

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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ENVIRONMENTAL LAW AND	)	
POLICY CENTER,	)	
IOWA ENVIRONMENTAL	)	
COUNCIL, &	)	
SIERRA CLUB	)	
	)	No. _____
Petitioners,	)	
	)	
v.	)	PETITION FOR JUDICIAL
	)	REVIEW
IOWA UTILITIES BOARD, STATE	)	
OF IOWA,	)	
	)	
Respondent.	)	
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Pursuant to Iowa Code § 17A.19, Environmental Law and Policy Center, Iowa Environmental Council, and Sierra Club (collectively Petitioners) petition for review of the Iowa Utilities Board’s decision to approve the 2020 Electric Power Generation Facility Emissions Plan and Budget Update filed by MidAmerican Energy Company pursuant to Iowa Code § 476.6(19). The Board approved the Update in its *Order Approving Emission Plan and Budget Update, Denying Joint Motion and Non-Unanimous Settlement Agreement and Canceling Hearing*, filed on March 24, 2021, and denied reconsideration in its *Order Denying Motion for Reconsideration* filed on May 13, 2021. The docket number of the underlying proceeding before the Iowa Utilities Board is EPB-2020-0156.

For their Petition for Judicial Review, Petitioners state:

## **PARTIES AND VENUE**

1. Petitioner Environmental Law and Policy Center (ELPC) is a non-profit corporation. ELPC has an office in Des Moines and members who reside in the State of Iowa. ELPC's goals include promoting clean energy, clean air, and clean water. ELPC has advocated for policies and practices that facilitate the efficient reduction of emissions to make our air and water cleaner, including increased energy efficiency and renewable energy development. ELPC has invested significant time and resources into promoting clean air, clean water and clean energy in Iowa and nine other states in the Midwest.

2. Petitioner Iowa Environmental Council (IEC) is a nonprofit membership organization incorporated under Iowa law with its office in Des Moines, Iowa. The IEC is a broad-based environmental policy organization with a mission to create a safe, healthy environment and sustainable future for Iowa. The IEC represents a broad coalition of Iowans including over 80 diverse member and cooperator organizations ranging from agricultural, conservation, and public health organizations, to educational institutions, business associations, and churches, along with hundreds of individual members. Many members of IEC are MidAmerican ratepayers. IEC's work focuses on clean water, clean air, conservation, and clean energy.

3. Sierra Club is a not-for-profit organization headquartered in California with more than 800,000 members nationally and over 7,000 members in the state of Iowa, many of whom are MidAmerican ratepayers. Sierra Club's mission includes promoting clean and affordable energy, and reducing air and water pollution associated with electricity generation. Many Sierra Club members in Iowa are MidAmerican customers who have a strong interest in receiving reliable power that is generated and supplied in a cost-effective and environmentally sound manner. Sierra Club has robust expertise in federal air and water compliance requirements. As such, Sierra Club

has a unique interest in MidAmerican's 2020 EPB docket and expects to be affected by its outcome.

4. Respondent Iowa Utilities Board (Board) is a division of the Department of Commerce created under Iowa Code § 474.1(1). The Board is an agency of the State of Iowa as defined in Iowa Code § 17A.2(1).

5. Petitioners ELPC, IEC, and Sierra Club intervened as parties in the underlying agency proceeding, Docket No. EPB-2020-0156, before Respondent Iowa Utilities Board.

6. MidAmerican Energy Company (MidAmerican) is a rate-regulated public utility. MidAmerican filed its first emissions plan and budget in 2002, and has filed updates every two years since then. MidAmerican filed its 2020 Emission Plan and Budget Update on April 1, 2020, in Iowa Utilities Board Docket No. EPB-2020-0156.

7. The Office of Consumer Advocate Division of the Iowa Department of Justice (OCA) and the Iowa Department of Natural Resources (DNR) participated in the proceeding as mandatory parties. IOWA CODE § 476.6(19)(a)(3).

8. Two other parties, Facebook, Inc. and Google LLC also participated in the proceeding as intervenors.

9. Venue for judicial review of agency action is appropriate in either the Polk County District Court or the district court for the county in which the petitioner resides or has its principal place of business. IOWA CODE § 17A.19(2). Venue is proper in Polk County on either criterion based on the facts set forth in this petition.

**THE EMISSIONS PLAN AND BUDGET STATUTE**

10. The Iowa Code requires each rate-regulated public utility that owns one or more coal-fired electric generation facilities to “develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.” IOWA CODE § 476.6(19)(a). A utility must file updates to the emissions plan and budget (hereinafter, EPB or EPB update) every twenty-four months. *Id.* § 476.6(19)(a)(1).

11. Each EPB update must be approved in a fresh contested case proceeding. *Id.* § 476.6(19)(a)(3).

12. Each EPB update must meet “applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.” *Id.* § 476.6(19)(b).

13. Each EPB update must be “reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards.” *Id.* § 476.6(19)(c). To determine whether the EPB update meets this standard, the Board must “consider whether the . . . update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.” *Id.*

14. Each EPB update must include “sufficient information . . . for the Board to be able to evaluate the plan and determine whether or not it meets the statutory requirements.” *In Re: MidAmerican Energy Co.*, Docket No. EPB-02-0156, Order Requiring Additional Information, 2002 WL 31235705, at \*1 (Iowa Util. Bd. Aug. 27, 2002). In other words, the rate-regulated public utility is required to provide evidence sufficient to show that the decisions on how to manage the emissions from its facilities in the proposed EPB update are “reasonably expected to achieve cost-

effective compliance” with applicable environmental regulations, and “reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.” IOWA CODE § 476.6(19)(c).

**FACTUAL BACKGROUND AND THE IOWA UTILITIES BOARD ACTION**

15. On April 1, 2020, MidAmerican filed its proposed 2020 Electric Power Generation Facility Emissions Plan and Budget update (2020 EPB Update).

16. In the 2020 EPB Update, MidAmerican requested approval for operations and maintenance (O&M) expenditures associated with emissions controls at the following coal-fueled facilities: Walter Scott, Jr. Energy Center Unit 3, George Neal Energy Center (Neal) Unit 3, Neal Unit 4 and Louisa Generating Station. MidAmerican also reported its share of the costs associated with emissions reduction measures at the Ottumwa Generating Station, which it co-owns with the Interstate Power and Light Company. Iowa Utilities Board, Docket No. EPB-2020-0156, Electric Power Generation Facility Budget Update (hereinafter 2020 EPB Update) at 3 (filed April 1, 2020).<sup>1</sup>

17. In past EPB Updates, MidAmerican has evaluated coal plant retirement as a means of managing its emissions to achieve cost-effective compliance with applicable state and federal environmental regulations. For instance, in support of its 2014 EPB Update, MidAmerican testimony explained that:

MidAmerican assessed the costs of its compliance options for units not currently scheduled to have controls installed. MidAmerican determined that, based on

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<sup>1</sup> All documents filed in Iowa Utilities Board Dockets since 2009 including Docket No. EPB-2020-0156 are publicly available on the Iowa Utilities Board Electric Filing System at <https://efs.iowa.gov/efs/>. We anticipate that the Board will include all of Docket No. EPB-2020-0156 filings in the record for this case. Rather than attach documents in this docket, we will reference them and rely on the fact that they are publicly available. For filings from other Iowa Utilities Board dockets, we will provide a specific citation and link to the publicly available docket.

economic and other considerations, it is in the best interest of its customers to comply with the [federal environmental regulations] and other environmental requirements by discontinuing the utilization of coal as a fuel and not installing environmental controls on five operating units. Therefore, by April 16, 2016, MidAmerican will cease burning coal at Neal Energy Center Units 1 and 2, Walter Scott Jr Energy Center Units 1 and 2, and Riverside Generating Station.

*In Re: MidAmerican Energy Company*, Docket No. EPB-2014-0156, Direct Testimony of Jennifer

A. McIvor, at 6 (filed April 1, 2014), available at [https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET\\_FILE&allowInterrupt=1&RevisionSelectionMethod=latest&dDocName=223991&noSaveAs=1](https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET_FILE&allowInterrupt=1&RevisionSelectionMethod=latest&dDocName=223991&noSaveAs=1).

18. In the 2014 proceeding, the Board approved a partial settlement accepting MidAmerican’s 2014 EPB Update, which included the coal unit retirements described in McIvor’s testimony. Further, the Order specifically stated that the Update “reasonably balances costs, environmental requirements, economic development potential, and reliability of the generation and transmission system.” Docket No. EPB-2014-0156, Order Addressing Completeness of Emissions Filing and Approving Partial Settlement, at 5 (filed March 12, 2015), available at [https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET\\_FILE&allowInterrupt=1&RevisionSelectionMethod=latest&dDocName=302567&noSaveAs=1](https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET_FILE&allowInterrupt=1&RevisionSelectionMethod=latest&dDocName=302567&noSaveAs=1).

19. MidAmerican also included coal-unit retirement as a compliance strategy in its 2012, 2016, and 2018 Updates. In the 2020 EPB proceeding, Petitioners’ testimony described the retirement alternatives MidAmerican evaluated and evidence it presented in the 2012, 2014, 2016, and 2018 proceedings. *See* Docket No. EPB-2020-0156, Reply Testimony of Steven C. Guyer, at 2–4 (filed on Jan. 21, 2021) (describing evidence presented by MidAmerican in 2012, 2014, 2016, and 2018).

20. Unlike previous EPB updates, MidAmerican’s 2020 EPB Update discussed only the costs of continued operation and maintenance of pollution control equipment—such as “dry

scrubber, baghouse, and mercury control operations . . . [and] Selective Non-Catalytic Reduction (“SNCR”) systems” — that MidAmerican has already installed at coal-fueled facilities in previous years. Docket No. EPB-2020-0156, 2020 EPB Update at 3.

21. MidAmerican’s filing and testimony did not provide evidence demonstrating that the Company’s proposed strategy for managing emissions through continued operation of its existing pollution controls was cost-effective by comparing the selected compliance option with other potential options for managing emissions, such as coal plant retirements.

22. MidAmerican also failed to introduce evidence showing that the proposed emissions plan “reasonably balance[s] costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.” IOWA CODE § 476.6(19)(c). The 2020 EPB Update did not discuss how MidAmerican balanced these statutory factors in any detail. The 2020 EPB Update included just half a page to address both the economic development potential and the reliability of the generation and transmission systems. 2020 EPB Update at 12.

23. MidAmerican actively resisted filling in these gaps of the record in discovery. Docket No. EPB-2020-0156, Bents Direct Testimony Exh. 1 (filed Dec. 17, 2020). As a witness for Google and Facebook put it, “the evidence relating to the need for and cost-effectiveness of the emissions plan and its impact on the reliability of the generation and transmission system is sparse.” Docket No. EPB-2020-0156, Pollock Reply Testimony, at 3 (filed Jan. 21, 2021).

24. ELPC, IEC, and Sierra Club submitted testimony from David B. Posner and Steven C. Guyer that demonstrated that the retirement of MidAmerican Neal Unit 3 and Neal Unit 4 represented a more cost-effective strategy for managing emissions from the facilities to meet the state and federal environmental requirements.

25. Witness Posner analyzed the cost of continued operation of these coal plants and their emissions controls as proposed by MidAmerican, comparing it to the cost of retiring them and replacing them with renewable energy. Witness Posner's direct testimony showed that "Neal Unit 3 and Neal Unit 4 have been uneconomic to operate for several years." Docket No. EPB-2020-0156, Posner Direct Testimony, at 2 (filed Dec. 17, 2020).

26. Witness Posner cited to an analysis by Paul Chernick that showed that the Neal units cost customers an extra \$17 million per year to keep operating, versus retiring and replacing with market energy purchases. *Id.* at Exhibit 2 p.10.

27. Further, the Posner testimony demonstrated that the costs of MidAmerican's proposed strategy for managing emissions exceed the cost of reasonable alternatives. *Id.* at 2-3. Witness Posner concluded that retiring the Neal units, refinancing the capital investment as debt, and replacing the energy and capacity with wind could reduce long-term costs to customers by 9.7% for Neal Unit 3 and 22.6% for Neal Unit 4. *Id.* at 3. Moreover, the testimony in the record shows that customers could see an immediate benefit: the first-year savings from retirement could be 15% for Neal Unit 3 and 19.3% for Neal Unit 4. *Id.* at 13-15.

28. Witness Guyer explained that coal units that retire are in compliance with applicable state and federal air emission regulations. That is, coal plant retirement is an accepted emissions management strategy under state and federal law. He further explained that it is cost-effective to retire Neal 3 and Neal 4 and stated that the Board should not approve costs associated with these units.

29. OCA witness Scott C. Bents stated that the 2020 EPB Update is not a cost-effective plan for managing emissions from MidAmerican's coal plants. Docket No. EPB-2020-0156, Bents Direct Testimony at 4 (filed Jan. 21, 2021). He criticized MidAmerican's "narrow focus on

emissions controls equipment” and stated that the Update must consider “alternative compliance options.” *Id.* at 3. He further explained that MidAmerican “has not shown that it made any attempt at all to balance [the four statutory] criteria.” *Id.* at 9.

30. In its Reply Testimony, MidAmerican did not rebut the cost analysis presented by Petitioners’ witnesses and did not contest the experts’ conclusion that retirement of the Neal units would be more cost effective than continuing to operate them. Instead, MidAmerican contended that an EPB docket is not an appropriate venue to consider cost savings that result from coal plant retirements. Docket No. EPB-2020-0156, Fehr Reply Testimony, at 3 (filed Jan. 7, 2021). MidAmerican further claimed that retirement is not an emissions management strategy, and that the utility therefore does not need to consider retirement as an alternative to continued unit operation. Docket No. EPB-2020-0156, Mohr Reply Testimony, at 1-2 (filed Jan. 7, 2021). MidAmerican also asserted that because the installation of the emissions controls had been approved in a prior docket, the utility was not required to demonstrate that continued operation of those controls was a cost-effective emissions control strategy.

31. In Reply Testimony, Witness Posner clarified that his testimony was not challenging the prudence of the initial capital expenditures on the emissions controls that the Board had previously approved. Docket No. EPB-2020-0156, Posner Reply Testimony, at 2 (filed Jan. 21, 2021). Instead, his analysis showed that the costs of continuing to operate and maintain the coal plants with their existing emissions controls were higher than reasonable alternatives. Specifically, his analysis found that both of the Neal coal facilities could be retired, their capital (including capital spent on existing emissions controls) recovered, and their energy output and additional services replaced at a lower levelized cost than continued operation of the Neal units with the installed controls. *Id.*

32. Witness Guyer filed reply testimony that addressed economic development potential arguments. He specifically noted that, if (as MidAmerican agreed) economic development potential came from pollution reduction by simply controlling emissions, then there would be an even greater economic benefit from eliminating emissions entirely. Docket No. EPB-2020-0156, Guyer Reply Testimony, at 6 (filed Jan. 21, 2021). He also observed that, as MidAmerican itself has acknowledged, replacing retiring coal units with renewable energy has significant economic development potential. *Id.* at 4-5.

33. On February 4, 2021, MidAmerican and the Office of Consumer Advocate filed a Joint Motion and Non-Unanimous Settlement Agreement (Proposed Settlement) pursuant to 199 Iowa Admin. Code § 7.18.

34. The Proposed Settlement acknowledged that:

actions by a rate-regulated public utility with respect to the operation of coal-fired power plants can and do have an impact on the amount of regulated emissions produced by those plants. Such actions include:

- a. Installation/adoption of environmental controls and techniques
- b. Fuel switching
- c. Modified dispatch (coupled with increased reliance on lower emission resources and/or energy storage)
- d. Generating unit retirement
- e. Reliance on emission allowances
- f. Addition of new generation sources, both renewable and fossil fuel, as well as energy storage
- g. Load growth management
- h. Wholesale market transactions and retail sales of electric energy.

Docket No. EPB-2020-0156, Proposed Settlement at 3-4 (filed Feb. 4, 2021).

35. The Proposed Settlement proposed to review such actions outside of the EPB proceeding, stating that the purpose of the separate review would be “to demonstrate how MidAmerican is managing its current generation resources and how it is planning for new resources in a manner that are cost-effective . . . .” *Id.* at 5.

36. On February 18, 2021, Petitioners ELPC, IEC and Sierra Club filed Comments objecting to the non-unanimous settlement and suggesting modifications to the proposed settlement that would allow it to meet the statutory requirements.

37. Petitioners' comments explained that the Proposed Settlement was inconsistent with the EPB statute because it does not require MidAmerican to satisfy the requirements of the EPB statute within the EPB docket. Instead, the settlement would address those requirements in a separate, non-contested docket lacking contested case procedures such as discovery.

38. Petitioners' comments further explained that the Proposed Settlement attempted to circumvent the requirements of the EPB statute altogether and shield MidAmerican from the cost-effectiveness analysis required in the EPB docket now and into the future.

39. In comments on the Proposed Settlement, ELPC, IEC, and Sierra Club noted that no party disputed that the Neal units currently operate in compliance with their air quality permits. Rather, the parties disputed whether compliance with air quality permits alone abdicates a utility from needing to evaluate whether other compliance options exist that would manage emissions more cost-effectively and better balance the statutory factors.

40. Petitioners further asserted in their comments that the fact that MidAmerican failed to meet its burden of proof to develop a record that demonstrates continuing to run Neal Unit 3 and Neal Unit 4 is a reasonably cost-effective emissions management strategy meant that the record in the case did not support the non-unanimous settlement.

41. The parties submitted a Joint Statement of Issues on March 19, 2021. The parties agreed that the reasonableness of the settlement was at issue before the IUB. Docket No. EPB-2020-0156, Joint Statement of Issues (filed March 19, 2021). The statement included additional

issues identified by Petitioners regarding the retirement of the Neal plants and the adequacy of the record. *Id.*

42. On March 24, 2021 – one week before the scheduled date for the hearing – the Board issued an Order approving the EPB update as originally proposed by MidAmerican, rejecting the proposed settlement, and canceling the hearing.

43. The Board held that evaluation of alternative emissions management options is outside of the scope of the statute. The Board reasoned:

OCA and the other intervenors argued that MidAmerican should be required to look at multiple options, including retirement of coal facilities, as part of the analysis of the balancing factors outlined in Iowa Code § 476.6(19)(c). These issues have not been raised in previous EPB dockets, and the EPBs in those dockets were found to be in compliance with the statute. Based upon the specific requirements in the statute which address compliance with state and federal emissions regulations and the approval of EPBs in previous dockets, the Board finds that the evidence addressing other options, filed by OCA and the intervenors, is outside the scope of an EPB proceeding under Iowa Code § 476.6(19).

Docket No. EPB-2020-0156, Order Approving Emission Plan and Budget Update, Denying Joint Motion and Non-Unanimous Settlement Agreement and Canceling Hearing (hereinafter March 24 Order), at 9 (filed March 24, 2021).

44. While the Board order did not include a section laying out any specific findings of fact or any citations to the record on this issue, the Board generally concluded that MidAmerican’s EPB provided sufficient information and that it reasonably balanced the criteria in Iowa Code § 476.6(19)(c). *Id.* at 10.

45. The Board declined to consider the ELPC, IEC, and Sierra Club testimony as well as the OCA testimony filed in opposition to the 2020 EPB Update, because, in its view, “evidence addressing other options, filed by OCA and the intervenors, is outside the scope of an EPB proceeding.” *Id.* at 9. Nevertheless, the Board admitted all parties’ filings into the record. *Id.* at 10.

46. Because it found that the testimony presented by OCA and intervenors was outside of the statutory scope, the Board concluded that there were no material facts in dispute. *Id.* at 9. The only relevant evidence, according to the Board, was the “evidence provided by MidAmerican and [the Iowa Department of Natural Resources] show[ing] that the 2020 EPB meets applicable state environmental requirements and federal ambient air quality standards.” *Id.* at 9-10.

47. The Board summarily stated that MidAmerican’s plan was cost-effective. *Id.* The Board did not specify any facts or evidence in the record to support this finding.

48. On April 13, 2021, ELPC, IEC and Sierra Club filed an Application for Reconsideration pursuant to Iowa Code § 17A.16(2) and 199 Iowa Admin. Code § 7.27(1).

49. ELPC, IEC, and Sierra Club noted that the Board was incorrect in finding that prior EPB proceedings had not raised coal plant retirements as an emissions compliance strategy. ELPC, IEC and Sierra Club specifically highlighted the multiple examples of past EPB dockets where retirement or other compliance options had been considered as part of the emission management strategy. Docket No. EPB-2020-0156, Motion for Reconsideration, at 9-13 (filed April 13, 2021). This included references to MidAmerican dockets EPB-2014-0156, EPB-2016-0156, and EPB-2018-0156, and Interstate Power & Light docket EPB-2016-0150. In those dockets, the Board had approved coal plant retirements as a compliance strategy and did not reject them as outside the scope of the EPB statute.

50. OCA filed a separate Motion for Rehearing and Reconsideration.

51. On May 13, 2021, the Board issued an Order denying both requests for rehearing and reconsideration. Docket No. EPB-2020-0156, Order Denying Motion for Reconsideration (filed May 13, 2021).

52. In its May 13 Order, the Board stood by its prior assertion that alternative compliance options such as retirement had not been considered in previous EPB dockets. Docket No. EPB-2020-0156, Order Denying Motion for Reconsideration, at 8 (filed May 13, 2021) (“The Board stated in its March 24, 2021 Order Approving 2020 EPB that these issues have not been raised in previous EPB dockets, and the EPBs in those dockets were found to comply with the statute.”).

53. The Board did not directly address the other EPB dockets that ELPC, IEC, and Sierra Club specifically raised in its Motion for Reconsideration and previously in testimony in the docket.

54. The Board correctly noted that there was no dispute about whether MidAmerican’s proposed emissions compliance strategy of continuing to operate existing air pollution controls met the state and federal environmental requirements. The Board also correctly pointed out that no party disputed the accuracy of the costs for MidAmerican to operate and maintain the pollution controls included in MidAmerican’s EPB update.

55. The Board also claimed that there was no disputed fact about whether MidAmerican’s plan reasonably balanced environmental requirements, costs, economic development potential, and the reliability of the electric generation and transmission system. *Id.* at 10. The Board was only able to make such a statement by erroneously excluding consideration of ELPC, IEC, and Sierra Club’s testimony as outside of the scope of the docket.

55. According to the Order, “Because there were no disputed material facts, the Board found substantial evidence in the record to approve MidAmerican’s 2020 EPB filing.” *Id.*

56. The Board’s Order denying the motions for reconsideration is a final agency action.

57. Petitioners have exhausted administrative remedies before the Board.

**GROUND S UPON WHICH RELIEF IS SOUGHT**

58. Petitioners have been aggrieved and adversely affected by the Board’s Order dated March 24, 2021, approving MidAmerican’s EPB Update, and by the Board’s Order dated May 13, 2021, denying Petitioners’ application for reconsideration. The Board’s decision will lead to higher utility rates for MidAmerican customers and greater air emissions than if the Board had correctly interpreted the statute, considered Petitioners’ evidence, and concluded that the 2020 EPB Update did not comply with the statute.

59. Petitioners seek review of the Board’s action in approving MidAmerican’s 2020 EPB Update under the Iowa Administrative Procedure Act. *See* IOWA CODE § 17A.19(1). For the reasons stated in paragraphs 10 to 58 above, the Board’s approval of MidAmerican’s 2020 EPB Update is reversible agency action under Iowa Code § 17A.19(10). The grounds for relief include but are not limited to the following deficiencies in the Board’s order, each of which provides grounds to reverse, modify, or grant other appropriate relief from agency action under section 17A.19(10):

- a. the conclusion that consideration of alternative emissions management options such as coal plant retirements is inconsistent with the Board’s past practices and precedent where the Board approved utility EPB updates that included coal retirements to manage emissions, and there is no fair and rational basis for the inconsistency; IOWA CODE § 17A.19(10)(h);
- b. the conclusions in the order were not supported by substantial evidence in the record, as Petitioners noted throughout the proceedings and as demonstrated by the lack of separate statement of findings of fact; IOWA CODE § 17A.19(10)(f);

- c. the conclusions were based on an erroneous interpretation of provisions in Iowa Code § 476.6(19) whose interpretation has not clearly been vested by a provision of law in the discretion of the Board, or if interpretation has been vested in the agency, the conclusions reflect irrational, illogical, or wholly unjustifiable application of law to fact; IOWA CODE § 17A.19(10)(c) and (l);
- d. it was a product of the Board's failure to consider relevant and important matters in the record, including the evidence presented by Petitioners; IOWA CODE § 17A.19(10)(j); and
- e. the Board's finding that the EPB update was cost-effective was unreasonable, arbitrary, capricious and an abuse of discretion; IOWA CODE § 17A.19(10)(n).

**RELIEF REQUESTED**

60. Petitioners respectfully request that the Court rule that Iowa Code § 476.6(19)(c), which states that the Board “shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards,” and Iowa Code § 476.6(19)(a), which requires utilities to “develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner,” require a utility to show that its emissions management strategy is cost-effective in comparison to reasonable alternatives, and not merely that an emission control strategy complies with environmental laws.

61. Petitioners respectfully request that the Court rule that the Board erred as a matter of law when it concluded that consideration of emission management strategies other than on-site pollution control equipment, such as coal plant retirements, are outside of the scope of Iowa Code § 476.6(19).

62. Petitioners respectfully request that the Court order that the IUB conclusion that MidAmerican’s “update and budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system” under § 476.6(19)(c) and that MidAmerican’s update and budget is “cost-effective” under Iowa Code § 476.6(19)(a) and (b) was arbitrary, capricious, and unsupported by the evidentiary record. The Court should further order IUB to include in its orders all requisite findings under Iowa Code § 476.6(19) and the Iowa Administrative Procedure Act explaining why the proposed update and budget reasonably balances the listed statutory factors.

63. Petitioners further request that the Court reverse IUB’s decision approving MidAmerican’s 2020 EPB Update, and remand for proceedings consistent with the law.

WHEREFORE, the Environmental Law and Policy Center, the Iowa Environmental Council, and Sierra Club request that the Court issue an order consistent with the relief requested above and provide any other relief the Court deems appropriate under the circumstances. Petitioners respectfully request oral argument in this matter.

Respectfully submitted,

Date: June 11, 2021

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