

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. SPU-2021-0003
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**ORDER ADDRESSING LONG-TERM RESOURCE PLANS AND SCHEDULING ORAL  
ARGUMENT ON CONFIDENTIALITY ISSUES**

**PROCEDURAL HISTORY**

On May 13, 2021, the Utilities Board (Board) opened Docket No. SPU-2021-0003 as part of its final order in Docket No. EPB-2020-0156, to review MidAmerican Energy Company's (MidAmerican) long-term resource plans, to review the reasonableness and prudence of MidAmerican's procurement and contracting practices related to the acquisition of fuel for use in generating electricity, and to address a forecast of future gas requirements or electric generating needs. Additionally, the docket was opened to allow interested parties to analyze MidAmerican's long-term resource needs, including consideration of least-cost options for generation, environmental requirements, reliability, baseload generation, and economic development potential.

On August 12, 2021, MidAmerican made its initial filings along with a request for confidentiality encompassing most documents, including both potential confidentiality issues and issues involving attorney-client privilege or attorney work product. In its filing, MidAmerican also made a request for clarification from the Board as to whether the docket is limited to a review of MidAmerican's management practices as permitted

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by Iowa Code § 476.2(4) and is thus an informational docket, or if the docket is a contested case proceeding.

On August 23, 2021, the Iowa Business Energy Coalition (IBEC) filed a petition to intervene, stating that its members could be directly affected by any changes to MidAmerican's generating fleet and IBEC's interests are specific to large industrial customers. On August 30, 2021, MidAmerican filed a reply to IBEC's petition for intervention, stating that if the docket is for informational purposes only, there is no statutory provision that would permit other groups to participate as parties in this information-gathering process and requesting IBEC's intervention request be denied.

On August 31, 2021, Facebook, Inc., and Google Inc. (Tech Companies) filed a motion to compel production and to extend the response deadline, arguing the Tech Companies are already parties to protective agreements with MidAmerican that require confidentiality and limit the use of information they obtain from MidAmerican. The Tech Companies identify that MidAmerican has refused to provide access to filings in the docket and state that since they have been unable to view the confidential information filed by MidAmerican, they cannot verify the completeness of MidAmerican's response or prepare their response. The Tech Companies request an additional 45 days beyond the September 27, 2021 deadline to file comments or responses to MidAmerican's filings.

On September 2, 2021, IBEC filed a joinder in the motion to compel production and to extend the response date filed by the Tech Companies. Additionally, IBEC filed a reply to MidAmerican's response to IBEC's petition to intervene, noting that the docket was created from the order in Docket No. EPB-2020-0156, in which outside groups

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were permitted to participate. IBEC argues that since materials are being withheld by MidAmerican despite its nondisclosure agreement with MidAmerican, a grant of intervention would allow IBEC access to filings and allow for meaningful participation.

On September 2, 2021, the Environmental Law & Policy Center (ELPC), Iowa Environmental Council (IEC), and Sierra Club (collectively, Environmental Organizations) filed a motion to compel and extend the response deadline, making the same arguments as the Tech Companies.

On September 3, 2021, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed its appearance and response. OCA argues that the proposed settlement agreement in the EPB docket between OCA and MidAmerican would allow parties to the EPB who executed a non-disclosure and confidentiality agreement to receive and participate in the discussion of the confidential information filed by MidAmerican in this docket regarding MidAmerican's generating fleet and generation planning process. OCA supports the relief requested by the other participants in the pending motions to compel and requests for additional time.

On September 14, 2021, MidAmerican filed a resistance to the various motions to compel, stating that MidAmerican views this proceeding as an informational review by the Board and, as such, is not a contested case proceeding where discovery is available to groups other than the Board and OCA. MidAmerican argues that Board rules make discovery methods that are available in civil proceedings available in Board contested case proceedings only.

On September 17, 2021, the Tech Companies filed a reply to MidAmerican's resistance to motions to compel production, arguing that the docket should be a

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contested case proceeding; however, if the docket is determined to not be a contested case proceeding, the Tech Companies argue that MidAmerican would still be required to provide the information to the other interested parties pursuant to Board rules, 199 Iowa Administrative Code chapter 7, specifically rule 7.1(1), identifying that chapter 7 applies to contested case proceedings and to other types of agency action without other applicable rules, “unless the Board or presiding officer orders otherwise.” Additionally, the Tech Companies argue that Board rules require MidAmerican to serve all filings on all parties, including those that contain confidential information, if confidentiality agreements are executed by the parties, and the docket was created to allow parties in Docket No. EPB-2020-0156 to provide input and comments on the filings in this docket.

## **BOARD ANALYSIS**

### **A. MidAmerican’s Request for Confidential Treatment/Motions to Compel Production**

The Environmental Organizations, IBEC, and the Tech Companies, as well as OCA in its response supporting these interested parties, request the Board require MidAmerican to produce all information filed with the Board that has been identified as potentially containing confidential material or potential attorney-client privilege issues. These interested parties identify that although they have signed non-disclosure agreements with MidAmerican, which should satisfactorily address confidential concerns, MidAmerican is refusing to provide access to this information.

In order to adequately investigate these concerns, the Board is assigning a presiding officer, Board Attorney Cecil Wright, to hold an oral argument hearing concerning the issues of confidentiality and attorney-client privilege and attorney work

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product. All parties who have filed documentation in the docket may argue their positions to the presiding officer.

The oral argument hearing will be held at 1:30 p.m. October 4, 2021, in the Utilities Board Hearing Room, located at 1375 E. Court Ave., Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe or participate in this hearing shall contact the Utilities Board Customer Service at 515-725-7300 or [customer.iub.iowa.gov](http://customer.iub.iowa.gov) at least five business days in advance of the hearing to request appropriate arrangements.

The oral argument hearing will be conducted both in person and by webinar. Those attending via webinar will be expected to provide their name and the company they represent and to utilize video for the proceeding. Instructions for registering and participating via webinar will be provided on the Hearing and Meeting Calendar webpage on the Board's website, [iub.iowa.gov](http://iub.iowa.gov). All parties shall file an Attendance Designation on or before September 30, 2021, identifying who will be participating and whether participation will be live or via webinar.

MidAmerican will be required to provide printed proposed confidential materials to the presiding officer for on-camera inspection at least 24 hours prior to the hearing.

**B. Motion to Extend Response Deadline**

The current deadline for parties to file responsive documents in the docket is September 27, 2021. Since an oral argument hearing will be held on October 4, 2021, the parties' request to extend the response deadline will be granted and a revised deadline will be issued following the oral argument hearing and corresponding order.

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**C. Contested Case Proceeding Versus an Informational Docket and IBEC's Request for Intervention**

It is MidAmerican's position that Docket No. SPU-2021-0003 is limited to the Board's review of information pursuant to Iowa Code § 476.2(4) and is not a contested case. All other filers have identified that the docket is a contested case.

In order to evaluate the attributes of the docket following the oral arguments of the parties, and the review of the information that MidAmerican has identified as confidential or potentially protected by attorney-client privilege, the Board is deferring its decision on whether this is a contested case proceeding or an informational docket until after the oral argument hearing and issuance of the corresponding order. Additionally, IBEC's intervention request will be deferred until after the oral argument hearing.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. An oral argument hearing will be held at 1:30 p.m. October 4, 2021, in the Utilities Board Hearing Room, located at 1375 E. Court Ave., Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe or participate in this hearing shall contact the Utilities Board Customer Service at 515-725-7300 or [customer.iub.iowa.gov](mailto:customer.iub.iowa.gov) at least five business days in advance of the hearing to request appropriate arrangements. The hearing will be held in person and by webinar.
2. The application for intervention filed in this docket by Iowa Business Energy Coalition is deferred until after the October 4, 2021 oral argument hearing.

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3. Any further filings in this docket are suspended until after the October 4, 2021 oral argument hearing.

4. MidAmerican Energy Company shall provide to the presiding officer printed versions of the proposed confidential materials for on-camera inspection at least 24 hours prior to the hearing.

5. Those persons intending to participate in the oral argument hearing scheduled in Ordering Clause 1 shall file a pleading on or before September 30, 2021, indicating whether attendance at the oral argument hearing will be in person or by webinar.

**UTILITIES BOARD**

**Geri Huser** Date: 2021.09.24  
15:19:02 -05'00'

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**Richard Lozier** Date: 2021.09.24  
08:53:45 -05'00'

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ATTEST:

**Louis Vander Streek** Louis Vander Streek  
2021.09.24 15:38:10  
-05'00'

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**Josh Byrnes** Date: 2021.09.24  
09:37:49 -05'00'

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Dated at Des Moines, Iowa, this 24th day of September, 2021.