

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>ENVIRONMENTAL LAW AND POLICY CENTER, IOWA ENVIRONMENTAL COUNCIL, &amp; 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><b>MIDAMERICAN ENERGY’S RESISTANCE TO MOTION TO RECONSIDER, AMEND AND ENLARGE</b></p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------

On December 7, 2021, the Court issued a thorough and well-supported decision in this case affirming the final order of the Iowa Utilities Board (“Board”) approving MidAmerican Energy Company’s (“MidAmerican”) 2020 Emissions Plan and Budget (“EPB”). Despite the extensive review undertaken in the Court’s order, Office of Consumer Advocate (“OCA”) now seeks reconsideration to amend the order. The sole issue presented by OCA appears to involve the absence of explicit discussion of a “collaborative process,” which OCA appears to define as meaning OCA has the ability to submit evidence as to alternative means of emissions compliance. *See* Motion to Reconsider at ¶ 6 (“[I]f 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. . .?”)

The Court should decline the request for a modification of its prior order. First and foremost, OCA’s argument is entirely hypothetical and is not required to resolve the case before the Court. MidAmerican does not read the Court’s order to preclude the OCA from participating

as a party, or from submitting evidence. That does not mean OCA will necessarily prevail; the statutory test is still for the Board to measure the regulated utility's filing against the EPB standards, a process that may be aided by considering OCA's filings. That remains collaborative – OCA still has input.

But in the current case, the concern is moot: the process was very collaborative, the OCA having worked with MidAmerican to file a Joint Settlement proposal. And to the extent the OCA defines “collaborative” in relation to filing testimony, OCA in fact did file evidence regarding MidAmerican's 2020 EPB, and the Board explicitly considered OCA's testimony in its final agency action. *See In re MidAmerican Energy Company*, Docket No. EPB-2020-0156, “Order Approving Emissions Plan Budget Update, Denying Joint Motion and Non-Unanimous Settlement Agreement, and Canceling Hearing” (Iowa Utils., Bd., March 24, 2021) at 7 (discussing testimony of OCA Witness Bents repeatedly). As a result, any modification of the Court's order on this issue would be merely dicta, not necessary to resolve the specific dispute before the Court. Adding dicta is not a sufficient reason to reopen the Court's order.

While it is not entirely clear, to the extent OCA seeks any additional or more stringently defined process, the Court should be wary of adding details to a legislative framework that the legislature itself did not. It can be implied from Iowa Code § 476.6(19) that the legislature necessarily kept the process flexible and streamlined. The statute requires the Board to complete its work within 180 days. Iowa Code §476.6(19)(d). The frequency of new EPB filings – every 24 months or less (see § 476.6(19)(a)(1)) – also reinforces that these are iterative, incremental, and are not intended to be long, drawn-out proceedings. It is a problem when, as here, the lawfulness of one EPB docket is still being litigated as the next filing becomes due – it leaves the

legal guidance uncertain as to how the utility, the Board, and other parties must or may proceed. Such a result is good for no one and serves no policy purpose.

The Court's decision in this case was correct as it currently stands. There is no basis for reconsidering or amending the order, and the Court should reject post-order reconsideration to hasten finality and avoid reaching issues that are not required to resolve the specific dispute before the Court.

Respectfully filed this 29th day of December 2021.

By: /s/ Bret A Dublinske

Bret A. Dublinske, AT0002232

**FREDRIKSON & BYRON, P.A.**

111 East Grand Avenue, Suite 301

Des Moines, IA 50309-1977

Telephone: (515) 242-8900

Facsimile: (515) 242-8950

Email: bdublinske@fredlaw.com

ATTORNEYS FOR INTERVENOR  
MIDAMERICAN ENERGY COMPANY

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 29th day of December, 2021, the foregoing document was electronically filed with the Clerk of Court using the EDMS system which will send a notice of electronic filing to all counsel of record registered with the EDMS system.

/s/ Olivia Lucas