

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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**

PROCEDURAL BACKGROUND

Iowa Code § 476.6(19) requires each rate-regulated utility that is the owner of an electric power generating facility fueled by coal and located in Iowa to develop multiyear emissions plans and budgets for managing emissions from its facilities in a cost-effective manner. Pursuant to § 476.6(19)(a)(1), the initial multiyear plan and budget was required to be filed with the Utilities Board (Board) by April 1, 2002, with updates to the plan and budget filed at least every 24 months thereafter.

MidAmerican Energy Company (MidAmerican) filed its initial Environmental Plan and Budget on April 1, 2002. Since that date, MidAmerican has filed plan and budget updates at least biennially and the updates have been approved by the Board. On April 1, 2020, MidAmerican filed its proposed Electric Power Generation Facility Emissions Plan and Budget, covering the period from January 1, 2020, through December 31, 2022, (2020 EPB) in Docket No. EPB-2020-0156. In the 2020 EPB, MidAmerican seeks approval of its compliance activities and associated budgets for its coal-fired electric generating units and provides a status report for activities and budgets

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associated with MidAmerican's approved 2018 EPB in Docket No. EPB-2018-0156.

The 2020 EPB describes current and future air emissions reduction requirements, the potential impact on MidAmerican's coal-fuel plants, and MidAmerican's projects designed to comply with the emission reduction targets. In support of its 2020 EPB, MidAmerican filed direct and reply testimony of three witnesses.

Pursuant to Iowa Code § 476.6(19)(a)(3), the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and the Iowa Department of Natural Resources (IDNR) must participate in the contested case proceeding conducted by the Board to consider MidAmerican's 2020 EPB. Section 476.6(19)(a)(4) provides that IDNR "shall state whether the plan or update meets applicable state environmental requirements for regulated emissions." In the event a plan or update does not meet the state environmental requirements for regulated emissions, IDNR "shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements."

On April 10, 2020, the Environmental Law & Policy Center and the Iowa Environmental Council jointly filed a petition to intervene in this docket, and on November 4, 2020, Sierra Club filed a petition to intervene in this docket. The three intervenors are addressed collectively as Environmental Intervenors. On November 4, 2020, Facebook, Inc., and Google LLC (Tech Intervenors) jointly filed a petition to intervene in this docket. All requests to intervene were granted by the Board. On April 13, 2020, OCA filed its appearance in this docket. On October 9, 2020, IDNR filed its appearance in this docket.

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IDNR filed direct testimony on October 26, 2020. On October 27, 2020, the Board issued an order deeming MidAmerican's 2020 EPB complete. The October 27, 2020 order also established a procedural schedule, which included a hearing for February 16, 2021. OCA and Environmental Intervenors filed direct testimony on December 17, 2020. MidAmerican filed reply testimony on January 7, 2021. OCA, Environmental Intervenors, and Tech Intervenors filed reply testimony on January 21, 2021.

On February 4, 2021, MidAmerican and OCA filed a "Joint Motion and Non-Uniform Settlement Agreement," requesting the Board issue an order approving the settlement agreement and canceling the February 16, 2021 hearing. IDNR is not a signatory party to the joint motion and non-unanimous settlement agreement. On February 10, 2021, the Board issued an order requesting that IDNR file a Statement of Position, requiring a settlement conference, suspending the remaining procedural schedule, and moving the hearing from February 16, 2021, to March 31, 2021.

On February 16, 2021, MidAmerican and OCA filed a settlement conference update as required by 199 Iowa Administrative Code (IAC) 7.18(2) for a non-unanimous settlement. On February 17, 2021, IDNR filed a Statement of Position. On February 18, 2021, the Environmental Intervenors and Tech Intervenors filed comments to the settlement. On February 25, 2021, OCA filed reply comments, and MidAmerican filed reply comments and an Attachment A, a request for confidential treatment of operation and maintenance projections for the 2020 EPB and three previous EPB dockets. In addition, MidAmerican's reply comments requested the Environmental

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Intervenors be estopped from arguing that certain expenses previously approved in earlier EPB dockets are not appropriate.

On March 4, 2021, the Environmental Intervenors filed a motion to strike Attachment A. On March 10, 2021, the Environmental Intervenors filed an amended motion to strike and Exhibits 1 & 2, which are data requests sent to OCA from March 2, 2021, and OCA's responses.

On March 11, 2021, MidAmerican filed a response to motion to strike. On March 16, 2021, the Board issued an order updating procedural deadlines; requiring a statement of issues to be filed March 19, 2021; and adopting hearing protocols that required an attendance and email designation to be filed by March 25, 2021. The March 16, 2021 order also identified that it would reserve ruling on the Attachment A and motion to strike until hearing. On March 19, 2021, the parties submitted a joint statement of issues.

SETTLEMENT AGREEMENT

The February 4, 2021 settlement agreement between MidAmerican and OCA states that MidAmerican's 2020 EPB update complies with Iowa Code § 476.6(19), acknowledges that Iowa law does not require or prohibit an integrated resource planning process, and states that MidAmerican will provide to the Board and the OCA, outside of a contested case proceeding, an Electric Generating Needs Forecast in 2022 and an update on or before 2027. MidAmerican proposes to file the electric needs forecasts in Docket No. M-0156.

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JOINT STATEMENT OF ISSUES

On March 19, 2021, the parties submitted a joint statement of issues. In the statement of issues, MidAmerican noted that it was withdrawing its Confidential Attachment A filed with its February 25, 2021 reply comments. The joint statement of issues identified the main issue for consideration as whether the proposed non-unanimous full settlement agreement is reasonable in light of the whole record and consistent with law and in the public interest. The Environmental Intervenors identified the following additional issues:

1. Is the retirement of a coal unit an appropriate emissions management compliance strategy under Iowa Code 476.6(19)?
2. In order to reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system, does Iowa Code 476.6(19) allow or require evaluating multiple options for compliance?
3. Does the retirement of a coal unit comply with the environmental requirements referenced in Iowa Code 476.6(19)?
4. Does the record demonstrate that MidAmerican evaluated the costs of alternative compliance options?
5. Does the record demonstrate that MidAmerican evaluated the economic development potential of alternative compliance options?
6. Does the record demonstrate that MidAmerican has adequately analyzed and balanced “costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system,” as required by Iowa Code 476.6(19)?
7. Does the proposed settlement include a stipulation that ten years of forward looking O&M costs would be prudent?
8. Are the modifications to the settlement proposed by the ELPC, the IEC, and the Sierra Club supported by the record and the law and in the public interest?

IOWA CODE SECTION 476.6(19)

EPBs are governed by Iowa Code § 476.6(19). When an EPB is filed, the Board must either approve or reject the EPB within 180 days after the public utility’s filing is deemed complete. Iowa Code § 476.6(19)(d). The Board is required to consider an

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EPB through a contested case proceeding pursuant to Iowa Code Chapter 17A. Iowa Code § 476.6(19)(a)(3). IDNR and OCA are required to participate in the proceeding.

Id.

IDNR is required to determine “whether the [EPB] meets applicable state environmental requirements for regulated emissions.” Iowa Code § 476.6(19)(a)(4). 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. Iowa Code § 476.6(19)(c). The Board reaches its determination by considering whether the updated plan and associated budget “reasonably balance[s] costs, environmental requirements, economic development potential and the reliability of the electric generation and transmission system.” *Id.*

BOARD ANALYSIS

A. MidAmerican’s Emissions Plan and Budget

Iowa law requires MidAmerican’s EPB to be reviewed by the IDNR to determine if the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, IDNR shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements. Iowa Code § 476.6(19)(a)(4). Additionally, Iowa law states that the Board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state. Iowa Code § 476.6(19)(b).

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The IDNR filed direct testimony that MidAmerican's 2020 EPB meets applicable state environmental requirements for regulated emissions (IDNR Piziali Direct Testimony pp. 1-2). In its Statement of Position, the IDNR further stated it did not intend to file any changes or additions to its testimony and it did not request a hearing to address any contested case issues. OCA Witness Scott Bents provided testimony that he believed MidAmerican's plan complies with Iowa Code requirements. (OCA Bents Direct Testimony pp. 3-4). The parties did not dispute that the 2020 EPB complied with applicable state environmental requirements and federal ambient air quality standards as outlined in Iowa Code § 476.6(19)(b).

Iowa law also requires the Board to 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. The Board, in reaching its decision, shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system. Iowa Code § 476.6(19)(c).

With regard to cost-effective compliance, OCA initially argued that MidAmerican's EPB filing should include an analysis of least-cost options for managing regulated emissions through a resource planning process and that the Board should require MidAmerican to provide further analysis to determine the economic development potential of constructing new generation, retiring coal units, and the economic impact of coal plant pollution. (OCA Bents Direct Testimony pp. 4-11). The Environmental

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Intervenors argued that two of MidAmerican's generating units, Neal 3 and Neal 4, were not operating in a cost-effective manner and, therefore, the emissions control expenses for the units should not be approved. Alternatively, the Environmental Intervenors argued that the Board could direct MidAmerican to evaluate retiring the units and replacing them with renewable generation, while considering factors of the EPB statute.

The Tech Intervenors' testimony stated that MidAmerican did not provide sufficient information regarding cost-effectiveness and reliability for the Board to determine if the 2020 EPB filing was adequate. The Tech Intervenors further stated that evidence concerning other viable alternatives for emissions regulations, including retirement and replacement of coal units, was necessary and a separate docket should be opened to conduct a broader-ranging inquiry into MidAmerican's electric supply plans for the future, possibly under the authority of Iowa Code § 476.6(16).

B. Existence of Material Facts

Iowa Code § 17A.10A provides that when a contested case has no factual dispute, the chapter provisions, except those relating to presentation of evidence, remain applicable. The Board has considered the evidence presented by the parties and the arguments regarding what additional evidence should be provided by MidAmerican as part of the 2020 EPB. The Board has also considered the issues raised by intervenors in the March 19, 2021 statement of issues.

Based upon its review, the requirements in Iowa Code § 476.6(19), and the issues addressed in previous filings under that statute, the Board finds that the requests for further analysis regarding least-cost options for emissions controls fall outside the scope of this proceeding and Iowa Code § 476.6(19). The statute specifically

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addresses whether a rate-regulated utility's electric power generating facilities fueled by coal comply with state and federal emissions requirements in a cost-effective manner. The statute provides that the Board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions.

The statute also provides that the Board shall review the plan or update and the associated budget and shall approve the plan or update and associated budget if they are reasonably expected to achieve cost-effective compliance with applicable state and federal requirements. The statute then provides that the Board shall determine if the plan, update, and budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

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).

Based upon the evidence in the record, the Board finds that there are no material facts about the EPB filed by MidAmerican that are in dispute. The Board finds that the

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evidence provided by MidAmerican and IDNR shows that the 2020 EPB meets applicable state environmental requirements and federal ambient air quality standards.

The Board finds that MidAmerican has provided sufficient information in its EPB to assess whether the plan reasonably balances costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system. The Board finds that MidAmerican's plan reasonably balances the criteria identified in Iowa Code § 476.6(19)(c). The Board also finds that MidAmerican's plan, which contains capital expenditure information as well as O&M expense information, is cost effective and complies with the requirements in Iowa Code § 476.6(19).

Therefore, the Board will admit all of the parties' filings into the evidentiary record, and the Board will approve the 2020 EPB.

C. MidAmerican and OCA's Joint Motion for Non-Unanimous Settlement Agreement

The Board has reviewed MidAmerican and OCA's joint motion regarding the non-unanimous settlement agreement. Although the Board finds that MidAmerican and OCA's settlement with regard to the 2020 EPB is reasonable, the settlement contains details, such as requiring an Electric Generating Needs Forecast to be filed, that the Board concludes is beyond the scope of an EPB docket. Therefore, the settlement will not be approved. Intervenor did not sign on to the settlement and have raised issues about the matters in the settlement that the Board has found to be outside the scope of the statute. The Board's findings regarding the scope of Iowa Code § 476.6(19) apply to the non-unanimous settlement. In addition, approval of the settlement is not

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necessary for approval of MidAmerican's 2020 EPB. The Board has found that the 2020 EPB reasonably balances costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system. MidAmerican and OCA's joint motion and non-unanimous full settlement agreement will be denied.

In summary, the Board concludes that MidAmerican's 2020 EPB meets the requirements of section 476.6(19). The Board also finds that the issues addressed in MidAmerican and OCA's non-unanimous settlement agreement, as well as the remaining issues identified in the parties' joint statement of issues, are more appropriately addressed in a separate docket and fall outside the limited scope of an EPB docket.

Since the Board has approved the 2020 EPB, and found that the other issues raised by the parties are outside the scope of an EPB proceeding, there are no remaining issues to be litigated at the March 31, 2021 hearing. Therefore, the March 31, 2021 hearing will be canceled.

D. New Docket

Since EPB dockets have a 180-day deadline for issuance of an order either approving or denying the emissions plan and budget, and since these dockets and the corresponding filings, settlements, and orders have been utilized in a limited manner since being statutorily created in 2002, the Board finds that these dockets are not appropriate vehicles for an extended discussion of least-cost alternatives for MidAmerican's generating fleet, including the potential retirement of coal plants.

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Although the Board has made this determination, the Board does agree that an analysis of a utility's long-term resource needs, including consideration of least-cost options for generation, environmental requirements, reliability, and economic development potential, is appropriate. The February 2021 polar vortex has raised numerous concerns about reliability and baseload generation — especially taking into account the rapid changes occurring to the national generation fleet — that appear to be directly related to portions of MidAmerican and OCA's proposed settlement and the Environmental Intervenors' remaining issues.

As such, the Board will be opening a new docket, Docket No. SPU-2021-0003, pursuant to Iowa Code § 476.6(12) to evaluate the reasonableness and prudence of MidAmerican's procurement and contracting practices related to the acquisition of fuel for use in generating electricity, and pursuant to Iowa Code § 476.6(16) to address a forecast of future gas requirements or electric generating needs.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The proposed Electric Power Generation Facility Plan and Budget filed by MidAmerican Energy Company on April 2, 2020, identified as Docket No. EPB-2020-0156, is approved.
2. The Joint Motion and Non-Unanimous Settlement Agreement filed on February 4, 2021, by MidAmerican Energy Company and the Office of Consumer Advocate, a division of the Iowa Department of Justice, is denied.
3. Any other outstanding motions are denied.

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4. The hearing in Docket No. EPB-2020-0156 scheduled for 9:30 a.m. March 31, 2021, is canceled.

5. A separate docket, Docket No. SPU-2021-0003, shall be opened by the Utilities Board to consider the matters identified in the joint statement of issues and any other issues as provided in Iowa Code §§ 476.6(12) and 476.6(16).

UTILITIES BOARD

Geri Huser Date: 2021.03.24
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Richard Lozier Date: 2021.03.24
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ATTEST:

Louis Vander Streek Date: 2021.03.24
16:21:14 -05'00'

Josh Byrnes Date: 2021.03.24
15:31:06 -05'00'

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