

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SELF-GENERATION	DOCKET NO. RMU-00-8
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ORDER COMMENCING RULE MAKING

(Issued August 3, 2000)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1, and 476.41 (1999), the Utilities Board proposes to adopt the rules attached hereto and incorporated by reference. These rules amend and clarify language contained in 199 IAC 15.1 and 15.11(5) with respect to the definition of "qualifying facility" and an alternate energy production facility's ability to self-generate. The reasons for proposing these amendments are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-00-8, is commenced for purposes of receiving comments upon the proposed rules 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/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Diane Munns

Dated at Des Moines, Iowa, this 3rd day of August, 2000.

UTILITIES DIVISION [199]

NOTICE OF INTENDED ACTION

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.41 (1999), the Utilities Board (Board) gives notice that on August 3, 2000, the Board issued an order in Docket No. RMU-00-8, In re: Self-Generation. The Board is proposing to amend current 199 IAC 15.1 and 15.11(5) to clarify that a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA) may or may not be an alternate energy production facility under Iowa law and that a small power producer is allowed to use some or all of its output.

The definition of "qualifying facility" in 199 IAC 15.1 currently provides that an alternate energy production facility under Iowa law may not be a PURPA qualifying facility. The proposed amendment would eliminate this restriction. In fact, Iowa Code section 476.42(1) states that a qualifying facility is not precluded from being an alternate energy production facility under Iowa law. The current rule, contrary to the statute, inadvertently excludes alternate energy production facilities under Iowa law from also being PURPA qualifying facilities.

The second paragraph of 199 IAC 15.11(5) is ambiguous because it arguably can be read to require a small power producer to sell all of its production to the host utility. This is not the intent of the rule. The rule emphasizes choice for the facility and was not intended to require a producer to sell all of its output to the utility. A

person should be allowed to use some or all of its output and the amendment clarifies this intent.

In proposing these amendments, the Board recognizes 199 IAC 15.11(5) is the subject of pending litigation. The Polk County District Court found the first paragraph of the rule, which concerns net billing and is not being amended in this rule making, to be preempted by federal law. The Board and the Consumer Advocate Division of the Department of Justice appealed this ruling to the Iowa Supreme Court. MidAmerican Energy Company v. Iowa Utilities Board, S.Ct. No. 99-1529. However, the Board notes that its interpretation of the second paragraph of the rule is consistent with the District Court's discussion. MidAmerican Energy Company v. Iowa Utilities Board, Nos. AA 3173, AA 3195, AA 3196 (8/26/99, Polk County District Court). The Board does not believe the District Court's decision invalidated the second paragraph of the rule.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before September 12, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, 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 27, 2000, in the Board's hearing room at the address listed above. The Board does not find it necessary to propose a separate waiver provision

in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these rules.

These amendments are intended to implement Iowa Code sections 476.1 and 476.41.

The following amendments are proposed.

Item 1. Amend 199 IAC 15.1 as follows:

“Qualifying facility” means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B, ~~and which is not a qualifying alternate energy production facility or a qualifying small hydro facility.~~

Item 2. Amend the second paragraph of 199 IAC 15.11(5) as follows:

In the alternative, by choice of the facility, the electric utility and facility shall operate in a ~~simultaneous~~ purchase and sale arrangement whereby ~~all~~ any electricity ~~produced~~ provided to the utility by the qualifying facility is sold to the utility at the fixed or negotiated buy-back rate, and ~~all~~ any electricity ~~used by~~ provided to the qualifying facility by the utility is sold to the facility at the tariffed rate.

This rule is intended to implement Iowa Code sections 476.1 and 476.41.

August 3, 2000

/s/ Allan T. Thoms

Allan T. Thoms
Chairperson