

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RULE MAKING PROCEDURES	DOCKET NO. RMU-99-6
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ORDER COMMENCING RULE MAKING

(Issued July 23, 1999)

Pursuant to the authority of IOWA CODE §§ 476.1 and 476.2(1) (1999), the Utilities Board proposes to adopt the amendments attached hereto and incorporated by reference. This rule amends IOWA ADMIN. CODE 199-3 (1999). The reasons for proposing this amendment are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-99-6, is commenced for purposes of receiving comments upon the proposed amendments attached to this order.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 23rd day of July, 1999.

UTILITIES DIVISION [199]

NOTICE OF INTENDED ACTION

Pursuant to the authority of Iowa Code section 476.1 and 476.2 (1999), the Utilities Board (Board) gives notice that on July 23, 1999, the Board issued an order in Docket No. RMU-99-6, Rule Making Procedures, "Order Commencing Rule Making," to receive public comment on the adoption of revisions to the Board's existing rule making procedures. The Board proposes to revise its existing procedures to reflect certain changes required by the 1998 amendments to the Iowa Administrative Procedures Act, 1998 Iowa Acts ch. 1202.

The Board previously conducted a rule making inquiry, identified as Uniform Rules On Agency Procedure, Docket No. RMU-99-2, in which the Board sought public comment concerning the possible adoption of the State's uniform rule making procedures. The comments received did not support adoption of the uniform rules; instead, they favored minimal modification of the Board's existing rules to accommodate the statutory changes. The Board is proposing to adopt the approach favored by the public comments, that is, modification of its existing rules.

The Board is proposing to revise and update all of its rule making procedures. As a part of that process, various editorial and grammatical changes are proposed that do not affect the substance of the rules. The changes are intended to simplify the rules and make the language more consistent. In this proceeding, the Board invites comment on any part of its rule making procedures, including but not limited to the changes proposed in this proceeding.

Waiver of rules can be considered to be a part of rule making. The Board's existing general waiver rule, 199 IAC 1.3, permits the Board to waive any of its rules "to prevent undue hardship to a party to a proceeding." The term "party" is defined in 199 IAC 7.2(7) in terms of "complainants, petitioners, applicants, respondents, and intervenors." These categories may fail to accommodate all of the persons for whom a waiver may be appropriate. For example, an objector in a pipeline permit proceeding may seek a waiver of a filing requirement; the objector may not be a "party" as that term is defined, but the waiver may be perfectly appropriate because the purpose of the rule in question will not be served if it is enforced as to the objector. Because the definition of "party" may be unduly restrictive in this context, the Board is proposing to amend its waiver rule to permit waiver of any rule in appropriate circumstances.

The first proposed substantive amendment to the Board's rule making procedures is the addition of a new rule providing for notices of inquiry, by which the Board may seek public comment on the subject matter of possible future rule making activities. The Board has conducted numerous such proceedings in the past but does not have a rule explicitly providing for inquiry proceedings.

The second proposed substantive amendment is the addition of a new subrule relating to fiscal impact statements pursuant to Iowa Code section 25B.6 and providing for issuance of such statements when appropriate.

The third proposed substantive amendment is the addition of a rule explaining when, and to what extent, the Board may adopt rules that vary from the proposed rules contained in the notice of intended action. This may occur in various situations

recognized by Iowa law, such as differences that are within the scope of the subject matter announced in the notice of intended action and are in character with the issues raised in the notice.

The Board is proposing to delete its existing rule providing for regulatory flexibility analyses and to adopt new procedures for regulatory analysis. This reflects the repeal of Iowa Code section 17A.31 (see 1998 Iowa Acts, ch. 1202, section 45) and the addition of a new section (Id. at section 10). The new rules provide that the schedule for a rule making proceeding will automatically be extended when a timely written request for a regulatory analysis is filed, to permit the Board time to prepare the analysis before public comment is received on the rules in question.

Finally, the proposed rules include a new provision for review of the Board's existing rules upon the request of the administrative rules coordinator, as required by the revised statute.

Any interested person may file a written statement of position on the proposed rules no later than September 3, 1999, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on September 15, 1999, in the Board's hearing room at the address listed above.

These amendments are intended to implement Iowa Code section 476.2.

Item 1. Amend 199 IAC 1.3 by deleting the existing rule in its entirety and replacing it with the following:

199—1.3(17A, 474) Waiver of any rule. The board may, on its own motion or at the request of any party, waive any of its rules for good cause shown, unless otherwise provided by law.

Item 2. Amend 199 IAC 3 by revising it as follows:

CHAPTER 3

RULEMAKING

RULE MAKING

199—3.1(17A,474) Purpose and scope.

3.1(1) *In general.* These rules shall govern the practice and procedure in all ~~rule-making~~ rule making proceedings of the Iowa state utilities board (board).

3.1(2) *Rules of construction.* If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

3.1(3) *Waiver.* The Board may waive the application of any of these rules pursuant to 199 IAC 1.3.

3.1(4) Forms and filing requirements. All rule making filings shall substantially comply with the forms prescribed in 199-rule 2.2. All filings shall include an original and 10 copies.

All rules in this chapter are intended to implement Iowa Code section 476.2.

199—3.2(17A, 474) Notice of inquiry. In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rule making by the board by causing notice of the subject matter to be published in the administrative bulletin, indicating where, when, and how persons may comment.

199—3.2 3.3(17A,474) Petition for adoption of rules.

3.23(1) *Petitioner.* Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

~~**3. 23 (2) *Form of petition.***~~ A petition for rule making shall substantially comply with the form prescribed in 199—subrule 2.2(1). The original and ten copies of the petition shall be filed with the board.

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.34(17A,474) Commencement of proceedings.

3.34(1) *Commenced by order.* Rule-making proceedings shall be commenced only upon written order of the board. The board may commence a rule-making proceeding by order upon its own motion or upon the filing of a petition for rule making by any interested person.

3.34(2) *Board action on petition.* Within 60 days after the filing of a petition for rule making, the board shall either deny the petition by written order on the

merits, stating the reasons therefor, commence by written order a rule making proceeding, or adopt by written order a rule pursuant to Iowa Code section 17A.4(2).

3.34(3) *Notice of rulemaking.* Upon the commencement by written order of a rule-making proceeding, the board shall, ~~if required by law,~~ cause the required notice of the proceeding to be published in the Iowa Administrative Bulletin.

3.4(4) *Fiscal impact statement.* Pursuant to Iowa Code section 25B.6, a proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services, shall be accompanied by a fiscal impact statement outlining the costs associated with the proposed rule. If the board determines at the time it adopts a rule that the earlier fiscal impact statement contains errors or that a fiscal impact statement should have been prepared but was not, the board will issue a corrected or delayed fiscal impact statement.

199—3.45(17A,474) Written statements of position.

3.45(1) *Persons.* Any interested person may file a written statement of position containing data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of a rule.

3.45(2) *Filing.* The time period, ~~as directed by the board,~~ for filing of written statements of position shall be not less than 20, ~~nor more than 30~~ calendar days after publication of the notice of rule making in the Iowa Administrative Bulletin. If the publication of a notice of rule making is not required by law, written statements of position may be filed as authorized by the board.

~~3.4(3) *Form of written statement of position.* A written statement of position shall substantially comply with the form prescribed in 199—subrule 2.2(2). The original and ten copies of a written statement of position shall be filed with the board.~~

3.45(43) *Service.* Written statements of position shall be served by the author upon the petitioner, if any, and consumer advocate at the time of filing. This rule is intended to implement Iowa Code section 476.2.

199—3.56(17A,474) Counter-statements of position.

3.56(1) *Petitioner.* The petitioner, if any, may file a counterstatement of position with the board in response to written statements of position.

3.56(2) *Filing.* Counterstatements of position, if any, shall be filed with the board prior to the oral presentation or, if no oral presentation is scheduled, not later than 15 calendar days after the petitioner's receipt of the written statement of position to which the petitioner is responding.

~~3.5(3) *Form of counterstatements of position.* A counterstatement of position shall substantially comply with the form prescribed in 199—subrule 2.2(3). The original and ten copies of a counterstatement of position shall be filed with the board.~~

3.56(43) *Service.* Counterstatements of position shall be served by the petitioner at the time of filing upon the authors of written statements of position to which the petitioner is responding and to consumer advocate. This rule is intended to implement Iowa Code section 476.2.

199—3.67(17A,474) Requests for oral presentation. If an oral presentation is not scheduled by the board on its own motion, any interested person may file a request for an oral presentation.

3.67(1) Filing. The time period, as directed by the board, for filing of requests for oral presentation shall be not less than 20, ~~nor more than 30~~ calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin.

~~**3.6(2) Form of requests for oral presentation.** A request for oral presentation shall substantially comply with the form prescribed in 199—subrule 2.2(4). The original and ten copies of a request for oral presentation shall be filed with the board.~~

3.67(32) Action on proper request. Within 15 calendar days of the filing of a request for oral presentation, the board shall determine if the request is in accordance with Iowa Code section 17A.4. If the board determines that the request complies with section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time, and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than ten calendar days after the publication of the notice. The board shall serve a similar notice on the party requesting oral presentation, on any other persons filing written comments, and on the petitioner, if any.

3.67(43) *Action on improper request.* If the board determines that a request for oral presentation does not comply with Iowa Code section 17A.4, it may by written order deny such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule an oral presentation ~~in accordance with the procedures hereinbefore prescribed.~~

3.67(54) *Action on own motion.* The board may, on its own motion, schedule an oral presentation on the rule making ~~in accordance with the procedures hereinbefore prescribed.~~

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.78(17A,474) Rule making oral presentation.

3.78(1) *Written appearance.* ~~Upon the filing of a written appearance, a~~Any interested person may participate in rule making oral presentations in person or by counsel. A written appearance shall may be filed not less than five calendar days prior to oral presentation. ~~The board may, in its discretion, waive the filing of a written appearance as a condition precedent to participation in said oral presentation. The general counsel shall not be required to file a written appearance.~~

3.7(2) ~~*Form of written appearance.* A written appearance shall substantially comply with the form prescribed in 199—subrule 2.2(15). The original and ten copies of a written appearance shall be filed with the board.~~

3.78(32) *Oral presentations.* Participants in rule-making oral presentations may submit exhibits and present oral statements of position which may include data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of the rule. Participants shall not be required to take an oath and shall not be

subject to cross-examination, ~~provided however, that the~~ The board may, in its discretion, permit the questioning of participants by any interested person, and ~~provided further, that~~ but no participant shall be required to answer any question.

3.78(43) *Rebuttal and limitations.* The board may, in its discretion, permit rebuttal statements of position and request the filing of written statements of position subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.89(17A,474) Rule-making decisions.

3.89(1) *Adoption, amendment, or repeal.* The board shall by written order adopt, amend, or repeal the rule pursuant to the rule-making proceeding, or dismiss the proceeding in accordance with Iowa Code section 17A.4. The written order shall include a preamble to the adopted rules explaining the principal reasons for the action taken and, if applicable, a brief explanation of any decision not to permit waiver of the adopted rules. The board may, by order, specify the effective date of the adoption, amendment, or repeal of the rule.

3.9(2) *Variance between adopted rule and proposed rules.* The board may adopt a rule that differs from the rule proposed in the Notice of Intended Action in the following situations:

a. The differences are within the scope of the subject matter announced in the notice of intended action and are in character with the issues raised in the notice;

b. The differences are a logical outgrowth of the contents of the notice and the comments submitted in response thereto;

c. The notice indicated that the outcome of the rule-making could be the rule in question;

d. The differences are so insubstantial as to make additional notice and comment proceedings unnecessary; or

e. As otherwise permitted by law.

3.89(23) Statements. Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person pursuant to Iowa Code section 17A.4(1)"b," the board shall, within 35 days of the request, issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board's decision. ~~A request for statement shall substantially comply with the form prescribed in 199—subrule 2.2(5).~~

~~199—3.9(17A,474) Regulatory flexibility analysis.~~

~~**3.9(1)** For purposes of these rules "small business" shall have the same definition as in Iowa Code section 17A.31(1).~~

~~**3.9(2) Published notice of small business impact.** If the board proposes a rule which may have an impact on small business, the notice of intended action shall expressly recite this possibility and describe the procedure to be followed for making a timely request for a regulatory flexibility analysis to the board.~~

~~**3.9(3) Registration for the small business impact list.** Small businesses or small business organizations as defined in Iowa Code section 17A.31 may register to be included on the board's small business impact list by making a specific, written request addressed to the Executive Secretary, Iowa State Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The request for registration shall state:~~

- ~~a. The name of the small business or small business organization.~~
- ~~b. Its address.~~
- ~~c. The name of a person authorized to transact business for the requesting party.~~
- ~~d. A description of the requesting party's business or its organizational purposes.~~

~~The board may request additional information from the applicant to determine whether the applicant is qualified as a small business or a small business organization. The board will send a letter every year to each small business or small business organization on the list asking whether the small business or organization wishes to remain on the list. The name of the small business or organization will be removed from the list if a negative response is received or if no response is received within one month after the letter is sent.~~

~~**3.9(4) Mailed notice of small business impact.** Prior to the publication of a notice of intended action described in subrule 3.9(2), the board shall notify small businesses or small business organizations on the small impact list, by ordinary first-class mail, of the changes it proposes to make to its rules. In the case of a rule made effective under Iowa Code section 17A.4(2) or 17A.5(2)"b," the board shall~~

~~provide mailed notice to small businesses or small business organizations on the small business impact list within seven days after publication of the rule.~~

~~**3.9(5) Request for regulatory flexibility analysis.** Requests for regulatory flexibility analysis to reduce the impact of a rule on small business may be made within 20 days after the publication of the notice of intended action.~~

~~a. The board shall entertain a request for a regulatory flexibility analysis from:~~

~~(1) The governor.~~

~~(2) The administrative rules review committee.~~

~~(3) A political subdivision of the state.~~

~~(4) Twenty-five or more persons who sign the request, provided that each represents a different small business.~~

~~(5) An organization registered on the small business impact list which represents at least 25 persons.~~

~~b. A request for a regulatory flexibility analysis should specify the proposed rule or portion of the proposed rule for which the analysis is requested.~~

~~c. Upon the receipt of a timely valid request for a regulatory flexibility analysis, the board shall consider whether it may reduce the impact of the proposed rule on small business by considering each of the following methods:~~

~~(1) Establishing less stringent compliance or reporting requirements.~~

~~(2) Establishing less stringent schedules or deadlines for compliance or reporting requirements.~~

~~(3) Consolidating or simplifying compliance or reporting requirements.~~

~~(4) Replacing design or operational standards with performance standards.~~

~~(5) Exempting small business from any or all rule requirements.~~

~~(6) Considering the nature and cost of preparation of any required reports weighed against the benefits to be gained from such reports.~~

~~(7) Considering the nature and estimated cost of measures or investments required of small business for compliance, weighed against the benefits to be gained.~~

~~(8) Considering the nature and estimated cost of professional, legal, consulting or accounting services incurred for compliance, weighed against the benefits to be gained.~~

~~(9) Considering the probable cost to the board or any other agency of the implementation and enforcement of the rule and its anticipated effect on state revenue.~~

~~(10) Comparing the possible cost and benefits which would accrue from a proposed rule as opposed to the probable effect of inaction.~~

~~(11) Determining whether the purposes sought by the board might be achieved by other less costly or less intrusive methods.~~

~~(12) Describing alternative methods seriously considered by the board, and the reasons that such methods were rejected in favor of the proposed rule.~~

~~(13) Considering any other method provided by a requesting party which is legal and feasible in meeting the statutory objective which is the basis of the proposed rule.~~

~~d. When the board is required to issue a regulatory flexibility analysis of a proposed rule, the board shall cause to be published a concise summary of the~~

~~regulatory flexibility analysis in the Iowa Administrative Bulletin at least 20 days prior to the adoption of the proposed rule. In the case of a rule made effective under Iowa Code section 17A.4(2) or 17A.5(2) "b," the board shall publish the summary within 90 days after the publication of the rule. The published summary shall state how interested persons may obtain the full text of the board's analysis at cost. The published summary shall also fix a time and place where interested persons may make an oral presentation on the analysis.~~

~~These rules are intended to implement Iowa Code section 474.1, 474.10, 476.2 and 546.7.~~

199—3.10(17A, 474) Regulatory analysis.

3.10(1) *Regulatory analysis.* The Board shall issue a regulatory analysis of a proposed rule, or of a rule adopted without prior notice and opportunity for public participation, when required by Iowa Code section 17A.4A.

3.10(2) *Request for regulatory analysis.* A request for a regulatory analysis shall be in writing and shall specify the proposed rule or adopted rule for which the analysis is requested.

3.10(3) *Schedule extended.* Upon receipt of a timely written request for a regulatory analysis of a proposed rule, the time periods for filing written comments and for requesting an oral proceeding are extended to a date 20 days after publication of a concise summary of the regulatory analysis in the administrative bulletin. Any oral proceeding that may already have been scheduled will be rescheduled by the board to a date at least 20 days after publication of the summary.

199—3.11(17A, 474) Review of rules.

3.11(1) Request from administrative rules coordinator. Pursuant to Iowa Code section 17A.7, upon receipt from the administrative rules coordinator of a request for formal review of a specified rule, the Board will determine whether the rule has been reviewed within the preceding 5 years. If such a review was conducted, the Board will report that fact to the administrative rules coordinator. If no such review has been conducted, the board will consider whether the rule should be repealed or amended or a new rule adopted in its place. The board will prepare a written report summarizing its findings, supporting reasons, and proposed course of action. Copies of the report will be sent to the administrative rules review committee, the administrative rules coordinator, and will be made available for public inspection.

July 23, 1999

/s/ Allan T. Thoms
Allan T. Thoms
Chairperson