

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

| | |
|--|---|
| <p>ENVIRONMENTAL LAW AND POLICY CENTER, IOWA ENVIRONMENTAL COUNCIL, & SIERRA CLUB,</p> <p>Petitioners,</p> <p>vs.</p> <p>IOWA UTILITIES BOARD,</p> <p>Respondent,</p> <p>and</p> <p>OFFICE OF CONSUMER ADVOCATE, MIDAMERICAN ENERGY COMPANY,</p> <p>Intervenors.</p> | <p>Case No. CVCV061992</p> <p>INTERVENOR OFFICE OF CONSUMER ADVOCATE'S MOTION TO RECONSIDER, AMEND, AND ENLARGE THE COURT'S DECEMBER 7, 2021, RULING</p> |
|--|---|

COMES NOW Intervenor the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, pursuant to Iowa Rule of Civil Procedure 1.904(3), moves the Court to reconsider, amend, and enlarge its December 7, 2021, Ruling, and states:

1. On October 8, 2021, a hearing was held on Petitioners' Petition for Judicial Review before the Honorable Samantha Gronewald.
2. On December 7, the Court issued its Ruling on Petition for Judicial Review (Ruling) denying the Petition in its entirety and affirming Respondent Iowa Utilities Board's (IUB) orders approving Intervenor MidAmerican Energy Company's (MidAmerican) 2020 Emissions Plan and Budget (EPB) and denying Petitioners' and OCA's motions for reconsideration.
3. In its Brief in Support of Petition for Judicial Review (Initial Brief), OCA argued:

[T]he IUB’s interpretation ignores the legislature’s stated intent that the EPB plan and subsequent updates be the result of a “collaborative effort.” Iowa Code § 476.6(19)(a). The legislature specifically required OCA to participate in the initial plan and any subsequent updates. *Id.* at (19)(a)(3). It is unclear how OCA could participate and collaborate in the EPB update approval process without the ability, according to the IUB’s interpretation, to present reasonable cost-effective alternative compliance options. As noted by OCA’s witness Scott Bents, OCA’s attempts to collaborate with MidAmerican by inquiring about reasonable alternative methods of compliance for regulated emissions were met by stonewalling from MidAmerican through the refusal to respond to discovery requests and to the suggestions made in Mr. Bents’s testimony.

Initial Brief, pg. 21.

4. In its Reply Brief, OCA similarly argued:

The IUB’s claim that OCA’s position has created a “new component” in the EPB process wholly ignores OCA’s role in the EPB process contrary to the statutory language. The IUB’s interpretation of section 476.6(19) ignores the fact the Legislature required the emissions planning and budget (EPB) process to be a “collaborative effort involving state agencies and affected generation owners.” Iowa Code § 476.6(19)(a). The Legislature required the initial EPB and any updates to be “considered in a contested case proceeding pursuant to chapter 17A.” *Id.* at (a)(3). The OCA is required to participate as a party in the contested case proceeding. *Id.* A contested case proceeding, by definition, allows parties to submit evidence. *See* Iowa Code § 17A.12(4). The IUB fails to reconcile in its Brief how OCA could perform its statutorily required duty to participate in the EPB update process if the IUB believes OCA cannot submit evidence concerning the utility’s EPB—including evidence concerning alternative methods for managing regulated emissions. The IUB’s interpretation of section 476.6(19) simply ignores OCA’s role and the fact the EPB update process is a “contested case proceeding.”

Reply Brief, pg. 2.

5. The Ruling lacks any contemplation of the 476.6(19)(a) language stating the Iowa Legislature’s intent that the EPB to be a “collaborative effort involving state agencies and affected generation owners,” with OCA as a required party, and conducted as a contested case proceeding. Iowa Code § 476.6(19)(a) (2021).

6. While the Court correctly notes, “it is not for the IUB or this Court to expand the requirements of the statute, such is left to the legislature,” the Ruling effectively ignores

language the Iowa Legislature did use in creating the EPB process. Ruling at 10 (citing *Caylor v. Employers Mut. Cas. Co.*, 337 N.W.2d 890, 894 (Iowa Ct. App. 1983)). OCA urges the Court to consider the “statute in its entirety rather than isolated words or phrases to ensure [the Court’s] interpretation is harmonious with the statute as a whole.” *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016). The Court’s interpretation of 476.6(19) results in excluding OCA from the EPB process, which conflicts with the language used by the Iowa Legislature. For example, if OCA is unable to submit alternative cost-effective compliance options for the EPB, why did the Iowa Legislature require the EPB to be a collaborative process conducted as a contested case proceeding with OCA as a required party? A contested case proceeding inherently contemplates the submission of evidence by parties. *See* Iowa Code § 17A.12(4). If OCA is unable to submit evidence consisting of cost-effective compliance options, how else will it perform its role in ensuring the EPB is “cost-effective” and “reasonably balance[s] costs” for consumers?

7. OCA requests the Court reconsider, amend, and enlarge its Ruling to find that because the Iowa Legislature required OCA to participate in the collaborative EPB process, conducted as a contested case proceeding, OCA is entitled to present reasonable cost-effective compliance options for a utility’s EPB.

WHEREFORE Intervenor Office of Consumer Advocate respectfully requests this Court grant this Motion to Reconsider, Amend, and Enlarge its December 7, 2021, Ruling, and for other relief the Court deems just and appropriate under the circumstances.

Respectfully submitted,

Jennifer C. Easler
Consumer Advocate

By: /s/ Jeffrey J. Cook
Jeffrey J. Cook, AT0012252

OFFICE OF CONSUMER ADVOCATE
1375 East Court Avenue
Des Moines, Iowa 50319-0063
Telephone: (515) 725-7200
E-mail: jeffrey.cook@oca.iowa.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was automatically served electronically to the parties of record via EDMS on December 21, 2021.

/s/ Jeffrey J. Cook
Jeffrey J. Cook