

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**ENVIRONMENTAL LAW AND
POLICY CENTER, IOWA
ENVIRONMENTAL COUNCIL, and
SIERRA CLUB,**

Petitioners,

v.

IOWA UTILITIES BOARD,

Respondent,

and

**OFFICE OF CONSUMER
ADVOCATE and MIDAMERICAN
ENERGY COMPANY,**

Intervenors.

Case No. CVCV061992

**RULING ON PETITION FOR
JUDICIAL REVIEW**

On October 8, 2021, the above captioned matter came before this Court for hearing. Petitioner Environmental Law & Policy Center appeared through Joshua Mandelbaum, Petitioner Iowa Environmental Counsel appear through Michael Schmidt, and Petitioner Sierra Club appeared through M. Gabriel Rowberry. Respondent Iowa Utility Board (IUB) was represented by Kim Snitker and Jon Tack. Intervenors MidAmerican Energy Company (MidAmerican) and the Office of Consumer Advocate (OCA) were represented by Bret Dublinske and Jeffrey Cook respectively. After hearing the arguments of counsel and reviewing the court file, including the briefs filed by the parties and the Certified Administrative Record, the Court now enters the following ruling.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS.

This matter arises from the IUB's approval of MidAmerican's 2020 Electric Power Generation Facility Emissions Plan and Budget update (2020 EPB). Iowa Code section 476.6(19)(a) requires each rate-regulated utility that is the owner of an electric power generating facility fueled by coal and located in Iowa to develop multiyear emissions plans and budgets for managing emissions from its facilities in a cost-effective manner. Pursuant to section 476.6(19)(a)(1), the initial multiyear plan and budget was required to be filed with the IUB by April 1, 2002, with updates to the plan and budget filed at least every 24 months thereafter. MidAmerican filed its initial EPB on April 1, 2002. Since that date, MidAmerican has filed plan and budget updates at least biennially and each of the updates have been approved by the IUB.

Under the statutes, for these updates, utilities with coal-fueled generating facilities file evidence that includes the EPB, witness testimony, and supporting exhibits for the IUB's consideration in a contested case proceeding pursuant to 17A. Iowa Code § 476.6(19)(a)(3). Pursuant to Iowa Code section 476.6(19)(a)(3), other required parties included the Iowa Department of Natural Resources (IDNR) and the OCA. The OCA is a division of the Iowa Department of Justice and acts as "attorney for . . . all consumers generally and the public generally" Iowa Code § 475A.2(2). Iowa Code section 476.6(19)(a)(4) provides that IDNR "shall state whether the plan or update meets applicable state environmental requirements for regulated emissions." In the event a plan or update does not meet the state environmental requirements for regulated emissions, IDNR "shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements." Iowa Code § 476.6(19)(a)(4). All parties may also file evidence. Once the EPB and all of the evidence is submitted, the IUB must determine whether the utilities proposed EPB will achieve cost effective

compliance with applicable state environmental requirements and federal ambient air quality standards by considering if the plan and budget reasonably balance costs, environmental requirements, economic development potential, and the 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).

On April 1, 2020, MidAmerican filed its 2020 EPB, covering the period from January 1, 2020, through December 31, 2022, in IUB Docket No. EPB-2020-0156. Certified Record (CR) pgs. 7-39. Petitioners became parties to this case through intervention at the agency level. CR pgs. 40-42, 44-47, 77-80, 82-84. Facebook, Inc. and Google, LLC (Tech Customers) also became parties through intervention. *Id.* at 82-84. OCA, Petitioners, and Tech Intervenors all filed statements, initial testimony, and exhibits on December 17, 2020. *Id.* at 88-711. All parties filed various supplemental testimony and exhibits throughout the pendency of the case.

In its 2020 EPB, MidAmerican sought approval of its compliance activities and associated budgets for its coal-fired electric generating units and provided a status report for activities and budgets associated with MidAmerican's approved 2018 EPB in IUB Docket No. EPB-2018-0156. The 2020 EPB described current and future air emissions reduction requirements, the potential impact on MidAmerican's coal-fuel plants, and MidAmerican's projects designed to comply with the emission reduction targets. In support of its 2020 EPB, MidAmerican filed with the IUB direct and reply testimony of three witnesses. CR pgs. 7-39, 54-60, 64-66. The IDNR filed direct testimony with IUB on October 26, 2020. *Id.* at 67-69. The IDNR representative gave a sworn affidavit that to the best of her knowledge "at this time, the above-referenced filings, in conjunction with continued compliance with all permitting requirements, permit conditions, and all other

applicable requirements, meet the applicable state environmental requirements for regulated emissions.” *Id.* at 68.

On October 27, 2020, the IUB issued an order deeming MidAmerican’s 2020 EPB complete, established a procedural schedule, and providing notice of hearing to be held February 16, 2021. *Id.* at pgs. 71-75. OCA and Petitioners filed direct testimony with IUB on December 17, 2020. MidAmerican filed reply testimony on January 7, 2021. OCA, Petitioners, and Tech Intervenors filed reply testimony on January 21, 2021.

On February 4, 2021, MidAmerican and OCA filed a “Joint Motion and Non-Unanimous Settlement Agreement,” requesting the IUB issue an order approving the settlement agreement and canceling the February 16, 2021 hearing. CR pgs. 830-36. IDNR is not a signatory party to the joint motion and non-unanimous settlement agreement. On February 10, 2021, the IUB issued an order requesting that IDNR file a Statement of Position, requiring a settlement conference, suspending the remaining procedural schedule, and moving the hearing from February 16, 2021, to March 31, 2021. On February 16, 2021, MidAmerican and OCA filed a settlement conference update as required by Iowa Administrative Code rule 199-7.18(2) for a non-unanimous settlement. On February 17, 2021, IDNR filed a Statement of Position. On February 18, 2021, Petitioners and Tech Intervenors filed comments to the settlement. CR pgs. 857-88, 897-923. On February 25, 2021, OCA and MidAmerican filed reply comments. *Id.* at 889-96, 924-40.

On March 24, 2021, the IUB issued an Order approving MidAmerican’s 2020 EPB, denying MidAmerican and OCA’s non-unanimous settlement agreement, opening a separate docket, and canceling hearing. CR pgs. 979-91. More specifically, the IUB concluded the parties did not dispute that the 2020 EPB complied with applicable state environmental requirements and federal ambient air quality standards as outlined in Iowa Code section 476.6(19)(b). *Id.* at 985. It

further determined that the request for analysis regarding least-cost options for emissions controls or requiring MidAmerican to look at multiple options, including retiring coal plants, as part of its balancing of the factors fell outside the scope of the EPB proceedings under Iowa Code section 476.6(19). *Id.* at 987. IUB admitted all evidence filed in the EPB docket into the record, and concluded there were no disputed material facts about the 2020 EPB filed by MidAmerican. It concluded the evidence provided showed: (1) the 2020 EPB met applicable environmental requirements for federal ambient air quality standards; (2) MidAmerican provided sufficient evidence to show its plan reasonably balanced the requisite criteria set out in Iowa Code section 476.6(19)(c); and (3) the 2020 EPB contained capital expenditure information and operations and management (O&M) expense information sufficient to show it was cost effective and complied with the requirements in Iowa Code section 476.6(19). *Id.* at 987-88. They did not approve MidAmerican and OCA's non-unanimous settlement agreement because it contained details, such as requiring an Electric Generating Needs Forecast to be filed, that were beyond the scope of the EPB docket. *Id.* at 988. However, the IUB also determined an analysis of the issues of least-cost alternatives for MidAmerican's generating fleet, long-term resource needs, and potential retirement of coal plants is appropriate. As such, they ordered the

opening of a new docket, Docket No. SPU-2021-0003 pursuant to Iowa Code [section] 476.6(12) to evaluate the reasonableness and prudence of MidAmerican's procurement and contracting practices related to the acquisition of fuel for use in generating electricity, and pursuant to Iowa Code [section] 476.6(16) to address a forecast of future gas requirements or electric generating needs.

Id. at 989-90.

On April 13, 2021, pursuant to Iowa Administrative Code rule 199-7.27, Petitioners filed an Application for Reconsideration. *Id.* at 992-1012. Also on April 13, and as amended on April 14, 2021, OCA filed a Motion for Rehearing and Reconsideration. *Id.* at 1014-1027. On April 27,

2021, Tech Intervenors and MidAmerican filed a response to the Motions for Reconsideration. *Id.* at 1028-1042. On May 13, 2021, the IUB issue an Order denying the Motions for Reconsideration. *Id.* at 1043-1054.

On June 11, 2021, Petitioners filed this Petition for Judicial Review pursuant to Iowa Code section 17A.19(1), (10) (2021). They allege IUB's Order should be reversed, remanded, or modified for the following reasons: (1) it was inconsistent with the agency's prior practice or precedents and that inconsistency was not justified with credible reasons under section 17A.19(10)(h); (2) it was not supported by substantial evidence in the record under section 17A.19(10)(f); (3) it was the product of a decision-making process in which the agency did not consider all relevant and important matters under section 17A.19(10)(j); (4) the conclusion was based on an erroneous interpretation of provisions of the Iowa Code that was not clearly vested in the discretion of the IUB, or in the alternative if interpretation were vested in the agency the conclusion was an irrational, illogical, or wholly unjustifiable application of law to fact, under subsections 17A.19(10)(c) or (l); and (5) it was otherwise unreasonable, arbitrary, and an abuse of discretion, under section 17A.19(10)(n).

II. SCOPE AND STANDARDS OF REVIEW.

Iowa Code section 17A.19(10) governs judicial review of administrative agency decisions. *NextEra Energy Res. LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30, 36 (Iowa 2012). A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was based on an erroneous interpretation of law; inconsistent with prior agency precedent; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* at §

17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002).

Allegations that an agency's actions should be reversed pursuant to section 17A.19(10)(h) are reviewed under the arbitrary, capricious, or abuse of discrimination 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)). "If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). Evidence in support of an agency decision is not insubstantial merely because it would have supported contrary inferences; nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996). The district court's review "is limited to the findings that were actually made by the agency and not other findings that the agency could have made." *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012). "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).

To decide the issue here the Court must look to various sections of chapter 476.

To determine the applicable standard of review of an agency's interpretation of a statute, we must determine whether the legislature clearly vested the agency with the authority to interpret the statute at issue. If the legislature clearly vested the agency with the authority to interpret specific terms of a statute, then we defer

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.

Id. at 36-37 (citations omitted); *see also* Iowa Code § 17A.19(10)(c) (“The court shall reverse, modify, or grant other appropriate relief from agency action . . . if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is . . . [b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.”) The Iowa Supreme Court has determined, “simply because the general assembly granted the Board broad general powers to carry out the purposes of chapter 476 and granted it rulemaking authority does not necessarily indicate the legislature clearly vested authority in the Board to interpret all of chapter 476.” *NextEra*, 815 N.W.2d at 38. The court then concluded, based on this and previous case law, that the “general assembly did not delegate to the Board interpretive power with the binding force of law” with regard to interpreting chapter 476. *Id.* Accordingly, here this Court will examine the IUB’s interpretation of the relevant sections of chapter 476 for correction of errors at law and will not give deference to its interpretation. *Id.*; *see also* Iowa Code § 17A.19(11)(b) (stating the court, “Should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.”).

III. MERITS.

Under Iowa Code section 476.6(19) the IUB must determine if an EPB: (1) meets “applicable state environmental requirements and federal ambient air quality standards,” *Id.* at § 476.6(19)(b); (2) is “reasonably expected to achieve cost-effective compliance with” state and federal environmental requirements, *Id.* at § 476.6(19)(c); and (3) does “reasonably balance costs,

environmental requirements, economic development potential, and reliability of the electric generation and transmission system.” *Id.*

With regard to the first element, the statute also requires the IDNR to review an EPB and determine if it meets this first element. *Id.* at § 476.6(19)(a)(4). The IDNR confirmed the 2020 EPB complied here. CR pg. 68. In addition, OCA witness Scott Bents testified that MidAmerican’s plan complied with state and federal emissions requirements. *Id.* at 90-91.

Regarding the second element of “cost-effective compliance,” the IUB determined MidAmerican’s plan was “cost effective and complies with the requirements in Iowa Code [section] 476.6(19).” CR pg. 988. In doing so, it found the Petitioners’ and OCA’s request for further analysis regarding least-cost options for emissions controls were outside the scope of the EPB proceedings based on the specific provisions of section 476.6(19)(c). *Id.* at 987. More specifically, it determined MidAmerican was not required to provide and it was not required to consider multiple options, including retirement of coal facilities, as part of the analysis of balancing the factors outlined in section 476.6(10)(c). *Id.* The IUB noted such issues had not been raised in previous EPB dockets and those EPBs were found to be in compliance with the statute. *Id.* Petitioners contend this was an error both because the IUB failed to follow prior practice or precedent and failed to consider relevant and important matters in the record. They point to several prior EPB dockets where MidAmerican discussed alternative methods of complying with emissions regulations and retiring certain coal-fueled generating units as the least-cost alternative.

The Court has reviewed these prior dockets and agree MidAmerican did offer such evidence therein. However, the Court finds nothing in the plain text of the statute that required MidAmerican to do so. The fact MidAmerican voluntarily provided such information in the past does not in any way make it a statutory requirement or a compulsory practice in all EPB reviews.

It is the sole purview of the legislature to add statutory requirements, neither the IUB nor this Court can do so. *See Riniker v. Wilson*, 623 N.W.2d 220, 227 (Iowa Ct. App. 2000) (stating the court will “leave it up to the legislature and/or our supreme court to establish” new statutory requirements; *see also State v. Wedelstedt*, 213 N.W.2d 652, 656–57 (Iowa 1973) (“If changes in the law are desirable from a policy, administrative, or practical standpoint, it is for the legislature to enact them, not for the court . . .”).

The Petitioners ask the Court to conclude that section 476.6(19) requires a utility to show that its “emissions management strategy is cost-effective in comparison to reasonable alternatives, and not merely that an emission control strategy complies with environmental laws.” Petition pg. 16. However, nowhere in section 476.6(19) has the legislature seen fit to include any language in the statutes regarding “reasonable alternatives,” “least cost options,” a “cost benefit analysis,” or requiring the shutdown of coal plants. The statute does expressly require the IUB and IDNR to ensure the EPB complies with state and federal environmental regulations. Iowa Code §§ 476.6(19)(a)(4), (b), (c). As set forth above, it is not for the IUB or this Court to expand the requirements of the statute, such is left to the legislature. *Caylor v. Employers Mut. Cas. Co.*, 337 N.W.2d 890, 894 (Iowa Ct. App. 1983) (“As the law stands, however, no such provision has been made by the legislature, and it is not the province of the court to enact such a provision.”) (citation omitted).

Accordingly, the Court concludes the IUB did not err in determining it was not required to address evidence regarding least-cost options for emissions controls and thus the evidence of such filed by Petitioners and OCA was outside the scope of an EPB proceeding. Once such evidence was properly not considered, the IUB also did not err in finding there were no material facts about the EPB filed by MidAmerican that were in dispute before the agency. The IUB “shall” approve

the EPB if the update and the associated budget are “reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards.” Iowa Code § 476.6(19)(c). The Court concludes the IUB sufficiently made such finding when it determined that the capital expenditure and O&M expenses information contained in MidAmerican’s EPB was cost effective and complied with the requirements of the statute. CR pg. 988. “[A]n agency’s decision is sufficient if it is possible to work backward from the agency’s written decision and to deduce what must have been the agency’s legal conclusions and its findings.” *IBP, Inc., v. Al-Gharib*, 604 N.W.2d 621, 634 (Iowa 2000) (internal citations omitted). The Court is able to work backward from the agency’s written decision.

The final element the IUB had to determine under the statute was whether MidAmerican’s 2020 EPB reasonably balanced “costs, environmental requirements, economic development potential, and reliability of the electric generation and transmission system.” Iowa Code § 476.6(19)(c). Petitioners allege there is not substantial evidence in the record to support the IUB’s conclusions, it did not consider all relevant matters, and it did not give sufficient findings with regard to this requirement. As concluded above, the IUB did not err in finding the statute does not require MidAmerican to provide or consider evidence of other options, including retiring of coal units. Thus, there were no material facts about the EPB in dispute. The IUB concluded that MidAmerican,

provided sufficient information in its EPB to assess whether the plan reasonably balances costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system. The [IUB] finds that MidAmerican’s plan reasonably balances the criteria identified in Iowa Code [section] 476.6(19)(c).

CR pg. 988.

Petitioners argue the IUB's opinion was not sufficiently detailed and contend the Court should reverse and remand to require it to explain all of its reasons why or how the EPB balances the statutory factors and detail the path it took to arrive at this decision. It is the duty of the agency to state the evidence it relied on and to detail its reasons for its conclusion. *See Armstrong v. State of Iowa Bldgs. & Grounds*, 382 N.W.2d 161, 166 (Iowa 1986); *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 510 (Iowa 1973).

While it is true the decision must be "sufficiently detailed to show the path he has taken through conflicting evidence," the law does not require the [agency] to discuss each and every fact in the record and explain why or why not [it] has rejected it. Such a requirement would be unnecessary and burdensome.

Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 274 (Iowa 1995) (quoting *Catalfo*, 213 N.W.2d at 510.). The Court notes MidAmerican's confidential report did contain all of its past projects and end dates thereof, specific details about the controls at its coal-fueled generating units for the period January 1, 2020 through December 31, 2022, considerations of economic development potential and the reliability of the electric generation and transmission system, all of its emissions control technologies, and exhibits showing their capital investments and O&M expenses. CR pgs. 1056-71. Thus, the Court concludes the IUB took all of this information into consideration in making its balancing determination and it was not required to set forth every factor it took into account in doing so. "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). The Court concludes the IUB's decision is sufficient for the Court to work backward and deduce its logical rationale for its factual findings and legal conclusions. *See Al-Gharib*, 604 N.W.2d at 634. Therefore, the IUB made sufficient findings to support its conclusion that MidAmerican's plan reasonably balances the criteria

required in Iowa Code section 476.6(19)(c), and such determination was not arbitrary, capricious, or unsupported by the evidentiary record.

Finally, the Court notes the IUB did open a separate docket to address all of the important issues raised by Petitioners regarding analysis of a utility's long-term resource needs, including consideration of least-cost operation for generation, potential retirement of coal plants, environmental requirements, reliability, and economic development potential. More specifically, it did so under Iowa Code section 476.6(12) to evaluate the reasonableness and prudence of MidAmerican's procurement and contracting practices as related to acquisition of fuel for use in generating electricity, and section 476.6(16) to address a forecast for future gas requirements or electric generating needs. IUB asserts that because of its action in opening this new docket the substantial rights of the Petitioners and OCA are not prejudiced and thus reversal is not required. Reversal is only required where the "substantial rights of the person seeking judicial relief have been prejudiced." Iowa Code § 17A.19(10).

OCA contends it is still prejudiced because it will not have the ability to represent its constituents by suggesting alternative cost-effective methods which, if considered, could result in cost savings for Iowa customers, and the new docket does not require review every two years. However, Iowa Code section 476.6(12) does call for "periodic" proceedings, that the proceeding be a contested case, gives the IUB power to require the utility to provide any information the IUB deems appropriate, and if it is determined the utility is not taking "all reasonable actions to minimize its fuel and allowances transaction costs, the [IUB] shall not allow the utility to recover" such costs from its customers. As such, the Court believes this statute and new docket will satisfy OCA's concerns with regard to the potential cost savings to customers and periodic reviews. Accordingly, the Court concludes that because IUB opened a separate and more appropriate docket

to address Petitioners' and OCA's important concerns, their substantial rights were not prejudiced. Thus, reversal is also not appropriate for this reason.

For all the reasons set forth above, the Court further concludes the IUB's denial of the Petitioners' and OCA's Motions for Reconsideration was also correct.

IV. CONCLUSION AND DISPOSITION.

Accordingly, the Court concludes: (1) the IUB's action was not inconsistent with prior practice or precedent because Iowa Code section 476.6(19) does not require coal retirements to manage emissions or least-costs options for emission controls be submitted to or considered by the IUB, and the fact MidAmerican had submitted such information in past EPB reviews did not make it a precedential requirement; (2) the IUB did not err in so interpreting the relevant Code provisions in this manner; (3) based on such correct interpretation of the statute the IUB did not fail to consider all relevant and important information in the record because such information submitted by Petitioners was outside the scope of section 476.6(19); and there is substantial evidence in the record to support the IUB's conclusions that MidAmerican's 2020 EPB complied with applicable state environmental requirements and federal ambient air quality standards, and was reasonably expected to achieve cost-effective compliance with such standards because it reasonably balanced the criteria identified in Iowa Code section 476.6(19). The Court further concludes the IUB's findings were in no way unreasonable, arbitrary, capricious, or an abuse of discretion.

For all of the reasons set forth above, Petitioners' Petition for Judicial Review is **DENIED**. The IUB's Orders approving MidAmerican's EPB and denying Petitioners' and OCA's motions for reconsideration are **AFFIRMED in their entirety**.



State of Iowa Courts

Case Number
CVCV061992

Case Title
IOWA ENVIRONMENTAL COUNCIL ET AL V IOWA
UTILITIES BOARD
OTHER ORDER

Type:

So Ordered

Samantha Gronewald, District Court Judge
Fifth Judicial District of Iowa

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