

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 INTERVENOR OFFICE
OF CONSUMER ADVOCATE'S
MOTION TO RECONSIDER,
AMEND, AND ENLARGE**

On January 28, 2022, the above captioned matter came before this Court for hearing. Petitioner Environmental Law & Policy Center was represented by Joshua Mandelbaum and Petitioner Iowa Environmental Counsel was represented by Michael Schmidt. Respondent Iowa Utility Board (IUB) was represented by Kim Snitker. Intervenor MidAmerican Energy Company (MidAmerican) was represented by Bret Dublinske and Intervenor Office of Consumer Advocate (OCA) was represented by Jeffrey Cook. After hearing the arguments of the parties and reviewing the court file, the Court now enters the following ruling.

I. LEGAL STANDARDS.

The Iowa Supreme Court has

long recognized that a district court has the power to correct its own perceived errors, so long as the court has jurisdiction of the case and the parties involved. Until the

district court has rendered a final order or decree, it has the power to correct any of the rulings, orders, or partial summary judgments it has entered.

Carrol v. Martir, 610 N.W.2d 850, 857 (Iowa 2000) (internal quotations and citations omitted).

II. MERITS.

OCA contends this Court erred in its December 7, 2021 Ruling denying the Petition for Judicial Review. *See Env't Law and Pol'y Ctr. v. Iowa Utils. Bd.*, CVCV061992, Court's Ruling on Petition for Judicial Review (Polk Cnty. Dist. Ct., Dec. 7, 2021). More specifically, it contends this Court did not take into account the Iowa Legislature's intent that the Emissions Plan and Budget (EPB) be a collaborative process under Iowa Code section 476.6(19)(a), with the OCA as a required party. OCA further contends the Court's interpretation of section 476.6(19) results in excluding OCA from the EPB collaborative process, which is in conflict with the language of the statute.

In the Court's December 7 Ruling, it specifically found that OCA is a required party in the EPB process under Iowa Code section 476.6(19)(a)(3) and as such it was allowed to file evidence. *Id.* at *2. The Court found that OCA filed statements, initial testimony, and exhibits in the process on December 17, 2020, as well as additional supplemental testimony and exhibits throughout the pendency of the case. *Id.* at *3. OCA also filed direct testimony with IUB on December 17, 2020 and reply testimony on January 21, 2021. *Id.* at *4. This Court also noted the "Joint Motion and Non-Unanimous Settlement Agreement" between MidAmerican and OCA, requesting the IUB issue an order approving the settlement agreement. *Id.* It found that IUB admitted into the record all evidence filed in the EPB docket. *Id.* at 5. Finally, the Court specifically noted OCA witness Scott Bents's direct testimony.

A contested case hearing does contemplate submission of evidence by parties. *See* Iowa Code § 17A.12(4). The Court concludes OCA did in fact file evidence regarding MidAmerican's

2020 EPB and the IUB explicitly considered OCA's testimony and evidence. It can and did participate in the EPB process in a collaborative way in that it was able to present evidence, challenge evidence and assertions, engage in discovery, and otherwise fully participate in the contested case. The Court affirms its prior conclusion that the IUB correctly determined some of this evidence was outside the scope of the EAB proceedings because the IUB was not required under the provisions of Iowa Code section 476.6(19) to address evidence regarding least-cost options for emissions controls. The fact some of the evidence OCA wanted to have considered ultimately was not considered because it was outside the scope of this process, or that OCA did not ultimately prevail on its arguments, does not in any way equate to it being excluded from the EPB process. It was allowed to participate in every way contemplated by the legislature. Finally, the Court reiterates its prior determination that OCA has not been substantially prejudiced in this process as it will have the ability to represent its constituents in the separate docket opened by the IUB under Iowa Code sections 476.6(12) and (16). *See Env't Law and Pol'y Ctr. v. Iowa Utils. Bd.*, CVCV061992, Court's Ruling on Petition for Judicial Review, *13-14 (Polk Cnty. Dist. Ct., Dec. 7, 2021). Reversal of final agency action is only required where the "substantial rights of the person seeking judicial relief has been prejudiced." Iowa Code § 17A.19(10).

III. CONCLUSION.

After again considering OCA's arguments and for all of the reasons set forth above, the Court affirms its prior Ruling on the Petition for Judicial Review. Intervenor OCA's Motion to Reconsider, Amend, and Enlarge is **DENIED**.



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