the IUB suggests that substantial evidence exists in the record to support the IUB's March 24, 2021 order.

Environmental Petitioners argue that the IUB's order finding MidAmerican's EPB update was cost-effective was unreasonable, arbitrary, capricious, or an abuse of discretion of the agency (Pet. Brief p. 15-16); Iowa Code § 17A.19(10)(n). Agency action may be challenged as arbitrary or capricious, but only when the decision was made "without regard to the law or facts." *Doe v. Iowa Bd. Of Med. Examiners*, 733 N.W.2d 705, 707 (Iowa 2007) (quoting *Greenwood Manor v. Iowa Dept' of Public Health*, 641 N.W.2d 823, 831 (Iowa 2002)). Agency action is unreasonable only if the agency acted "in the face of evidence as to which there is no room for difference of opinion among reasonable minds[.]" *Id.* See also *Citizen's Aide/Ombudsman v. Rolfes*, 454 N.W.2d 815, 819 (Iowa 1990). The Court typically defers to an agency's informed decision as long as it falls within a "zone of reasonableness." *S.E. Iowa Co-Op. Elec. Ass'n v. Iowa Utils. Bd.*, 633 N.W.2d 814, 818 (Iowa 2001). When considering claims under the unreasonableness standard, the courts generally affirm the informed decision of the agency and refrain from substituting a less-informed judgment. *Al-Khattat v. Eng'g & Land Surveying Examining Bd.*, 644 N.W.2d 18, 23 (Iowa 2002).

The IUB's conclusion that a separate docket was appropriate to facilitate an in-depth analysis of least-cost strategies and coal retirement options is supported in the record. The Tech Intervenor supported a separate docket to review this information. (CR p. 1028-1030). Additionally, IAMU, Corn Belt, and NIPCO all filed comments providing input that a separate docket would be appropriate to consider such information given the Environmental Petitioners and OCA's unexpected issues with MidAmerican's EPB, as many of the Environmental Petitioners' identified concerns were non-issues with prior EPB dockets. (CR pp. 734-738). Certainly, this input provides additional support that the IUB's conclusion, to-wit finding that alternative options and retirement of coal plant analysis should be handled outside the EPB dockets, falls within a "zone of reasonableness." This further supports that the IUB's orders approving MidAmerican's 2020 EPB and denying Environmental Petitioners' request for reconsideration were appropriate.

3. Substantial evidence - Application for Reconsideration denied.

Iowa Admin. Code r. 199-7.27 states that any party to a contested case may file an application for reconsideration of a final decision. In a request for reconsideration or rehearing, a party may raise new or additional arguments to correct legal error. An application for reconsideration must identify the findings of fact and conclusion of law claimed to be erroneous and contain a brief statement of the alleged ground of error. Here, Environmental Petitioners provided the necessary information detailed in rule 7.27 and claimed: 1) the IUB erred by concluding the language of the statute excludes consideration of alternative compliance options; and 2) the IUB erred in approving MidAmerican's EPB based on the record. Similarly, OCA filed its motion for rehearing and reconsideration stating the IUB erred in not approving MidAmerican and OCA's settlement agreement, in not providing findings of fact and

conclusions of law separately stated in the decision, and lacks analysis of how the record supports the IUB's finding that MidAmerican's EPB complies with the Iowa statute. (CR pp. 1021-1027). The Tech Intervenors responded to the motions for reconsideration supporting a separate docket to review this type of information. (CR pp. 1028-1030). MidAmerican responded to the application and motion for reconsideration agreeing that the IUB's conclusion that alternative compliance options are outside the EPB statute and the IUB's approval of MidAmerican's 2020 EPB update was appropriate. (CR pp. 1031-1042).

The IUB reviewed the reconsideration filings provided by Environmental Petitioners, OCA, Tech Intervenors, and MidAmerican. In its May 13, 2021 order, the IUB agreed Environmental Petitioners raised concerns that deserved further attention and again concluded those items went beyond the confines of the EPB docket and should be addressed in Docket No. SPU-2021-0003. Additionally, the IUB found that there were no material facts about the EPB filed by MidAmerican that were in dispute, and the parties did not dispute any of the information or supporting documentation filed by MidAmerican. The IUB stated that because there were no disputed material facts, it found substantial evidence in the record to approve MidAmerican's 2020 EPB filing. For these reasons, the IUB denied Environmental Petitioners' application for reconsideration. (CR pp. 1043-1054).

The IUB's reconsideration order adequately reviewed the parties' filings and detailed the basis for the affirming its original approval of MidAmerican's 2020 EPB filing in its (CR pp. 1043-1054).

CONCLUSION

The IUB's March 24, 2021 order correctly interprets Iowa Code § 476.6(19), is supported by substantial evidence in the record, and correctly found that there were no disputed issues of

material fact that required a hearing. The IUB approved MidAmerican's 2020 EPB. The IUB correctly found that there were no issues raised by Environmental Petitioners and OCA's request for reconsideration that required the IUB to reconsider its decision. Consequently, the IUB's decision should be affirmed.

Dated this 24th day of September, 2021.

Respectfully submitted,

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UTILITIES BOARD

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was automatically served electronically on all parties registered with the Electronic Filing System for this matter on September 24, 2021.

Signature: /s/ Karen M. Evans