

IN THE SUPREME COURT OF IOWA

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No. 22-0385  
POLK COUNTY NO. CVCV061992

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ENVIRONMENTAL LAW AND POLICY CENTER OF IOWA,  
ENVIRONMENTAL COUNCIL and SIERRA CLUB,  
Petitioners-Appellants,

vs.

IOWA UTILITIES BOARD,  
Respondent-Appellee,

and

MIDAMERICAN ENERGY COMPANY, Intervenor-Appellee.  
and  
OFFICE OF CONSUMER ADVOCATE, Intervenor.

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APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY,  
THE HONORABLE SAMANTHA GRONEWALD, JUDGE

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FINAL AMICUS CURIAE BRIEF OF INTERVENOR  
OFFICE OF CONSUMER ADVOCATE

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## **IDENTITY OF AMICUS CURIAE**

Amicus Curiae Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, represents Iowa consumers and the public generally in all proceedings before the Iowa Utilities Board (IUB) and in state court judicial review proceedings and appeals. Iowa Code §§ 475A.2(2), (5) (2021). Pursuant to Iowa Code section 476.6(19)(a)(3), OCA is required to participate in utilities' emissions plan and budget (EPB) proceedings before the IUB. Iowa consumers will pay for any costs associated with the EPB approved by the IUB. For the benefit of Iowa consumers, OCA seeks to provide its unique perspective and knowledge that will assist this Court in gaining a complete understanding of the implications of a decision in this case.

## **DISCLOSURE STATEMENT**

The Office of Consumer Advocate's Amicus Curiae Brief was authored solely by the undersigned counsel for the Office of Consumer Advocate, at its sole expense. Neither party nor their counsel participated in the drafting of this Brief, in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this Brief. Iowa R. App. P. 6.906(4)(d).

## INTRODUCTION

The emissions planning and budgeting process dates back to 2001 when the Iowa Legislature passed H.F 577. AN ACT RELATING TO ELECTRIC POWER GENERATION AND TRANSMISSION . . . , Ch. 4 (H.F. 577) (July 3, 2001) (codified as amended at Iowa Code § 476.6(19) (2021)). The legislation required “[e]ach rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.” *Id.*; Iowa Code § 476.6(19)(a). Iowa rate-regulated utilities were required to file the first multiyear plan by April 1, 2002, which would then be subject to a contested case proceeding before the IUB. *Id.* at (a)(1), (2). The IUB was tasked with determining whether the initial EPB and subsequent updates were “reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards.” Iowa Code § 476.6(19)(c). In reaching this determination, the Legislature required the IUB to “consider whether the plan or update and the associated budget reasonably balance[d] costs, environmental requirements,

economic development potential, and the reliability of the electric generation and transmission system.” *Id.*

Following the filing of the first multiyear plan, rate-regulated utilities were required to update the plan and budget every twenty-four months—the updates are also subject to the contested case proceeding requirement. *Id.* at (a)(1). The Legislature required the emissions planning process to be a “collaborative effort involving state agencies and affected generation owners.” *Id.* The “collaborate effort” language remains in the 2021 version of the Iowa Code. *Id.*

OCA and other stakeholders have participated in emissions plan and budget proceedings since 2002 when the two Iowa rate-regulated utilities owning coal-fueled electric power generating facilities filed their first EPBs. Notably, over the past two decades, these proceedings have been largely non-controversial, with the great majority settling before hearing.

By approving MidAmerican’s 2020 EPB as filed and disallowing consideration of the collaborative efforts of stakeholders in a contested case proceeding, the IUB has diverged from the collaborative process for managing regulated emissions in Iowa envisioned by the Iowa Legislature in its creation of the relevant statute in 2001. The IUB’s



order effectively rubber-stamped MidAmerican's 2020 EPB and did not provide the depth of review and investigation necessary for imposing new rates and charges on rate-payers and is contrary to the other "rate-making" sections contained in 476.6 and to IUB precedent. The practical effect of the IUB's exclusion of stakeholders' evidence concerning alternatives for managing regulated emissions is that ratepayers could end up paying more for the costs associated with the MidAmerican's EPB versus what they would pay if the EPB had been subject to a rigorous collaborative process and contested case proceeding to ensure the cost-effectiveness of the EPB. Ratepayers are ultimately responsible for the costs approved in an EPB proceeding, which presents the only opportunity for parties and the IUB to scrutinize these costs to ensure they are reasonable and just.

For the reasons asserted below, the IUB's order approving MidAmerican's 2020 EPB, and the District Court's Order affirming, should be reversed.

## ARGUMENT

### **I. THE IUB’S INTERPRETATION OF IOWA CODE SECTION 476.6(19) RELIES ON AN ERRONEOUS APPLICATION OF THE RELEVANT LAW AND PRECEDENT AND SHOULD BE REVERSED**

Iowa Code section 476.6(19) requires a rate-regulated public utility that operates a coal-fueled electric generating facility in Iowa 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). The Iowa Legislature envisioned the EPB process as a “collaborative effort involving state agencies and affected generation owners.” *Id.* The Department of Natural Resources (DNR) is tasked with evaluating whether the plan or update meets the applicable state environmental requirements for regulated emissions. Iowa Code § 476.6(19)(a)(4). If the plan does not meet the requirements, the DNR must recommend amendments to the plan or budget to resolve compliance issues. *Id.* The IUB is tasked with reviewing the plan and the subsequent updates and associated budget. 476.6(19)(b), (c).

In reaching its decision on whether to approve the EPB, the IUB must consider the following: First, pursuant to Iowa Code section 476.6(19)(b) the plan or 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.” Second, pursuant to Iowa Code section 476.6(19)(c),

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. In reaching its decision, the board 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.

In the IUB’s Order, it found no party contested whether MidAmerican’s EPB complied with section 476.6(19)(b). Appendix (App.) pg. 478. Concerning section 476.6(19)(c), the IUB found Appellants’ and other stakeholders’ submissions of alternative cost-effective compliance options for managing regulated emissions were outside the scope of EPB proceedings under section 476.6(19). App. pgs. 480–90. The IUB declined to hold a hearing and approved MidAmerican’s EPB as filed. App. pg. 483. The District Court affirmed the IUB’s Order. App. pgs. 724–30. The IUB’s Order and the District Court’s ruling rely on an erroneous interpretation of “managing regulated emissions” and “cost-effective compliance” language in section 476.6(19)(c) and an erroneous application of IUB precedent.

**A. The phrases “cost-effective compliance” and “in a cost-effective manner” necessarily require consideration of alternatives for managing regulated emissions.**

This court is tasked with interpreting Iowa Code section 476.6(19). Concerning statutory interpretation, the Iowa Supreme Court has provided the following guidance:

Our goal in interpreting a statute is to determine the legislative intent by looking at the language the legislature chose to use, not the language they might have used. *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016). In other words, legislative intent cannot change the meaning of a statute if the words used by the legislature will not allow such a meaning. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). . . . When there is no statutory definition to guide us, we interpret terms “in the context in which they appear and give each [word] its plain and common meaning.” *Ramirez-Trujillo*, 878 N.W.2d at 770. If there is more than one interpretation of the plain meaning that is reasonable, we will employ traditional tools of statutory interpretation. *Irving[v. Employment Appeal Bd.]*, 883 N.W.2d [179,] 191 [(Iowa 2016)].

*Banilla Games, Inc. v. Iowa Dep’t of Inspections & Appeals*, 919 N.W.2d 6, 14 (Iowa 2018).

Because we presume the legislature included every part of the statute for a purpose, we avoid construing a statutory provision in a manner that would make any portion thereof redundant or irrelevant. *Rojas [v. Pine Ridge Farms, LLC.]*, 779 N.W.2d [223,] 231 [(Iowa 2010)]; see Iowa Code § 4.4(2). We also avoid construing statutory provisions in a manner that will lead to absurd results. *Iowa Ins. Inst.*[

*v. Core Group of Iowa Ass'n for Justice*], 867 N.W.2d [58,] 75 [(Iowa 2015)]; see Iowa Code §§ 4.4(3), .6(5).

*Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016).

The IUB's and District Court's cursory interpretation and application of section 476.6(19) is conclusory (at best) and runs counter to the clear legislative intent of that section. The IUB's order lacks an interpretation of section 476.6(19) and only presents a conclusion from which to parse an interpretation. *See* App. pgs. 477–81. Comparing the IUB's conclusion that section 476.6(19)(c) does not allow alternatives to the plain language of the statute leads to an absurd result: how can the cost-effective compliance of MidAmerican's EPB update be shown without a consideration of other potentially more cost-effective alternative compliance options? By definition, "cost effective" means "providing good value for the amount of money paid." *See* Cost-Effective, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/cost-effective>, (last visited September 23, 2022). Based on MidAmerican's 2020 EPB filing, the dollar amount MidAmerican proposes spending for the emissions compliance from January 1, 2020, through December 31, 2022, is known, but it is not known if that amount is "good value" and cost-

effective. The alternatives suggested by stakeholders would provide a means to measure the value of MidAmerican's 2020 EPB update. Without a comparison to alternatives, the IUB's interpretation of "cost-effective compliance" essentially ignores the phrase entirely—contrary to statutory interpretation precedent that assumes the legislature included each word in a statute for an express purpose. *See Ramirez-Trujillo*, 878 N.W.2d at 770.

The IUB's interpretation, absent a comparison to alternatives, only makes logical sense if the factors governing coal plant operations and EPB plans are static and not subject to change. However, a utility's plans and obligations for meeting emissions regulations are necessarily impacted by a utility's ongoing plans for operating a coal-fired power plant, which in turn are impacted by the addition of new low-emission energy resources and other factors, which MidAmerican has done in recent years with the construction of new wind energy generation facilities. App. pgs. 334–35. Emissions planning is not a static process. The EPB statute recognizes this and requires MidAmerican to review and update its plans at least every twenty-four months. The IUB's interpretation is erroneous by ignoring the clear language in the statute.

**B. The IUB’s Interpretation of 476.6(19) Constrains Stakeholders from Participating in the Emissions Planning Process Contrary to the Legislature’s Intent that the EPB be “Collaborative.”**

The IUB’s and District Court’s interpretations of section 476.6(19) create a limitation on the scope of the EPB process that is not contained in the statute. Section 476.6(19)(c) sets forth a collaborative process where a utility’s EPB is evaluated every twenty-four months to ensure the EPB is “reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards.” The EPB is evaluated every twenty-four months because emissions planning is not a static process—rapid changes in both the emissions regulatory scheme and technology mean approaches to managing emissions that were not cost-effective in 2018 could be cost-effective in 2020. App. pgs. 334–35. The plain language of the statute makes clear the Legislature envisioned the EPB as a review of a utility’s emissions plan every twenty-four months, which invites the consideration of other methods for cost-effective compliance with emissions regulations submitted by stakeholders. *See Ramirez-Trujillo*, 878 N.W.2d at 770 (“Because we presume the legislature included every part of the statute

for a purpose, we avoid construing a statutory provision in a manner that would make any portion thereof redundant or irrelevant.”).

MidAmerican’s recent changes in its generation mix impacts its regulated emissions and underscores the Legislature’s purpose in requiring the EPB to be reviewed every twenty-four months. MidAmerican completed several large wind-generation projects since the conclusion of the 2018 EPB update, which should reduce MidAmerican’s reliance on coal-fueled generation subject to new and potentially costly emissions regulations. App. pg. 334. Also due to the addition of new wind-generation, the status-quo from the 2018 EPB could no longer be assumed as a cost-effective option for Iowa rate-payers who are ultimately responsible for the payment of the costs incurred by MidAmerican in the EPB. *Id.* The statutory language does not allow the IUB to assume the status quo remains cost-effective, rather it requires a contested case proceeding, including the submission and consideration of stakeholders’ evidence to test the EPB against the statutory requirements.



**C. The IUB’s Interpretation of Section 476.6(19)  
Conflicts with its Treatment of Other Similar  
Sections Contained in 476.6**

Iowa Code section 476.6 contains the various provisions that broadly relate to the rates and charges of Iowa rate-regulated public utilities, and the procedures used to establish the same. These provisions largely provide the exclusive means for a utility to raise customers’ rates.<sup>1</sup> Like section 476.6(19), the other provisions in section 476.6 feature comparable procedures that must be followed prior to the implementation of a new rate or charge. The provisions addressing the filing of a utility’s five-year energy efficiency plan (EEP) and the process and approval of a utility’s rate increase application provide useful guidance for the interpretation of section 476.6(19). Iowa Code §§ 476.6(1)–(10), (13), (15); *Beverage v. Alcoa, Inc.*, 975 N.W.2d 670, 681 (Iowa 2022) (“[C]ontext is critical, and context comes from ‘the language’s relationship to other provisions of the

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<sup>1</sup> The EPB statute, section 476.6(19), is unique in one sense when compared to the other sections of 476.6 due to the fact the Iowa Legislature included language specifically requiring OCA to participate in EPB proceedings. Iowa Code § 476.6(19)(a)(3). In the other rate-increase proceedings outlined in 476.6, OCA participates as a party pursuant to Iowa Code section 475A.2. The fact the legislature included a provision in 476.6(19) specifically requiring OCA to participate in the EPB proceedings further underscores the importance of OCA’s collaboration and participation in these proceedings.

same statute and other provisions of related statutes.” (citation omitted)); *Irving v. Emp. Appeal Bd.*, 883 N.W.2d 179, 191 (Iowa 2016) (stating statutory analysis “must strive to make sense of [a statute] as a whole and examine the “general scope and meaning of a statute when all its provisions are examined.” (citations omitted));

Just like in the EPB process, OCA and other stakeholders participate in the EEP process by reviewing and investigating a utility’s filed EEP. OCA and stakeholders then submit evidence and recommendations in the form of pre-filed testimony to be considered in a contested case proceeding in the same manner as was done in the instant proceeding. *See, e.g.*, App. pgs. 85–89; *see also In Re MidAmerican*, EEP-2018-0002, OCA Davison Testimony, pgs. 12–14 (IUB Sept. 13, 2018) (recommending an alternative method for tracking program savings in MidAmerican’s 2018 EEP). The IUB considered OCA’s evidence and recommendations in its order approving MidAmerican’s 2018 EEP. *In Re MidAmerican*, EEP-2018-0002, Final Order pgs. 11–12 (IUB Feb. 18, 2019) (Discussing OCA’s testimony and recommendations).

Similarly, Iowa Code sections 476.6(1) through (10) provide guidance on the procedure and process that must be followed for a

utility to impose a new rate or charge on customers. OCA participates in rate increase proceedings in the same manner as its participation in the energy efficiency proceedings. Iowa Code § 475A.2. OCA reviews the utility's rate increase application then files direct testimony containing evidence and recommendations, including alternatives to various aspects of the rate increase application to be considered in a contested case proceeding. *See, e.g., In Re Black Hills Energy Company*, RPU-2021-0002, Tessier Direct Testimony, pgs. 17–18 (IUB Oct. 1, 2021) (recommending the rejection of a utility's proposed program or, in the alternative, providing four alternative recommendations to bolster consumer protections for the program).

The EPB process in section 476.6(19) should be treated in the same manner as the other provisions in 476.6. The IUB's Order approving MidAmerican's 2020 EPB gives no compelling reason to treat the EPB in a manner where stakeholders are barred from the IUB considering relevant evidence related to managing regulated emissions, and in fact, the IUB's narrow interpretation of the EPB statute does not fit into the context of the other rate-making provisions contained in section 476.6. *See Beverage*, 975 N.W.2d at 681. Further, the energy efficiency and rate increase provisions in 476.6 lack express

language requiring the utility to demonstrate a consideration of alternatives, but stakeholders present alternatives to the utility’s initial filing and these alternatives are taken into consideration when the IUB renders a decision on whether to approve the rate increase or energy efficiency plan. The various proceedings contained in section 476.6 are incredibly important because they are the exclusive means for raising customer rates and present a singular opportunity for stakeholders to investigate the rate increase prior to its imposition on consumers to ensure the rates are “reasonable and just”—the polestar of utility rate-making. Iowa Code § 476.8.

**D. The IUB’s Reliance on “Past Precedent” to Justify its Interpretation of Section 476.6(19)(c) is Erroneous.**

In both the IUB’s initial order and its order on rehearing it states that reasonable alternatives for emissions compliance were not raised in previous EPB dockets and it found those EPB’s in compliance with the statute—past precedent demonstrates this finding is erroneous. App. pgs. 472–484, 535–36.

In both MidAmerican’s 2016 and 2018 EPB filings, it touted alternative methods of complying with emissions regulations, which constitutes past precedent justifying the consideration of alternatives

in this matter. App. pgs. 76–78. In 2016, MidAmerican witness Jennifer McIvor testified “MidAmerican is retiring certain coal-fueled generating units as the least-cost alternative to company” with emissions standards. Direct Testimony of Jennifer McIvor, EPB-2016-0156, pg. 5 (IUB Apr. 1, 2016); App. pg. 77. MidAmerican also limited a generating station “to natural gas combustion” to comply with emissions standards. *Id.* MidAmerican’s 2016 Electric Power Generation Facility Emissions Plan contains the same language stating that retirement of coal-fueled units and limiting to natural gas combustion is a least-cost means to comply with emissions requirements. *MidAmerican Electric Power Generation Facility Emissions Plan*, EPB-2016-0156, pgs. 4–8 (IUB Apr. 1, 2016). No parties contested MidAmerican’s early retirement of coal plants and use of natural gas combustion as a least-cost means to comply with emissions standards, and the IUB approved the 2016 including these issues. *See Order Granting Motion to Cancel Hearing and Approving*

*Emissions Plan Update* (IUB June 9, 2017).<sup>2</sup> Similarly, in 2018 MidAmerican touted early retirement of coal-fueled generation as an alternative method for complying with emissions standards. *Direct Testimony of Jennifer McIvor*, EPB-2018-0156, pg. 4 (IUB Apr. 2, 2018); *Id.*, *MidAmerican Electric Power Generation Facility Emissions Plan*, pgs. 2, 5.

IUB precedent from IPL's EPB filings in past years also supports the conclusion that the consideration of alternative methods of managing regulated emissions is appropriate. As noted in Appellants' Application for Reconsideration before the IUB, in 2016 IPL performed a cost-benefit analysis, including a consideration of alternative compliance options. App. pg. 495. The 2016 IPL EPB eventually settled through a collaborative process with IPL, OCA, and

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<sup>2</sup> The only outstanding issue in the 2016 EPB related to the installation of emissions control technology at a coal plant jointly owned by Interstate Power and Light (IPL) and MidAmerican, but operated by IPL. *Id.* The IUB found this issue had been resolved in IPL's 2016 EPB. *Id.* pgs. 4–5. In the Order approving IPL's 2016 EPB, the IUB made specific findings regarding the emissions control technology and found it achieve cost-effective compliance. Specifically, it found IPL had considered alternative emissions control measures, but selected the one presented in the EPB due to evidence it was the most cost-effective solution. *See Order Approving Joint Motion, Settlement Agreement, and Emissions Plan Update, and Cancelling Hearing*, EPB-2016-0150 (IUB May 16, 2017).

Appellants, where IPL agreed to install battery storage and develop renewable energy generation. App. pg. 496; *Joint Motion and Settlement Agreement*, EPB-2016-0150, pg. 4 (IUB May 11, 2017). The IUB approved the settlement including the alternative methods of compliance. *Order Approving Joint Motion, Settlement Agreement, and Emissions Plan Update, and Cancelling Hearing*, EPB-2016-0150, pgs. 6–7 (IUB May 16, 2017) (“[T]he settlement agreement itself states that the parties stipulate that IPL’s EPB update complies with the requirements of Iowa Code § 476.6(20). Therefore, the record weighs in favor of a finding approving IPL’s 2016 EPB update. The Board will approve the April 1, 2016, filing as amended.”) Based on this precedent, the IUB’s rejection of alternative methods for managing regulated emissions is erroneous and should be reversed.

### **CONCLUSION**

The Iowa Legislature created of the EPB process in 2001 to provide a “collaborative” method, subject to a contested case proceeding, for managing emissions from coal fueled electric power generating facilities owned by rate-regulated public utilities. AN ACT RELATING TO ELECTRIC POWER GENERATION AND TRANSMISSION . . . , Ch. 4 (H.F. 577) (July 3, 2001) (codified as

amended at Iowa Code § 476.6(19) (2021)). The EPBs are required to be reviewed by the IUB every twenty-four months to ensure compliance with section 476.6(19). The statutory language is broad and invites stakeholder participation through collaboration with the utility and in a contested case proceeding—similar to the other rate-making provisions in section 476.6—to ensure the EPB complies with the statutory requirements. The IUB’s and District Court’s narrow interpretation of 476.6(19) creates an EPB process that conflicts with the language of that statute and with IUB precedent, and could result in ratepayers overpaying for the costs associated with MidAmerican’s EPB. For these reasons, OCA urges this Court to reverse the District Court’s Ruling affirming the IUB’s Order approving MidAmerican’s 2020 EPB.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
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This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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*/s/ Jeffrey J. Cook*                      9/23/22  
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**ATTORNEY COST CERTIFICATE**

I hereby certify the cost of printing the foregoing Intervenor Office of Consumer Advocate Proof Amicus Curiae Brief was the sum of \$0.00.

*/s/ Jeffrey J. Cook*                      9/23/22  
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## CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies he electronically filed the foregoing Intervenor Office of Consumer Advocate Final Amicus Curiae Brief on September 23, 2022, in EDMS.

The undersigned hereby certifies on September 23, 2022, the foregoing Intervenor Office of Consumer Advocate Proof Amicus Curiae Brief was served by EDMS to the respective counsel for said parties:

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/s/ Jeffrey J. Cook  
Signature

9/23/22  
Date