

FAQ
Docket No. SPU-2021-0003 – MidAmerican
Energy Co.

UPDATED May 19, 2022

NOTE: See page 4 for status of outstanding issues with District Court
and IUB Procedural Background:

On May 13, 2021, the Iowa Utilities Board (IUB) opened Docket No. SPU-2021-0003 in its final order in Docket No. EPB-2020-0156. The purpose of Docket No. SPU-2021-0003 is to explore least-cost alternatives for MidAmerican’s electric generating fleet, including the potential retirement of coal plants, pursuant to Iowa Code § 476.6(12) by evaluating the reasonableness and prudence of MidAmerican’s procurement and contracting practices related to the acquisition of fuel for use in generating electricity and Iowa Code § 476.6(16) to address a forecast of future gas requirements or electric generating needs. All filings in Docket No. EPB-2020-0156 are part of this docket. MidAmerican was ordered to make **initial filings** including:

- i. Any current documents that provide details about its long-term resource requirements;
- ii. An overview of its current generating fleet and how it meets the needs of MidAmerican’s customers;
- iii. A least-cost analysis addressing options considered to meet its long-term resource needs, including the potential effects on reliability and economic development potential; and
- iv. An analysis of the issues identified in Docket No. EPB-2020-0156 that have been deferred to this docket including fuel switching, generating unit retirement, modified dispatch, addition of new generation sources, wholesale market transactions, and the costs of alternative compliance options, as well as any economic development potential for those options.

On August 12, 2021, MidAmerican made **initial filings** along with two specific, separate requests. First, MidAmerican requested **confidential** treatment for most of the filings. Second, MidAmerican identified a few documents that were not filed due to its claim of **privilege** via attorney-client privilege or attorney work product. MidAmerican also asked for clarification if the docket was a contested case proceeding or an informational docket.

Several parties including Office of Consumer Advocate (OCA); Facebook, Inc., and Google LLC (Tech Companies); Iowa Business Energy Coalition (IBEC); and Environmental Law & Policy Center (ELPC), Iowa Environmental Council (IEC), and Sierra Club (collectively, Environmental Organizations) responded by filing various documents including motions to compel/requests for additional time. IBEC also filed a request for intervention.

On September 24, 2021, the IUB issued an order assigning a presiding officer to address the **confidential** treatment and **privilege** issues as well as the motions to compel/requests for additional time. The IUB reserved ruling on whether the docket was a contested case proceeding or an informational docket and whether to grant IBEC’s intervention request.

On October 4, 2021, the presiding officer held an oral argument and requested MidAmerican file the nondisclosure agreements (NDAs) it had entered into with the Tech Companies, IBEC, and the Environmental Organizations in order to address the **confidential** materials and directed

MidAmerican provide a sealed paper copy of the documents to the presiding officer that are subject to the claims of attorney-client **privilege** or attorney work product, to be reviewed by only the presiding officer *in camera* (a review of the contents of the documents to see if the documents contained privileged material). MidAmerican agreed to provide the information to the presiding officer and to file a privilege log of the documents provided for in camera review.

On October 12, 2021, MidAmerican filed a response that contained the requested NDAs for the **confidential** claims and a request that the IUB assign an administrative law judge (ALJ) to review the documents subject to the **privilege** claims.

On October 20, 2021, the presiding officer issued an order containing recommendations regarding the

privilege issue with the following recommendations to the IUB that included:

- i. Remove the presiding officer from the review of the attorney-client and attorney work product material,
- ii. Deny the request for appointment of an ALJ, and
- iii. Have the Board members review the documents claimed to be subject to **privilege** claims.

On October 29, 2021, MidAmerican filed a response to the presiding officer's order renewing its request that an ALJ review the information for which **privilege** is being claimed.

On November 23, 2021, the presiding officer issued his Proposed Order with regard to the **confidential**

treatment requests/Motions to Compel. The presiding officer:

- i. Granted application for confidential treatment filed by MidAmerican Energy Company on August 12, 2021, is granted pursuant to Iowa Code § 22.7(6), except for the document identified as "MidAmerican Energy Resource Plan, December 16, 2016," ARC-2015- 0156 16-1216 Resource Plan, which does not meet the requirements for confidential treatment;
- ii. Granted IBEC, the Tech Companies, ELPC and IEC motions to compel requiring MidAmerican to enter into non-disclosure agreements, as described in this order, that allow these entities to review the information found to be confidential in this docket;
- iii. Found that an NDA with Sierra Club not required because Sierra Club did not enter into an NDA in Docket No. EPB-2020-0156;
- iv. Required MidAmerican to file additional documents in the docket; and
- v. Identified that the proposed order shall become the final order of the Board unless an appeal is filed within 15 days of the date of the order.

On December 8, 2021, MidAmerican filed its appeal of the presiding officer's proposed order regarding its **confidential** request arguing that the presiding officer made numerous errors when he found that MidAmerican's 2016 Resource Plan should no longer be afforded **confidential** treatment; Iowa Code

§ 476.2(4) permits the Board to provide confidential information to outside groups outside of a contested case proceeding; the Board's rules at 199 IAC chapter 7 allows the IUB to compel disclosure of **confidential** information without MidAmerican's consent outside of a contested case proceeding; and the Board can issue a protective order in this proceeding should MidAmerican fail to offer a non- disclosure agreement. MidAmerican also argued that the ruling undermines MidAmerican's procedural and substantive due process rights.

On December 15, 2021, Environmental Organizations filed a **response to MidAmerican's initial filing** by filing an independent modeling analysis to evaluate the economics of MidAmerican's

coal fleet (the Synapse analysis in Exhibit 1) which documents over \$1.2 billion in potential customer savings over the next two decades from retirement of MidAmerican's coal generation and under a high gas price scenario, modeling shows customers could save \$5 billion.

On December 16, 2021, the Board issued its order addressing the presiding officer's recommendations regarding issue of **privilege**:

- i. Removed presiding officer from reviewing privilege information.
- ii. Denied MidAmerican's request to appoint an administrative law judge.
- iii. Required MidAmerican to provide the Board the privileged information for its review within 10 days of this order or file with the district court for assistance.

On December 21, 2021, Environmental Organizations filed their response to MidAmerican's appeal of the presiding officer's November 23, 2021 proposed order with regard to the **confidential** treatment requests/motions to compel. They argued that the proposed order correctly concluded that MidAmerican's 2016 Resource Plan should no longer be afforded confidential treatment, correctly granted the motions to compel and requested the IUB to affirm the proposed order.

On December 22, 2021, Tech Customers filed a response to MidAmerican's notice of appeal of the presiding officer's November 23, 2021 proposed order with regard to the **confidential** treatment requests/motions to compel. Tech Customers stated they were unable to respond to whether MidAmerican's 2016 Resource Plan is no longer entitled to confidential treatment because they have not had access to the Plan. Tech Customers stated that the remaining MidAmerican arguments should be rejected and the IUB should deny MidAmerican's appeal.

On December 22, 2021, IBEC filed its response to MidAmerican's appeal of November 23, 2021 proposed order with regard to the **confidential** treatment requests/motions to compel stating that it takes no position with respect to the presiding officer's conclusion about MidAmerican's 2016 Resource Plan. Regarding the motions to compel, IBEC agrees with the presiding officer that the motions to compel should be granted requiring MidAmerican to enter into a non-disclosure agreement with IBEC specific to this proceeding, regardless of this proceeding's status as contested or non-contested and affirm proposed order granting motions to compel.

On December 22, 2021, MidAmerican filed a request for extension of time and a request for stay. MidAmerican requests that the Board extend the compliance deadline for its order by 20 days to coincide with the appeal deadline required by Iowa Code § 17A.19(3) and requests the Board grant a stay regarding **privileged** documents not to be filed until after MidAmerican files a petition for judicial review.

On December 28, 2021, the IUB issued an order granting an extension of time to match the 30-day window to file a petition for judicial review **(privilege)** and stating that it would address the request for stay in a subsequent order.

On January 13, 2022, the MidAmerican filed a Petition for Interlocutory Judicial Review with the District Court regarding the Board's December 16, 2021 ruling on **privilege** claim.

On February 8, 2022, the IUB filed a Motion to Recast Petition on **privilege** claim/extend time to file certified record in the District Court case.

On February 11, 2022, OCA filed a petition to intervene (**privilege** claim) in the District Court case.

On February 15, 2022, the District Court set a hearing for March 18, 2021 (**privilege** claim) in the District Court case.

On February 15, 2022, MidAmerican filed its **response to Environmental Organizations' December 15, 2021 response to MidAmerican's initial filing.** MidAmerican identified that a review of its generation should be within a rate case, responded to the Synapse report filed by the Environmental groups and described its renewable energy approach as it relates to reliability and rates.

On February 28, 2022, the IUB issued an order granting MidAmerican's request to stay (or not require) filing the documents subject to its **privilege** claim regarding the identified privileged documentation while MidAmerican's District Court filing is pending.

On March 18, 2022, the District Court held a hearing (**privilege** claim) regarding the IUB's Motion to Recast Petition.

On April 4, 2022, the IUB issued an order requesting proposals and scheduling an oral argument requesting interested parties to file proposals to efficiently address overlapping issues of SPU-2021-0003 and MidAmerican's January 19, 2022 application for a determination of advance ratemaking principles identified as Docket No. RPU-2022-0001.

On May 18, 2022, the IUB issued an order that does not consolidate the dockets and noting that common factual issues will be addressed as appropriate in the separate dockets.

Summary of status and outstanding issues of initial filings, privilege, and confidential treatment requests

I. Pending with the District Court (CVCV063014)

- a. MidAmerican's **privilege** request:
 - i. On December 16, 2021, the Board issued its order addressing the Presiding Officer's recommendations regarding issue of **privilege**
 1. Removed presiding officer from reviewing **privilege** information.
 2. Denied MidAmerican's request to appoint an administrative law judge.
 3. Required MidAmerican to provide the Board the **privileged** information for review within 10 days of this order or file with the district court for assistance.
 - ii. On January 13, 2022, MidAmerican appealed to district court (petition for interlocutory judicial review)(**privilege**).
 - iii. On April 26, 2022, the Court issued an order with the following deadlines:
 1. Petitioner's brief shall be electronically filed on or before June 8, 2022.
 2. Respondent's and Intervenor's briefs shall be electronically filed on or before July 8, 2022.
 3. Petitioner's reply brief, if any, shall be electronically filed no later than July 15, 2022.
 4. Hearing is scheduled for July 22, 2022 at 9 a.m. to hear oral arguments and final submission.

II. Pending with the IUB (SPU-2021-0003)

- a. MidAmerican's December 8, 2021, appeal of the presiding officer's November 23, 2021 proposed decision addressing MidAmerican's request for **confidential**

treatment / outstanding motions to compel and time extension to respond

- i. IBEC, Environmental Groups and Tech Customers filed responses on 12/21/21 and 12/22/21 to MidAmerican's appeal of the proposed decision.
- b. IBEC's intervention request
 - i. The request remains on hold until the issues of **privilege** and **confidential** treatment are resolved.
- c. MidAmerican's request for clarification of whether the docket is a contested case proceeding or an information gathering docket
 - i. The request remains on hold until the issues of **privilege** and **confidential** treatment are resolved.
- d. IUB is reviewing **initial filings**, other parties' responses to **initial filings**, and MidAmerican's response to other parties' filings to determine next steps in docket.

Questions

1. Why was this docket opened?

In the final order of the related docket, EPB-2020-0156, the IUB found that several issues were outside the scope of the EPB docket. As such, the IUB opened this docket to explore least-cost alternatives for MidAmerican's generating fleet, including the potential retirement of coal plants, by evaluating the reasonableness and prudence of MidAmerican's procurement and contracting practices related to acquiring fuel for use in generating electricity.

2. What does the May 18, 2022 order do?

The May 18, 2022 order addresses the April 1, 2022 order that requested interested parties to file proposals about how to most efficiently address overlapping issues of SPU-2021-0003 and MidAmerican's January 19, 2022 application for a determination of advance ratemaking principles identified as Docket No. RPU-2022-0001. The May 18, 2022 order does not consolidate the dockets and concludes that common factual issues will be addressed as appropriate in the separate dockets.

3. Is the IUB considering whether to order MidAmerican to close its coal plants in this docket? The purpose of the docket is to explore less expensive alternatives for MidAmerican's generating fleet, which includes the potential retirement of coal plants. The IUB is reviewing what has been filed in the docket to determine next steps.

4. What are the next steps?

With regard to the **privilege** claim, the district court has set a briefing schedule and set a hearing for July 22, 2022 at 9 a.m. The remaining outstanding issues are before the Board (appeal of proposed order (**confidentiality**), whether the docket is a contested case proceeding versus an informational docket, IBEC's intervention, and a review of **initial documents** and responses).

5. Can I participate in the docket?

Yes. You may file comments in the docket, which will place you on the service list. This means you will receive an email when anything is filed in the docket.

You can email comments or objections to customer@iub.iowa.gov. Be sure to reference the docket number for this case, SPU-2021-0003, in your email. You may also file written comments or objections using the IUB's online Open Docket Comment Form at <https://iub.iowa.gov/online-services/open-docket-comment-form>. Or, you may mail comments to:

Utilities Board, Attn: SPU-2021-0003
1375 E. Court Ave.
Des Moines 50319-0069

All written comments are filed in the docket and are made part of the public record. The information is also made available to the Office of Consumer Advocate, which represents the public interest in cases before the IUB. Comments or objections are not individually addressed or responded to by the IUB, but they are reviewed and considered as the IUB makes its decision in the case.

EPB-2020-1056 Overview

- a. Purpose of EPB Filing
 - i. Beginning April 1, 2002, and every two years after, each Iowa rate-regulated utility that owns an electric power generating facility fueled by coal is to file a multiyear emissions plan and budget for managing emissions from its facilities in a cost-effective manner.
- b. Statutory Overview of EPB
 - i. Iowa Code § 476.6(19)(d) — The Board must either approve or reject the EPB within 180 days after the public utility's filing is deemed complete.
 - ii. Iowa Code § 476.6(19)(c) — The Board is required to determine whether the EPB will achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards by considering if plan and budget reasonably balance
 1. costs
 2. environmental requirements
 3. economic development potential
 4. reliability of the electric generation and transmission system
- c. Filing Requirements of EPB
 - i. Electric Power Generation Facility Budget
 - ii. Electric Power Generation Facility Emission Plan
 - iii. Witness testimony
- d. Board Order
 - i. Found the costs associated with the facility were reasonable and MidAmerican's Emission Plan and Budget met federal and state emission requirements
 - ii. Found that the requests for further analysis regarding least-cost options for emissions controls, including retirement of coal facilities, fell outside the scope of an EPB docket and Iowa Code § 476.6(19)
 - iii. Opened Docket No. SPU-2021-0003 to address those issues
- e. Current Status
 - i. Environmental Intervenors and OCA filed a Petition for Judicial Review on June 11, 2021
 - ii. IUB's order was affirmed on December 7, 2021
 - iii. OCA's request to reconsider was filed December 21, 2021
 - iv. OCA's request to reconsider was denied on February 21, 2022
 - v. Environmental Intervenors filed a notice of appeal on February 28, 2022
 - vi. Environmental intervenors' proof brief and designation of appendix are due on or before June 9, 2022