IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

CITY OF COUNCIL BLUFFS, IOWA, Plaintiff, STATE OF NEBRASKA; STATE OF IOWA, Intervenor-Plaintiffs, v. UNITED STATES DEPARTMENT OF THE INTERIOR; DAVID BERNHARDT,[1] in his official capacity as Secretary of the United States Department of the Interior; NATIONAL INDIAN GAMING COMMISSION; JONODEV OSCEOLA CHAUDHURI,[2] in his official capacity as Chairman of the National Indian Gaming Commission; and KATHRYN ISOM-CLAUSE, in her official capacity as Vice Chair of the National Indian Gaming Commission, Defendants.	)	Case No. 1:17-CV-00033-SMR-CFB ORDER ON MOTIONS

Before the Court are motions by Plaintiff City of Council Bluffs, Iowa ("Council Bluffs"), and Intervenor-Plaintiffs the State of Nebraska and the State of Iowa (together with Council Bluffs, the "Plaintiffs"). Plaintiffs seek: (1) amendment and clarification of the Court's March 26, 2019 Order on the parties' cross-motions for summary judgment (the "Summary Judgment Order"); and (2) certification of that Order for interlocutory appeal. [ECF Nos. 57; 58]. Defendants the

[1] Pursuant to Federal Rule of Civil Procedure 25(d), David Bernhardt, as a public officer and successor to Ryan K. Zinke as Secretary of the United States Department of the Interior, is "automatically substituted as a party." Fed. R. Civ. P. 25(d).

[2] Chaudhuri resigned from the National Indian Gaming Commission effective May 15, 2019. His successor has not yet been named.

United States Department of the Interior ("DOI") and the National Indian Gaming Commission ("NIGC" or the "Commission"), along with three federal employees in their official capacities—David Bernhardt as Secretary of the DOI, Jonodev Osceola Chaudhuri as Chair of the NIGC, and Kathryn Isom-Clause as Vice-Chair of the NIGC—resist the motions. Plaintiffs requested oral argument, but the Court finds the issues can be resolved without it. *See* LR 7(c). The matter is fully submitted and ready for decision. For the reasons stated herein, Plaintiffs' motions are DENIED.

I. BACKGROUND

The full factual and procedural background of this matter is discussed extensively in the Court's Summary Judgment Order and is hereby incorporated by reference. *See* [ECF No. 55 at 2–16]. This matter is a challenge under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, to the NIGC's November 13, 2017 Amended Final Order[3] approving a site-specific gaming ordinance for the Ponca Tribe of Nebraska (the "Tribe") involving a 4.8-acre tract of land in Carter Lake, Iowa (the "Carter Lake Parcel"). The parties filed cross-motions for summary judgment. *See* [ECF Nos. 22; 35]. Defendants asked that the Court affirm the Amended Final Order. Plaintiffs asked that the Amended Final Order be reversed, vacated, and remanded to the Commission with an order that it deny the Tribe's request to amend the Carter Lake Parcel ordinance. Plaintiffs advanced various legal theories in support of their motion, including that the Commission's interpretation of relevant provisions in the Ponca Restoration Act (the "PRA" or the "Act") conflicted with the plain language of the Act, and that the Commission failed to properly consider circumstances surrounding the 2002 Agreement as part of its restored lands analysis.

[3] Capitalized terms not defined herein have the same meaning as in the Summary Judgment Order.

The Court agreed with Plaintiffs only that the Commission failed to properly weigh the circumstances of the 2002 Agreement as part of its restored lands analysis. The Court remanded the case to the NIGC and ordered it to "evaluate the 2002 Agreement and the Corrected Notice as factual circumstances of the trust acquisition." [ECF No. 55 at 37]. It thus granted in part and denied in part Plaintiffs' Motion for Summary Judgment, and it denied Defendants' motion. The Clerk of Court entered Judgment on March 28, 2019. [ECF No. 56]. Neither the Judgment nor the Court's Summary Judgment Order specified whether the Amended Final Order was vacated. The instant motions followed on April 12, 2019.

While the present motions were pending, the NIGC issued a "Revised Amendment to Final Decision and Order" on April 30, 2019 (the "April 2019 Decision"), which affirmed the Amended Final Order, and in which the Commission reports it conducted the analysis directed by the Summary Judgment Order. *See* [ECF No. 63-1]. The April 2019 Decision consists only of a restored lands analysis, and it restates findings from the Amended Final Order in that limited context. The Commission does not, for example, repeat in the April 2019 Decision the analysis of the PRA that appeared in the Amended Final Order. Although the April 2019 Decision is not presently before the Court, the fact of its issuance bears some relevance to the matters discussed below.

II. ANALYSIS

A. Motion to Amend

Plaintiffs have filed a Motion to Amend Judgment under Federal Rule of Civil Procedure 59(e), asking the Court to "clarify that the agency decision here has been vacated, as well as

remanded." [ECF No. 57 at 2].[4] Rule 59(e) states only that "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." Thus, it is more of a time-limit than it is a substantive rule; for example, it sets no parameters as to how a court should decide such a motion. Nevertheless, "[m]otions under Rule 59(e) 'serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence' and 'cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment.'" *Ryan v. Ryan*, 889 F.3d 499, 507 (8th Cir. 2018) (citation omitted). It is, however, not uncommon for parties to use Rule 59(e) to request that a court clarify aspects of a judgment. *Cf. Phelps-Roper v. Koster*, 815 F.3d 393, 396 (8th Cir. 2016) (noting that the plaintiff filed a motion under Rule 59(e) asking the district court to clarify whether its previous order granting summary judgment dismissed one count or the entire case). Whatever the nature of a party's request under Rule 59(e), "[d]istrict courts have 'broad discretion in determining whether to alter or amend [a] judgment.'" *Ryan*, 889 F.3d at 507–08 (citation omitted).

Although Plaintiffs ask the Court to clarify that the Amended Final Order was vacated, they proceed to argue in a ten-page brief why vacatur was warranted.[5] Plaintiffs thus appear to

[4] The Tribe, as amicus, argues Plaintiffs' Motion to Amend "plainly [has] become moot" by the April 2019 Decision. [ECF No. 71 at 2]. The Court disagrees. The April 2019 Decision focuses solely on the issues the Court directed the Commission to consider on remand, and generally does not revisit outside of this context findings from the Amended Final Order. If the Amended Final Order is vacated, it is not clear the April 2019 Decision, standing alone, satisfies the requirements of the APA. Thus, notwithstanding the NIGC's swift action on remand, the Court will consider the merits of Plaintiffs' Motion to Amend.

[5] In a footnote in their brief, Plaintiffs ask the Court to clarify "that *all* NIGC Orders regarding the Carter Lake site-specific ordinance are vacated." [ECF No. 57-1 at 3 n.2]. This request encompasses the 2007 Final Order, which preceded the Amended Final Order and it is not the agency decision challenged in this action. Plaintiffs cite no authority that would allow the Court to issue orders pertaining to an agency decision that is not presently before it. Furthermore,

imply that if the Court did not vacate the Amended Final Order, it committed manifest error and the Judgment should be amended to correct that error. But the Court did not mention vacatur in its Summary Judgment Order because it did not vacate the Amended Final Order. Nor was its decision not to do so manifest error.

The APA provides that a court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Although this language suggests that an agency decision must be vacated whenever it is found to violate the APA, "that is simply not the law." *Sugar Cane Growers Co-op. of Fla. v. Veneman*, 289 F.3d 89, 98 (D.C. Cir. 2002); *see also Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1290 (11th Cir. 2015) (citing cases from the United States Courts of Appeals for the First, Fifth, Ninth, District of Columbia, and Federal Circuits in concluding that "remand without vacatur is permitted under the APA"). Although it is true that "vacatur of unlawful agency action is the ordinary APA remedy," *Sierra Club v. Van Antwerp*, 526 F.3d 1353, 1369 (11th Cir. 2008) (Kravitch, J., concurring in part and dissenting in part), it is not "the only one." *Black Warrior Riverkeeper*, 781 F.3d at 1290.

Relevantly, the "remedy of remand without vacatur is within a reviewing court's equity powers under the APA." *Id.* (citation omitted). As a reflection of a court's equity powers, however, remand without vacatur is appropriate only where "equity demands." *Wood v. Burwell*,

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the 2007 Final Order was the subject of a different litigation, *Nebraska ex rel. Bruning v. United States Department of Interior*, No. 1:08-CV-0006-CRW-CFB (S.D. Iowa). That dispute ultimately reached the United States Court of Appeals for the Eighth Circuit, which remanded the case back to the NIGC for further consideration. *See Nebraska ex rel. Bruning v. U.S. Dep't of Interior*, 625 F.3d 501, 512–13 (8th Cir. 2010). Plaintiffs argue there is confusion amongst the parties as to whether the Eighth Circuit's order vacated the 2007 Final Decision. Plaintiffs thus appear to be asking the Court to clarify—and thereby amend—a nine-year-old Eighth Circuit decision. The Court denies this request and focuses solely on the agency decision at issue in this action.

837 F.3d 969, 976 (9th Cir. 2016) (citation omitted); *accord Nat'l Res. Def. Council v. EPA*, 808 F.3d 556, 584 (2d Cir. 2015) (citation omitted). Thus, "[i]n deciding whether an agency's action should be remanded without vacatur, a court must balance the equities." *Black Warrior Riverkeeper*, 781 F.3d at 1290. The United States Court of Appeals for the District of Columbia Circuit has held that, when undertaking this balancing test, courts should consider: (1) "the seriousness of the order's deficiencies (and thus the extent of doubt whether the agency chose correctly)"; and (2) "the disruptive consequences of an interim change that may itself be changed." *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993) (citation omitted). The D.C. Circuit's approach has been cited approvingly by other circuit courts, as well as district courts within this circuit. *See, e.g.*, *Black Warrior Riverkeeper*, 781 F.3d at 1290; *Cal. Cmtys. Against Toxics v. EPA*, 688 F.3d 989, 992 (9th Cir. 2012); *WaterLegacy v. EPA*, 300 F.R.D. 332, 345 (D. Minn. 2014); *Breaker v. United States*, 977 F. Supp. 2d 921, 936 (D. Minn. 2013). Although the Court is not required to use this approach, it nevertheless provides a useful framework for determining when an agency action may be remanded without vacatur.

Considering first the "seriousness" of the Amended Final Order's "deficiencies," *Allied-Signal*, 988 F.2d at 151, the Court notes that the D.C. Circuit has found this element satisfied when "there [was] at least a serious possibility that" the federal agency would "be able to substantiate its decision on remand." *Id.* In *Allied-Signal*, the D.C. Circuit found the United States Nuclear Regulatory Commission (the "NRC") failed to adequately explain during the rule-making process why it exempted nonprofit educational institutions from certain fees, but not converters of uranium hexafluoride who, it was alleged, were similarly situated to such institutions. *See id.* at 149–51. However, the court found it "conceivable" that the NRC could explain this discrepancy on remand, for example, by "explain[ing] how the principles supporting an exemption for

educational institutions do not justify a similar exemption for domestic [uranium hexafluoride] converters." *Id.* at 151; *see also Cent. & S. W. Servs., Inc. v. EPA*, 220 F.3d 683, 692 (5th Cir. 2000) (declining to vacate a regulation after concluding that the federal agency "may well be able to justify" on remand "its decision to refuse to promulgate" a variance from certain regulatory requirements). Outside of the rule-making context, the United States District Court for the District of Minnesota found the United States Forest Service violated the APA when it denied the plaintiffs' request for a special use permit application. *Breaker*, 977 F. Supp. 2d at 941. The court found the Forest Service applied the wrong legal standard and failed to consider numerous relevant factors when reaching its decision. *See id.* at 942. Still, the court found the errors were "not severe enough to set aside the existing decision" because they were "likely to be corrected on remand with [the] [c]ourt's guidance." *Id.* The court also stressed that it was not "requir[ing] the Forest Service to modify the outcome, although it [could] certainly do so." *Id.*

Here, the Court found in its Summary Judgment Order that the NIGC failed to adequately consider the circumstances surrounding the 2002 Agreement and the Corrected Notice as part of its restored lands analysis—particularly the portion of that analysis requiring the NIGC to evaluate the factual circumstances of the trust acquisition. *See* [ECF No. 55 at 36]. Plaintiffs claim the Summary Judgment Order "lays out serious deficiencies in the NIGC's decision-making, and the decision on remand is in no way certain." [ECF No. 57-1 at 6]. The Court disagrees. Plaintiffs challenged nearly every aspect of the Amended Final Order, and the Court upheld most of the order in the face of those challenges. The Court only found fault on a discrete issue and, like in *Breaker*, stated precisely what the NIGC needed to consider on remand:

> On remand . . . the NIGC must consider the facts and circumstances surrounding the agreement as part of its restored lands analysis. As the district court found in *Nebraska I*—and Defendants conceded on appeal—"those events were crucial to the completion of the

> conveyance" of the Carter Lake Parcel. As to how crucial they were, and how they balance against other factual, temporal, and geographic factors, the Court leaves that determination to the NIGC. To the extent the Commission needs a clearer guide as to what must be considered on remand, it need look no further than the Gross Memorandum. There, Associate General Counsel Gross considered numerous factual circumstances surrounding the 2002 Agreement. The NIGC is not bound by his conclusions, and it may consider additional factors regarding the agreement that it considers relevant. To the extent those factors include conclusions the NIGC reached in its estoppel analysis in the Amended Final Order, the Commission need not repeat the analysis it undertook to reach those conclusions; instead, it is enough to explain why those factors are or are not relevant.

[ECF No. 55 at 36–37].

Given the clarity of these instructions, it was likely on remand that the NIGC would correct the defects in the Amended Final Order. Further, due to the complex factual history in this case and the NIGC's discretion to consider "additional factors regarding the [2002 Agreement] that it consider[ed] relevant," *id.* at 37, and balance all relevant "factual, temporal, and geographic factors," *id.* at 36, there was "at least a serious possibility" that the NIGC would affirm the Amended Final Order on remand. *Allied-Signal*, 988 F.2d at 151.

Against this, the disruptive consequences of vacatur would have been significant. Following the Amended Final Order, the Tribe opened and began operating a casino on the Carter Lake Parcel. Had the Amended Final Order been vacated, the Tribe presumably would have been required to close the casino, eliminating a revenue stream for the Tribe and costing the casino employees their jobs. Plaintiffs admit this would have had a negative economic impact on the Tribe. *See* [ECF No. 57-1 at 8]. Other courts have declined to vacate agency decisions when doing so would have adverse economic consequences. *See La. Fed. Land Bank Ass'n, FLCA v. Farm Credit Admin*, 336 F.3d 1075, 1085 (D.C. Cir. 2003) (finding sufficient "disrupt[tion]" where vacatur would prohibit loan transactions between two willing participants); *Backcountry*

Against Dumps v. Perry, No. 3:12-cv-03062-L-JLB, 2017 WL 3712487, at *3 (S.D. Cal. Aug. 29, 2017) (finding that vacatur would disrupt, *inter alia*, "a substantial revenue stream" and "a number of paying jobs").

Plaintiffs advance various arguments as to why the disruptive consequences of vacatur would be minimal, but none are convincing. They argue "the Tribe took the risk of building a casino after over a decade of litigation, but without waiting for *this* litigation to conclude." [ECF No. 57-1 at 8]. The Tribe was entitled to act on the Amended Final Order, and at no point in this litigation did Plaintiffs seek preliminary injunctive relief. If the Court holds now that the Tribe should have awaited the conclusion of this litigation, it would encourage litigants to treat an APA challenge as a stay of administrative action that is not supported by procedural or substantive law. Plaintiffs also argue that the disruptive consequences of vacatur are minimal because "the Ponca casino imposes economic and social welfare costs upon the surrounding communities, which impelled Plaintiffs to file this lawsuit." *Id.* It is not clear, however, how the Tribe's casino is any more detrimental than the three casinos, licensed by the State of Iowa, that are already operating in neighboring Council Bluffs. *See Ponca Tribe Scores Win in Fight to Keep Iowa Casino Open*, Des Moines Reg. (May 2, 2019), https://www.desmoinesregister.com/story/news/2019/05/02/ponca-tribe-scores-win-fight-keep-iowa-casino-open/3653236002/ (last visited Aug. 12, 2019). Plaintiffs also argue vacatur would help ensure that the Commission acts in a timely manner on remand, but that argument is moot in light of the April 2019 Decision.

Additionally, Plaintiffs argue remand without vacatur typically occurs when vacatur would impact broad public interests. *See* [ECF No. 57-1 at 7–8] (citing *U.S. Steel Corp. v. EPA*, 649 F.2d 572 (8th Cir. 1981)). Even if that were true, it is not always the case, *see generally Breaker*, 977 F. Supp. 2d at 942 (citing disruption to a wilderness area if motorized access to it

was required), and it overlooks that the ultimate question is one of balance. Here, the disruption the Tribe would suffer is far greater than the minimal defects in the Amended Final Order, especially considering the likelihood the Commission would be able to affirm that order on remand.

Because Plaintiffs have not shown that the Court's decision to remand the Amended Final Order without vacatur was manifest error, their Motion to Amend Judgment is DENIED.

B. Motion for Interlocutory Appeal

Plaintiffs also ask the Court to certify the Summary Judgment Order for interlocutory appeal under 28 U.S.C. § 1292(b). Specifically, they ask the Court to certify for appellate review its determination that the PRA does not restrict the Tribe's restored lands to property in Knox and Boyd Counties, Nebraska.

Generally, the federal circuit courts of appeals have jurisdiction over "all final decisions of the district courts of the United States." 28 U.S.C. § 1291. Some exceptions to this final-decision rule are set out in 28 U.S.C. § 1292. Relevant here, § 1292(b) allows a district court to certify a nonfinal decision for appeal when the court is "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." The court must "so state in writing in such order," and the court of appeals may, in its discretion, permit a timely appeal from such an order. *Id.*

The parties disagree on a preliminary—and potentially dispositive—issue: whether or not the Summary Judgment Order was a final order. Defendants believe that it was; Plaintiffs disagree. If it was, § 1292(b) is inapplicable because it only applies to interlocutory, not final, orders. *See Gelboim v. Bank of Am. Corp.*, 135 S. Ct. 897, 906 (2015) (finding § 1292(b) to be inapposite

where there was "nothing 'interlocutory' about the dismissal order" at issue); 16 Charles Alan Wright et al., *Federal Practice & Procedure* § 3929.1, p. 56 (3d ed. Supp. 2019).

"A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Sisseton-Wahpeton Oyate of Lake Traverse Reservation v. U.S. Corps of Eng'rs*, 888 F.3d 906, 920 (8th Cir. 2018) (citation omitted). There must be "some clear and unequivocal manifestation by the trial court of its belief that the decision made, so far as the court is concerned, is the end of the case." *Minnesota v. Kalman W. Abrams Metals, Inc.*, 155 F.3d 1019, 1023 (8th Cir. 1998) (citation omitted). Typically, a district court order remanding a case to an agency for further proceedings is not a final order. *See Giordano v. Roudebush*, 565 F.2d 1015, 1017 (8th Cir. 1977) (finding a remand order to be nonfinal when the district court "only remanded the case for further administrative proceedings"); *Baca-Prieto v. Guigni*, 95 F.3d 1006, 1008 (10th Cir. 1996) (noting the "prevailing view that a district court order remanding an action to an administrative agency for further proceedings is generally considered a nonfinal decision").

But this is not a bright-line rule, and whether such an order is final turns largely on what of the case remains to be litigated. In *Giordano*, the United States Court of Appeals for the Eighth Circuit found that the district court's remand order was nonfinal because the district court retained jurisdiction to consider a back-pay issue following the completion of administrative proceedings on remand. *See Giordano*, 565 F.2d at 1016–17. Similarly, in *Borntrager v. Central States, Southeast & Southwest Areas Pension Fund*, the Eighth Circuit found that a remand order was nonfinal where the district court left numerous claims unresolved and "expressly stated it was

remanding for 'further development of the record'" so as to conduct a "proper review" of the defendant's decision. 425 F.3d 1087, 1091 (8th Cir. 2005).[6]

In contrast, the Eighth Circuit in *Sisseton-Wahpeton* found that an order remanding a permit determination back to the United States Corps of Engineers was a final decision. 888 F.3d at 920. Distinguishing the case from *Giordano*, the Eighth Circuit noted that "the District Court denied all relief requested by the [plaintiff] except with regard to whether the 2009 permit violated the [National Historic Preservation Act], which was remanded for the [defendant] to determine." *Id.* It also noted that the "District Court did not retain jurisdiction to hear the Tribe's arbitrary-and-capricious claim related to the 2009 permit but rather explicitly denied the Tribe's requested relief with respect to that claim." *Id.*

The instant case bears a striking resemblance to *Sisseton-Wahpeton*. In its Complaint, Council Bluffs sought: (1) a declaratory judgment that the Carter Lake Parcel does not qualify as restored lands under 25 U.S.C. § 2719(b)(1)(B)(iii); (2) a declaratory judgment vacating and setting aside as unlawful the Amended Final Order; (3) an order remanding the case with instructions that the NIGC deny the Tribe's request to amend the Carter Lake Parcel ordinance; (4) an order awarding Plaintiff reasonable attorney's fees to the extent permitted by law; and (5) other relief the Court deemed just and equitable. *See* [ECF No. 1 at 14–15]. Plaintiffs repeated these requests in their Motion for Summary Judgment. *See* [ECF No. 22 at 3–4]. The Court denied all of the requested relief, except for the award of attorney's fees, which the Court directed Plaintiffs to timely pursue in a separate motion.[7] Furthermore, regarding Plaintiffs' claim which

[6] The Eighth Circuit also found that the entry of judgment under Rule 58 "does not alter the interlocutory nature of the remand order." *Borntrager*, 425 F.3d at 1091.

[7] The unresolved claim for attorney's fees does not impact the finality of the Summary Judgment Order for the purposes of appellate jurisdiction. *See Budinich v. Becton Dickinson &*

the Court found warranted further analysis on remand—that the Commission improperly failed to consider the 2002 Agreement in its restored lands analysis—the Court remanded the issue back to the Commission for further consideration without granting Plaintiffs the relief they sought (i.e., vacatur).

The Summary Judgment Order resolved all the parties' claims and left nothing for the Court to resolve at some later date, save the issue of attorney's fees. Under Eighth Circuit precedent, the Summary Judgment Order was final and is thus ineligible for interlocutory appeal. Plaintiffs' motion seeking certification of the Summary Judgment Order for interlocutory appeal is therefore DENIED.

C. Retaining Jurisdiction

In light of the April 2019 Decision, Plaintiffs ask the Court to "keep jurisdiction of the case to consider the appropriateness of" that decision. [ECF No. 69 at 8]. They have presented various procedural means by which the Court might accomplish this, but their arguments are unconvincing. *See* [ECF No. 74 at 2–3].

Assuming the Court can hear a new APA challenge to the April 2019 Decision, simply by retaining jurisdiction over Plaintiffs' challenge to a different NIGC decision, the Court would decline to do so. Although the Court did not reach the substance of Plaintiffs' § 1292(b) analysis, Plaintiffs asserted many compelling arguments as to why the Court should certify the Summary Judgment Order for interlocutory appeal. Principal among them was that if the Eighth Circuit were to find the PRA limits the Tribe's restored lands to Knox and Boyd Counties, Nebraska, it

Co., 486 U.S. 196, 202–03 (1988) (establishing "a uniform rule that an unresolved issue of attorney's fees for the litigation in question does not prevent judgment on the merits from being final").

would all but conclusively resolve the case in Plaintiffs' favor. *See* [ECF No. 69 at 3–4]. This has the potential to promote efficiency by obviating the risk of the Court wasting judicial resources by needlessly considering the April 2019 Decision. But those efficiency gains may be even greater if Plaintiffs seek an appeal of a final order under 28 U.S.C. § 1291, rather than appealing the single PRA issue under § 1292(b). On a broader appeal, even if the Eighth Circuit rejected Plaintiffs' arguments as to their interpretation of the PRA, the appellate court might identify other errors the Commission must remedy on remand. The court's doing so might effectively invalidate the April 2019 Decision. If Plaintiffs are concerned about the risk of needlessly prolonging this dispute, it seems more sensible for them to pursue an appeal now, rather than wait until after the Court holds proceedings on the April 2019 Decision.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Amend Judgment, [ECF No. 57], and Motion to Certify Order for Interlocutory Appeal, [ECF No. 58], are DENIED.

IT IS SO ORDERED.

Dated this 12th day of August, 2019.

STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT