

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVISED PROCEDURAL RULES	DOCKET NO. RMU-05-1
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ORDER ADOPTING AMENDMENTS

(Issued October 21, 2005)

Pursuant to the authority of Iowa Code §§ 17A.4, 474.5, and 476.2 (2005), the Utilities Board (Board) adopts the amendments to the Board's administrative rules attached to this order and incorporated by reference. The amendments are to the Board's procedural rules. This proceeding has been identified as Docket No. RMU-05-1. On January 26, 2005, the Board issued an order commencing this rule making. On February 16, 2005, the Board's "Notice of Intended Action" in this docket was published in IAB Vol. XXVII, No. 17 (2/16/05) p. 1129, ARC 3990B.

The Board adopts new rules at 199 IAC 7 and 26 and amends subrules 1.8(4) and 32.9(4). The Board's current Chapter 7 rules combine procedural rules applicable to all cases, unless specifically excluded, and procedural rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives. In this rule making, the Board leaves the general procedural rules applicable to all proceedings, unless specifically excluded, in Chapter 7. The Board moves all rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives to new Chapter 26 without making any changes to

those rules at this time. The Board adopts a new rule 199—26.1(17A,476) setting forth the scope of the chapter, but the remaining rules in new Chapter 26 are the same as in current Chapter 7.

Chapter 7 as adopted has been reorganized according to the chronological order of a typical contested case. Although the adopted Chapter 7 rules appear different from the former Chapter 7 rules, most of the changes are grammatical and organizational. The substantive changes that were proposed with the reasons for them were discussed in the Board's January 26, 2005, order commencing the rule making, which is available on the Board's Web site at www.state.ia.us/iub. The changes that were made to the proposed rules in response to public comments are discussed below.

In this rule making docket, the Board took comments only on the proposed Chapter 7 rules. It deferred consideration of the Chapter 26 rules for a separate rule making docket. In addition, procedural rules applicable only to electric transmission line cases (E dockets) and pipeline permit proceedings (P dockets) will be proposed in a separate rule making docket.

The Board received written comments on the proposed rules from Interstate Power and Light Company (IPL), the Iowa Industrial Energy Group (IIEG), the Iowa Telecommunications Association (ITA), MidAmerican Energy Company (MEC), Qwest Corporation (Qwest), and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). An oral comment hearing was held on April 26,

2005. Representatives of IPL, MEC, Qwest, and Consumer Advocate participated in the oral comment hearing.

The Board made a number of revisions to the proposed rules as a result of the comments received. The following is a summary of the public comments received with the Board's responses and revisions to the proposed rules when they are being adopted.

MEC, Qwest, IIEG, IPL, and Consumer Advocate each expressed overall support for the proposed changes. MEC in general supported the proposed changes and commended the Board for making the rules more user friendly. Qwest agreed with most of the proposed changes and expressed appreciation for the work done to improve the procedural rules. At the oral comment hearing, Qwest stated it was obvious a lot of work had gone into the proposed rules and they were good, as evidenced by the fact there were few people at the hearing and the comments filed were fairly minor and not really substantive in nature. IIEG commended the Board for its overall efforts to provide clarity by proposing to move the rules applicable only to rate cases, tariff filings and rate regulation election to new Chapter 26, for organizing the Chapter 7 rules to reflect a standard procedural timeline of a contested case, and for proposing a single subject per rule. It stated this type of clarification and ease of use is helpful for IIEG members who are not normally involved in litigation matters before the Board. IPL stated that the proposed changes were a significant improvement and that structuring the rules

more closely to the chronology of a case and placing the rules applicable only to rate cases, tariff filings, and rate regulation in a separate chapter would make the rules more accessible and less confusing to everyone using them. Consumer Advocate stated the overall approach of the revisions is very successful, it is well conceived, and should make the rules more accessible, being both simpler and presented in a more orderly fashion than the existing version.

The commentors then provided comments regarding specific proposed rules. The summary of these comments will be presented in the order of the proposed rules. If no comments were received regarding a particular rule and no changes were made to a particular rule, the rule will not be referenced in this order. The complete listing of the final rules as adopted by the Board is included in the adopted and filed document attached to this order and incorporated by reference.

Proposed subrule 7.1(1) Scope and applicability.

MEC commented that the statement of the scope of the rules (limited to contested case proceedings, investigations, and other hearings) is overly narrow. MEC also commented that because the rules place a great deal of discretion in the hands of a presiding officer, language that sets standards for application of this discretion should be included.

The Board notes that MEC's comments are to an earlier version of the proposed subrule, not to the published version. So long as appropriately limited, the addition of "agency action" to proposed subrule 7.1(1) as suggested by MEC

could be useful. Many of the rules in Chapter 7 relate only to activities that are involved in contested case proceedings. In addition, many forms of "agency action," such as rule making proceedings, have their own procedural rules (in Chapter 3 and Iowa Code ch. 17A). However, there are some general rules in Chapter 7 that could serve as basic rules of procedure in other types of agency action if there were no other applicable procedural rules and the Board did not order otherwise. Therefore, the Board will modify proposed subrule 7.1(1) as shown below.

Board rule 1.8, regarding matters applicable to all proceedings, will remain in effect and, as proposed in this rule making, subrule 1.8(4) will contain cross-references to the rules regarding use of docket numbers, service, and number of copies in Chapter 7.

The Board does not agree with MEC's comment that subrule 7.1(6) is an example of "agency action" to which the Chapter 7 rules apply. Subrule 7.1(6) is an exception to the applicability of the Chapter 7 requirements, not an example of how Chapter 7 is applied to other forms of agency action as suggested by MEC.

Current subrule 7.1(1) gives the Board broad discretion to order different procedures in a specific proceeding and the proposed rule merely imported that discretion. However, the suggestion to add the phrase "reasonably necessary to fulfill the objectives of a specific proceeding" is reasonable and the Board will modify subrule 7.1(1) to include it.

MEC commented that it was not clear that the term "presiding officer" is intended to include the situation when a case is assigned to one Board member. As proposed, Chapter 7 uses the term "Presiding Officer" to include the Board, the administrative law judge, or another person so designated by the Board. The term was intended to include the situation when a case is assigned to one Board member. For clarity, the Board will amend the proposed definition of "presiding officer" to explicitly include one Board member.

In addition, the Board believes it may be confusing to parties to use the term "presiding officer" to include the Board itself, particularly since the current rules use the terms "Board" and "administrative law judge." Therefore, the Board will modify the definition of "presiding officer" to exclude the Board itself. The Board will amend the proposed rules throughout Chapter 7 to use the terms "Board," "presiding officer," and "Board or presiding officer," as appropriate.

Therefore, the Board will adopt the following changes to proposed subrule 7.1(1):

7.1(1) This chapter applies to contested case proceedings, investigations, and other hearings conducted by the board or a presiding officer, unless such proceedings, investigations, and hearings are excepted below, otherwise ordered ~~by the presiding officer~~ in any proceeding if reasonably necessary to fulfill the objectives of the proceeding, or are subject to special rules or procedures that may be adopted in specific circumstances. If there are no other applicable procedural rules, this chapter applies to other types of agency action, unless the board or presiding officer orders otherwise.

Proposed subrule 7.1(6) Discontinuance of service.

Proposed rule 7.1 sets forth the scope and applicability of the Chapter 7 rules. Subrule 7.1(1) states that the chapter applies to contested case proceedings, investigations, and other hearings unless they are excepted as listed in the rule, otherwise ordered, or subject to special rules or procedures adopted in particular circumstances. The subrules that follow then list the exceptions. One of those exceptions is subrule 7.1(6) Discontinuance of Service. The effect of placement of subrule 7.1(6) in rule 7.1 as an exception means that the Chapter 7 rules do not apply to discontinuance of service proceedings as defined in the subrule. Rather, subrule 7.1(6) contains special procedural rules that apply only to these discontinuance of service proceedings.

Proposed subrule 7.1(6) has its origin in current rule 7.12. Rule 7.12 was moved to proposed subrule 7.1(6) because it contains different procedures from those in the remainder of Chapter 7 that apply only to the discontinuance of service proceedings as defined in the subrule. The Board originally considered moving rule 7.12 out of Chapter 7 altogether, but decided to move it to rule 7.1 because rule 7.1 contains the list of excepted types of cases to which the Chapter 7 rules do not apply and there did not seem to be a good alternative location in the Board's rules.

However, in the process of moving rule 7.12 to subrule 7.1(6), certain changes to the rule were made and proposed in subrule 7.1(6). These changes inadvertently broadened the scope of subrule 7.1(6) beyond the original intent of rule 7.12 so that

the unique procedures in rule 7.12 applied to more types of cases than was intended. In addition, the placement of rule 7.12 into rule 7.1 in combination with broadening its scope had the unintended consequence of excepting more types of cases from coverage of the Chapter 7 procedural rules than was intended. For example, the unique procedures in subrule 7.1(6) should not apply to contested cases involving discontinuance of service to an individual customer for nonpayment of a utility bill. Rather, the Chapter 7 procedural rules should apply to those cases.

This inadvertent broadening of scope of subrule 7.1(6) became apparent through public comment on the proposed rule and an examination of the origin of the rule. In addition, commentators had questions regarding the relationship between proposed rule 7.1(6) and rule 22.16, which also governs discontinuance of service by telephone utilities.

Written comments on proposed rule 7.1(6) were received from MEC, Qwest, and ITA.

MEC commented that discontinuance of service is covered in at least three places in the Board's rules and enabling legislation: subrules 19.4(5) and 20.4(5) (implementing Iowa Code § 476.20), Iowa Code § 476.23, and proposed subrule 7.1(6). MEC stated that the proposed revisions to subrule 7.1(6) appear to expand the scope of the existing rule and MEC does not believe this is appropriate or necessary. MEC stated that proposed subrule 7.1(6) should be limited to its original topic of disconnections incident to utility property transfers.

MEC also suggested removal of the requirement in paragraph 7.1(6)"b" for a joint application when the transfer is incident to an involuntary transfer. MEC stated that parties to an involuntary transfer may not agree on much of anything, including the text of a joint filing. MEC also suggested striking paragraph 7.1(6)"d" because there is no reason why the Board should set a timeline for this one type of proceeding when there is no statutory requirement to do so. Finally, MEC suggested adding a public interest standard to paragraph 7.1(6)"e." MEC provided suggested changes to proposed subrule 7.1(6).

Qwest commented that three sets of procedural rules potentially govern discontinuance of utility service: Chapters 7, 22, and 32. Qwest proposed that paragraph 7.1(6)"a" be clarified to eliminate potential conflicts among these chapters. Qwest also commented that Chapter 7 sets forth procedural rules and rule 22.16 sets forth more substantive rules regarding discontinuance of service. It further commented that the rules may not vary the statutory requirements. Therefore, to avoid potential conflict with rule 22.16 and the statutory scheme for discontinuance of service, Qwest suggested eliminating proposed paragraph 7.1(6)"e." Qwest suggested the following language be added to proposed subrule 7.1(6): "Procedural rules applicable to discontinuance of service for local exchange utilities and interexchange utilities are included in 199—22.16(476). In the event the requirements in 199—22.16(476) conflict with the requirements in this chapter, the 199—22.16(476) requirements are controlling."

ITA commented that proposed subrule 7.1(6) is principally a transfer of previous rule 7.12. ITA commented that telecommunications carriers have a general provision relating to the discontinuance of service under Iowa Code § 476.20(1) in Board rule 22.16. ITA stated that the general rule in Chapter 7 is intended to apply in connection with the discontinuance of service by any utility in connection with the transfer of service from one company to another. It stated while the service may be abandoned by the transferring utility, comparable service is intended to be provided by the transferee utility. ITA recommended that there be clarity and distinction between Chapter 7 and Chapter 22 discontinuance of service provisions. ITA suggests that proposed subrule 7.1(6) be revised to limit the subrule to the transfer of utility property. ITA provided suggested language for changes to proposed subrule 7.1(6).

ITA further commented that the actual termination of service to a market should be addressed for telecommunications carriers in Chapter 22, and rule 22.16 should be modified to clarify that the discontinuance of service to a particular customer, even if that customer provides service to others, is not an abandonment of service to the market under Iowa Code § 476.20. ITA stated that the National Exchange Carriers Association (NECA) tariff provides conditions for terminating service to a carrier and ITA's access tariff provides for notice for the carrier customer. ITA acknowledged that not all telecommunications providers adopt the NECA and

ITA tariffs, but the process for discontinuance of carriers should be available to all providers. ITA supported a revision to rule 22.16 and provided suggested language.

At the oral comment hearing on April 26, 2005, comments on proposed subrule 7.1(6) and rule 22.16 were received from MEC, Qwest, ITA, and IPL. The commentors discussed the same issues that were raised in the written comments. The commentors were not in agreement regarding the substantive changes suggested in the written comments.

The Board researched the origin of rule 7.12, which forms the basis of proposed rule 7.1(6). It appears that rule 7.12 was originally intended to be limited to discontinuance of service pursuant to Iowa Code § 476.20(1) incident to utility property transfer. In adopting rule 7.12, the Board stated:

The adopted rule sets forth procedures to obtain Board approval prior to discontinuance of utility service incident to the transfer of utility property. ... The adopted rule explicitly excludes stock transfers incident to corporate reorganization. By definition, the rule does not encompass discontinuance of service to an individual for nonpayment of utility bills.

In re: Transfer of Utility Property – Discontinuance of Service, Docket No.

RMU-85-26, "Order Adopting Rules" (August 8, 1986) (published Iowa Administrative Bulletin, August 27, 1986, ARC 6883).

The Board agrees with the commentors that the scope of subrule 7.1(6) should continue to be limited to discontinuance of service incident to utility property transfer.

Therefore, the Board will modify proposed subrule 7.1(6) so that it is restored as it was in current rule 7.12. Since the subrule is contained in rule 7.1, this will have the effect of limiting the type of cases to which the subrule's unique procedures apply and will also limit the types of cases to which the Chapter 7 procedural rules do not apply. This better conforms to the intended scope of application of subrule 7.1(6) and Chapter 7 rules.

Some commentors suggested substantive changes to proposed subrule 7.1(6) in addition to those regarding the relationship between proposed subrule 7.1(6) and 22.16. The ITA suggested substantive changes to rule 22.16. The commentors were not in agreement regarding these proposed substantive changes. It is not clear that all interested persons had notice and a fair opportunity to comment on this issue, so the Board will defer action on these comments to a future rule making. Restoration of rule 7.12 language will serve as a placeholder until any changes can be considered later.

However, the Board agrees with the commentors that there should be cross-references to the other rules regarding discontinuance of service in subrule 7.1(6). Adding such cross-references is not a substantive change and therefore would not be beyond the scope of this rule making. Therefore, the Board will adopt the following changes to proposed subrule 7.1(6), which will restore the rule to its current form in rule 7.12 and add cross-references to other rules related to discontinuance of service:

7.1(6) Discontinuance of service incident to utility property transfer.

a. Scope. This rule applies to discontinuance of utility service pursuant to Iowa Code section 476.20(1), which includes ~~but is not limited to~~ the termination or transfer of the right and duty to provide utility service to a community or part of a community incident to the transfer, by sale or otherwise, except a stock transfer incident to corporate reorganization. This rule does not limit rights or obligations created by other applicable statutes or rules including, but not limited to, the rights and obligations created by Iowa Code sections 476.22 to 476.26. Additional rules applicable to discontinuance of service by local exchange utilities and interexchange utilities are contained at 199—22.16. Discontinuance of service to individual customers is addressed in rules 199—19.4, 20.4, 21.4, and 22.4. Procedures in the event of a sale or transfer of a customer base by a telecommunications carrier are contained in paragraph 199—22.23(2)"e."

b. Application. A public utility shall obtain board approval prior to discontinuance of utility service, ~~except in cases of emergency, nonpayment of account, or violation of rules and regulations.~~ The public utility shall file an application for permission to discontinue service that includes a summary of the relevant facts and the grounds upon which the application should be granted. When the discontinuance of service is incident to the transfer of utility property, the transferor utility and the transferee shall file a joint application.

c. Approval. Within 30 days after an application is filed, the board shall approve the application or docket the application for further investigation. Failure to act on the application within 30 days will be deemed approval of the application.

d. Contested cases. Contested cases under paragraph "c" shall ~~normally~~ be completed within four months after date of docketing. ~~Extensions may be ordered for good cause.~~

e. Criteria. The application will be granted if the board finds ~~discontinuance of the utility service is reasonable and in the public interest, the utility service is no longer necessary, or, in the case of a transfer of service,~~ if the board finds the transferee is ready, willing, and able to provide comparable utility service.

Proposed rule 7.2 Definitions.

Proposed rule 7.2 contains a number of definitions. The following comments were received regarding several of these definitions.

IPL commented that it has concerns regarding the definition of "expedited proceeding" and the later provisions concerning expedited proceedings in subrule 7.4(10). IPL did not suggest any changes to the definition itself. IPL's comments actually relate to concerns with proposed subrule 7.4(10) and will be discussed below.

MEC commented that many of the definitions are applicable in circumstances other than contested cases, so this rule should be included in a location where it can have more general applicability. MEC suggests the definition of "presiding officer" may be unclear, as it does not appear to allow one Board member to preside (unless the intent is that one board member is referred to as "any other person"), as another rule defines the Board as a majority of the body. MEC also commented that there is no definition of "application," although the term is used frequently.

The Board will keep the definitions section in Chapter 7. The definitions were drafted because the terms are used in Chapter 7. It may be appropriate for the Board to draft a more general definitions section that could be included in Chapter 1, but that may be outside the scope of this rule making proceeding.

As proposed, "presiding officer" is defined as "the board, the administrative law judge, or another person so designated by the board for the purposes of a

particular proceeding." The definition of "presiding officer" is intended to include the circumstance where one Board member presides over a particular proceeding. In addition, there may be circumstances where the Board needs to designate a person other than one Board member or the administrative law judge to preside over a proceeding. Therefore, the definition is intentionally broad to include both one Board member and any other person so designated by the Board. However, in order to clarify the Board's intent, the Board will add "one Board member" to the proposed definition. In addition, as discussed above, the Board will modify the proposed definition to exclude the Board itself.

"Presiding officer" means ~~the board,~~ one board member, the administrative law judge, or another person so designated by the board for the purposes of a particular proceeding.

The term "application" is used in proposed Chapters 7 and 26 in its common, everyday sense. The Board does not believe the term needs further definition and therefore will not add a definition of "application" to the final rules.

Qwest suggested that each definition be assigned a separate subsection designation for ease of reference. Qwest also suggested that the phrase "statutory or other provision" used in the definition of "expedited proceeding" and elsewhere be changed to "statutory or other legal requirement" to more clearly include potential requirements from state statutes, federal laws, regulations, or agency rulings, or orders or injunctions from courts as events that might trigger expedited proceedings.

The Board consulted with the Code Editor regarding the request to assign a subrule number to each definition. The Code Editor said this was not a good idea. Leaving the definitions without numbers allows the agency to add additional terms without renumbering the rule; it can cause problems any time a rule must be renumbered. The Code Editor suggested that putting the definitions in alphabetical order provides sufficient clarity to the public. Therefore, the Board will not assign a separate subrule number to each definition.

"Expedited proceeding" is defined as "a proceeding before the board in which a statutory or other provision of law requires the board to render a decision in the proceeding in six months or less." The phrase intended to be used throughout the rules is "statutory or other provision of law." The Board does not believe the suggested phrase "statutory or other legal requirement" means anything different from the phrase used and does not add clarity or other improvement. Therefore, the Board will not change the phrase. However, the Board notices that the words "of law" were inadvertently omitted from proposed subrules 7.4(10), 7.13(1), 7.15(2), and 7.26(6), paragraph 7.9(2)"a," and rule 7.12, and the Board will add them to the final rules.

The Board will add the following definition of "Consumer Advocate" to proposed rule 7.2: "Consumer Advocate" means the consumer advocate referred to in Iowa Code Chapter 475A.

The Board will add the word "applicant" back into the definitions with "petitioner" as it exists in the current rules to reflect that parties who file a petition are referred to as "petitioners" and parties who file an application are referred to as "applicants," so that the definition will read as follows:

"Petitioner" or "applicant" means any party who, by written petition, application, or other filing, applies for or seeks relief from the board.

The Board will modify the definition of "proposed decision" because there is no need to separately state "administrative law judge" in the definition.

"Proposed decision" means the ~~administrative law judge's~~ or presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case that has been assigned by the board to ~~the administrative law judge~~ or a presiding officer.

Proposed rule 7.4. General information.

Proposed rule 7.4 contains general provisions regarding orders of a presiding officer, communications with the presiding officer, references to docket numbers, required number of copies, defective filings, service requirements, written appearances, representation by attorneys, and expedited proceedings. The rule contains a cross reference to rule 1.9 regarding public documents and confidential filings. As proposed, subrule 1.8 contains a cross-reference to subrule 7.4(6) service of documents and 7.4(4) number of copies.

MEC commented that proposed rule 7.4 appears to apply to proceedings other than contested cases and suggests it be placed in a chapter of general applicability with cross-references to the contested case chapter.

When drafting this rule, the Board considered what provisions should be included in Chapter 1 organization and operation, and what provisions should be included in Chapter 7. The proposed rules leave requirements that are of a general nature in Chapter 1 and place rules that more specifically relate to practice and procedure in contested cases in Chapter 7. The proposed rules then include cross-references in both chapters so that applicable rules may be found in either chapter. Whether to place certain rules in Chapter 1 or in Chapter 7 was a judgment call and the Board believes it appropriately exercised that judgment in the proposed rules. The Board notes that the placement of the rules into Chapters 1 and 7 was not changed from the prior rules, except that the service and number of copies rules were moved from Chapter 1 to Chapter 7 and a cross-reference added to Chapter 1. The Board will add an additional cross-reference to subrule 7.4(3) related to references to docket numbers to proposed subrule 1.8(4) as follows:

1.8(4) Cross reference to rules regarding placement of docket numbers on filings, service of documents, and required number of copies. The board's rule regarding placement of docket numbers on filings is at 199—subrule 7.4(3). The board's rule regarding service of documents is at 199—subrule 7.4(6). The board's rule regarding required number of copies is at 199—subrule 7.4(4).

The Board will modify proposed subrule 7.4(1) to correct the reference to the Board's Records and Information Center. Although current subrule 7.2(3) refers to the "office of the board," as does the proposed subrule, orders are kept in the Records and Information Center. In addition, use of the term "placed" rather than "filed" would be more correct. Therefore, the Board will adopt the following modifications to proposed subrule 7.4(1):

7.4(1) Orders ~~of a presiding officer~~. All orders ~~made by a presiding officer~~ will be issued and placed filed in the board's records and information center ~~office of the board~~. Orders ~~of the presiding officer~~ shall be deemed effective upon issuance ~~by the presiding officer~~ unless otherwise provided in the order. Parties and members of the public may view orders in the board's records and information center and may also view orders (other than orders granting confidential treatment) and a daily summary of filings on the board's Web site located at www.state.ia.us/iub.

Proposed subrule 7.4(6) Service of documents.

IPL suggested that the Board may wish to consider requiring both electronic and mail service of documents in dockets with short time frames.

MEC suggested that the Board's Records and Information Center be designated in the rules as the source of the official service list for a docket to help eliminate questions about whom to serve. In addition, MEC suggested this subrule should be revised to include service by overnight mail by adding the words "or overnight delivery" after the references to first class mail.

Qwest commented that in expedited cases, faster response times are required and suggests a requirement that in expedited cases, if service is made by first-class

mail instead of personal delivery, service must be supplemented by sending a copy by email or facsimile.

The Board agrees that overnight delivery is a reasonable alternative method of service. The Board also agrees that requiring parties to supplement service by email or facsimile in expedited proceedings would be helpful and should be required if receiving parties have provided an email address or fax number. However, Board orders are posted on the Board's Web site and, therefore, there is no need for emailing or faxing Board orders.

The Board will not adopt MEC's suggestion that the Records and Information Center be designated as the source of the official service list for a docket. Parties are responsible for maintenance of their own service lists. In addition, the Records and Information Center may not be aware of everyone who should be served as soon as the parties are.

Therefore, the Board will adopt the following changes to proposed subrule 7.4(6):

7.4(6) Service of documents.

a. Method of service. Unless otherwise specified by the board or presiding officer or otherwise agreed to by the parties, documents that are required to be served in a proceeding may be served by first-class mail or overnight delivery, properly addressed with postage prepaid, or by delivery in person. In expedited proceedings, if service is made by first class mail instead of by overnight delivery or personal service, the sending party must supplement service by sending a copy by electronic mail or facsimile if an electronic mail address or facsimile number has been provided by the receiving party. When a document is

served, the party effecting service shall file with the board proof of service in substantially the form prescribed in 199—subrule 2.2(16) or an admission of service by the party served or the party’s attorney. The proof of service shall be attached to a copy of the document served. When service is made by the board, the board will attach a service list with a certificate of service signed by the person serving the document to each copy of the document served.

b. Date of service. Unless otherwise ordered by the board or presiding officer, the date of service shall be the day when the document served is deposited in the United States mail or overnight delivery, is delivered in person, or otherwise as the parties may agree. Although service is effective, the document is not deemed filed with the board until it is received by the board pursuant to subrule 7.4(2).

c. Parties entitled to service. A party or other person filing a notice, motion, pleading, or other document in any proceeding shall contemporaneously serve the document on all other parties. Parties shall serve documents containing confidential information pursuant to a confidentiality agreement executed by the parties, if any. If the parties are unable to agree on a confidentiality agreement, they may ask the board or presiding officer to issue an appropriate order. A party formally filing any document or any other material with the board shall serve three copies of the document or material on consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. “Formal filings” include, but are not limited to, all documents that are filed in a docketed proceeding or that request initiation of a docketed proceeding. The address of consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0063.

d. Service upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Proposed subrule 7.4(7) Written appearance.

In its written comments, MEC questioned whether a separate appearance is necessary if a party files an application or a petition in the form required for the

particular type of proceeding. MEC stated the application usually contains the information required in the appearance form and suggested the parties be given the option of providing the information required by this subrule in a separate appearance form or in the body of their first pleading.

The requirement to file a written appearance exists in current subrule 7.2(1). At the oral comment hearing, some commentators stated this requirement is not widely followed and questioned whether it was needed. The proposed rule already provides that if a person files an answer or other responsive pleading containing the required information, a separate appearance is not required. Therefore, it seems reasonable that a similar provision could be added if a person files an application, petition, or other initial pleading that contains the required information.

The Board agrees that parties do not need to file a separate written appearance if they have provided the information in the initial application, petition, or pleading and therefore will adopt the following change to the proposed rule:

7.4(7) Written appearance. Each party to a proceeding shall file a separate written appearance, substantially conforming to the form set forth in 199—subrule 2.2(15), identifying one person upon whom the board may serve all orders, correspondence, or other documents. If a party has previously designated a person to be served on the party's behalf in all matters, filing the appearance will not change this designation, unless the party directs that the designated person be changed in the appearance. If a party files an application, petition, or other initial pleading, or an answer or other responsive pleading, containing the information that would otherwise be required in an appearance, the filing of a separate appearance is not required. The appearance may

be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed.

Proposed subrule 7.4(10) Expedited proceedings.

IPL commented that proposed subrule 7.4(10) appears to create an implied waiver of the required statutory or other provision of a decision in six months or less if a person fails to include the words "Expedited Proceedings Required" in the caption. IPL stated that this could be a harsh result. IPL believes waiver of statutory time limits for a proceeding should be explicitly agreed to by all the parties to a proceeding, not be implicit as provided in subrule 7.4(10).

IPL is also concerned that the expedited proceedings provisions do not appear to retain the Board's current practice of expediting a docket, if appropriate, even when there is no provision of law requiring it. IPL urged the Board to add a paragraph 7.4(10)"d" that recognizes expedited treatment will be granted at the Board's discretion upon request in appropriate circumstances, even though it is not required by statute or other provision of law.

The Board did not intend to drop the option for voluntary expedited treatment as mentioned by IPL. As proposed, subrule 7.4(10) only relates to proceedings in which there is a statutory or other legal requirement for a Board decision within a specified time period of six months or less. The Board will continue to exercise its discretion to set appropriate procedural schedules considering the circumstances of the particular case and no specific statement regarding this is needed in the subrule. However, in order to make it clear that parties may request expedited treatment even

when there is no statutory requirement, the Board will add this to the subrule as shown below. However, in cases of voluntary expedited treatment where there is no statutory or other provision requiring a Board decision within six months or less, the shortened timeframes for the parties to act contained in the rules for statutorily required expedited cases will not apply unless the Board or presiding officer specifically orders that they will. If there is to be any shortening of timeframes for parties to act, the Board or presiding officer should establish them by order. This will also be clarified in the subrule as stated below.

IPL stated the subrule as drafted is unclear regarding whether the answer and response times are shortened in cases where a statute or other provision of law sets a six-month time limit, but the words are not yet in the caption. This will be clarified in the adopted rule.

Consumer Advocate commented that this proposal effectively provides that unless the prescribed words are in the caption, a proceeding to which a mandated time frame applies may be deemed to have not actually commenced. It stated that this proposal could lead to procedural disputes. If the Board accepts a filing to which an expedited schedule applies, and it is not rejected as defective, and the proceeding is not dismissed, a difficult decision could arise whether the time frame can be lawfully extended on the grounds that the initial pleading failed to contain the prescribed phrase. Consumer Advocate asserted this proposal raises more issues than it resolves and should be reconsidered. However, if the proposal is to be

adopted, the rule should state the mandate and consequences more directly and plainly. Consumer Advocate stated a more flexible approach may be just as effective but more accommodating. Consumer Advocate suggested two alternative modifications to the proposed subrule.

MEC commented that it is not clear what proceedings might be considered expedited under the proposed rule, other than reorganization proceedings, which are governed by procedural rules in Chapter 32. It stated the Board cannot use the procedure proposed in subrule 7.4(10) to deprive parties of their legal rights. MEC suggested that this proposed subrule be deleted from the proposed rules. MEC suggested that it is unnecessary and is not clear how it is to be applied. MEC also suggested that the shortened timelines established for "expedited proceedings" be removed from the proposed rules. Alternatively, MEC suggested the Board retain the rule and specify the proceedings that are covered by the subrule.

Qwest recommended that proposed paragraph 7.4(10)"a" be stricken and the rest of the rule renumbered accordingly. It stated that if a statute, regulation, or other provision of law requires the Board to decide a matter, the Board cannot by rule delegate decision-making authority to an inferior tribunal or a presiding officer, and a decision by the inferior tribunal will not likely meet any legally imposed deadline if the Board decision is not timely.

As the Board stated in its order commencing the rule making, given the volume of filings with the Board, it is sometimes difficult for the parties and the

Board to quickly identify dockets requiring expedited treatment. The Board, therefore, proposed the requirement to include the phrase "Expedited Proceedings Required" in the caption of the first pleading as a solution to this problem. The proposed subrule also provided that if the person failed to do so, the Board could calculate the timeframe for decision from the filing date of the first pleading in which the phrase was included in the caption. The proposed rule also required the party to state the basis for the claim that a Board decision is required in six months or less in the first pleading in which the claim is made.

The Board continues to believe that due to the number and variety of statutes that form the basis for Board proceedings and the volume of those filings, the Board and the interested public need parties who claim there is a legal requirement for a Board decision within six months or less to clearly identify the requirement in the first pleading filed. This requirement is especially for the benefit of the other parties to such proceedings, because they will have shortened timeframes for filing such things as answers and responses to motions in expedited cases. The Board believes the requirement to include the phrase in the caption and the requirement to state the basis for the claim are reasonable and will retain them in the final rules.

However, after considering the comments, the Board believes additional clarification is appropriate and the sentence regarding the potential consequences for failure to include the required phrase in the proposed rule should be modified.

All parties need to know the date the Board is using to calculate the statutory timeframe for decision. It is appropriate, therefore, for the Board to issue an order stating that date. In addition, the appropriate date from which to calculate the statutory timeframe may be something different than the date of the pleading on which the required phrase first appears. For example, the Board may issue an order recognizing the need for an expedited procedural schedule even though the initiating party failed to comply with this rule. In that case, it may be appropriate to calculate the time period beginning on the date the Board issues an order notifying the parties of the requirement. The Board will amend the proposed subrule as stated below. Consumer Advocate's suggested revisions were helpful in crafting the recommended amendments.

MEC suggested that if the Board retains subrule 7.4(10), it should list the proceedings that are expedited by law to which the provision applies. The Board will decline this suggestion for two reasons. First, statutory deadlines for Board decisions are contained not only in Iowa Code Chapter 476, such as in §§ 476.53(6), 476.77, and 476.101(8), but also in various federal statutes, such as 47 U.S.C. § 252. This is one reason the Board needs the parties to identify the deadlines for decision. It is reasonable for the party filing an initiating document with the Board to determine whether a statutory deadline for Board decision applies and notify the Board and the other potential parties if the deadline is six months or less as provided in the proposed subrule.

Second, if the Board were to adopt a list of all the statutes that require expedited proceedings, that list would have to be amended each time a new statute was enacted that included a similar requirement. Moreover, it would be unclear whether the expedited proceedings time frames applied to proceedings under the new statute while the rule making was in process.

The Board agrees with the commentators that it must comply with statutory timeframes for rendering decisions. The Board is not waiving these statutory timeframes. Rather, the Board is requiring parties to comply with certain filing requirements before the statutory timeframe will start. The requirement to include the phrase "Expedited Proceedings Required" on the first pleading is one such filing requirement. If a party does not comply, the party may be considered to have waived its right to have the statutory time period for decision calculated from the date of the first filing. In that case, the Board may calculate the required time for the decision from the date the party complies with the Board's filing requirements. This is no different from any other filing requirement. A defective pleading does not normally start the clock.

Proposed paragraph 7.4(10)"a" states that when a statutory or other provision of law requires the Board to render a decision in six months or less, the term "board" is interpreted to mean "presiding officer." This proposed paragraph is merely a codification of prior Board interpretation in specific cases. The Board disagrees with Qwest's comment that if a statute, regulation, or other provision of law requires the

Board to decide a matter, the Board cannot by rule delegate decision-making authority to an inferior tribunal or a presiding officer, and a decision by the inferior tribunal will not meet any legally imposed deadline if the Board decision is not timely. However, the Board agrees that there is a possibility that this interpretation may not be correct with respect to every statute in every case, and it therefore may not be appropriate to codify it in rule. Therefore, the Board will withdraw proposed paragraph "a" and the Board will continue to interpret this type of statutory provision on a case-by-case basis.

Finally, the Board concludes that it may be helpful to parties to provide a reference to the rules that contain shortened timeframes in expedited proceedings and to the additional service requirement applicable to expedited proceedings.

Therefore, the Board will modify proposed subrule 7.4(10) as follows.

7.4(10) Expedited proceedings.

~~a. When a statutory or other provision requires the board to render a decision in a proceeding in six months or less, the term "board" is interpreted to mean "presiding officer."~~
ba. If a person claims that a statutory or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall include the phrase "Expedited Proceedings Required" in the caption of the first pleading filed by the person in the proceeding. If the phrase is not so included in the caption, the board or presiding officer may find and order that the proceeding did not commence for purposes of the required time for decision until the date on which the first pleading containing the required phrase is filed or such other date that the board or presiding officer finds is just and reasonable under the circumstances. calculate the time frame for decision from the filing date of the first pleading in which the phrase is included in the caption.

e b. If a person claims that a statutory or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall state the basis for the claim in the first pleading in which the claim is made.

c. Shortened time limits applicable to expedited proceedings are contained in rules 7.9(17A, 476) (pleadings and answers), 7.12(17A, 476) (motions), 7.13(17A, 476) (intervention), 7.15(17A, 476) (discovery), and 7.26(17A, 476) (appeals from proposed decisions). An additional service requirement applicable to expedited proceedings is contained in subrule 7.4(6) (service of documents).

d. A party may file a motion that proceedings be expedited even though such treatment is not required by statute or other provision of law. Such voluntary expedited treatment may be granted at the board or presiding officer's discretion in appropriate circumstances considering the needs of the parties and the interests of justice. In these voluntary expedited proceedings, the board or presiding officer may shorten the filing dates or other procedures established in this chapter. The shortened time limits and additional service requirement applicable to expedited proceedings contained in this chapter and listed in paragraph 7.4(10)"c" do not apply to voluntary expedited proceedings under this paragraph unless ordered by the board or presiding officer.

Proposed rule 7.7 Electronic files.

Consumer Advocate commented that the provisions in proposed rules 7.7 and 7.10 regarding electronic files provide good clarity and appear to be appropriate and workable.

IPL commented that the requirement to file a hard-copy printout should be modified to allow the Board discretion to waive the requirement in cases where the file is too voluminous for printing. It also stated the subrule is not descriptive enough to put a person on notice of what is expected to be provided. At the oral comment

hearing, IPL stated that it was not certain what kind of information the Board is trying to obtain under this subrule.

Qwest stated that for some types of electronic files, a hard-copy printout and index may not be practical and, in some cases, could be confusing. Qwest suggested that the subrule be modified to require hard-copy printouts except where impracticable.

The initial paragraph of proposed rule 7.7 states: "The presiding officer, on the officer's own motion or at the request of a party, may provide for additional or different requirements in specific cases, if necessary." This provides sufficient flexibility to accommodate the situations stated in the comments so that no change to proposed subrule 7.7(1) is needed. The Board will not make any modifications to proposed subrule 7.7(1).

IPL suggested that the phrase "or reference to the web source of the software" be added to subrule 7.7(2) after the word "software" because IPL typically uses compression software available on the web.

IPL's suggestion is reasonable, so long as the Board may download and use the software without paying a fee. Therefore, the Board will modify proposed subrule 7.7(2) as follows:

7.7(2) Electronic files that are compressed shall be accompanied by software and clear documentation to reverse the process of compression. 1If the software may be downloaded and used by the board without incurring a fee, the person filing the compressed electronic files may provide a reference to the Web source of the software.

IPL expressed concern that others sometimes make PDF files available and it may not be possible for IPL to comply with subrule 7.7(4) when such material is filed with the Board. It stated these PDF requirements are also in the standards published on the Board's Web site, which may be waived by the Executive Secretary or General Counsel, but it is not clear that those officials can waive this subrule.

The initial paragraph of proposed rule 7.7 provides sufficient flexibility to accommodate IPL's situation so that no change to the proposed subrule is needed.

IPL commented that subrule 7.7(5) did not make provision for recording any changes in the standards for electronic information. IPL believes the subrule should state that all changes will be clearly identified and listed by the date of the change at the Records and Information Center and on the Board's Web site. This would allow a person filing to know whether there are changes since the person's last filing without having to review all of the standards.

In its order commencing the rule making, the Board stated that proposed rule 7.7 would contain only general information regarding electronic files because applicable technology may change frequently. The Board stated that its specific standards for electronic files, which include such information as the software and media formats the Board uses, would be available from the Board's Records and Information Center and on the Board's Web site. The purpose of the standards is to notify the public of the formats used by the Board so the public can submit electronic information to the Board in a format that is compatible with the Board's

systems. The Board provided for the more specific standards to be easily available to the public and not in rule format so they can be changed along with technology that may change frequently. The subrule itself does not need to provide for changes in the standards and the method proposed by IPL for changing the standards would be cumbersome. The standards document is not so voluminous that it would be burdensome to review it each time a person plans to file electronic information with the Board. In addition, the standards document contains the date of the most recent revision at the top, so that reviewing persons may easily tell whether the version is the same as that used previously. Therefore, the Board will make no change to proposed subrule 7.7(5).

Proposed rule 7.8 Procedural schedule and notice of hearing.

Rule 7.8 is proposed as follows:

199—7.8(17A,476) Procedural schedule and notice of hearing. The presiding officer will issue an order that includes a procedural schedule and notice of hearing. Delivery of the order will be by first-class mail unless otherwise ordered by the presiding officer.

Upon reflection, the Board realizes that it does not issue an order that includes a procedural schedule and notice of hearing in all cases. For example, in some cases no hearing is required. The purpose of the first sentence of this rule was merely to inform the public of what would occur in a typical contested case. However, it may cause more confusion than it informs in those cases in which the

Board or presiding officer does not issue such an order. Therefore, the Board will delete the first sentence of proposed rule 7.8.

The purpose of the second sentence of this proposed rule is to give the Board authority to serve notices of hearing by first-class mail. Iowa Code § 17A.12(1) provides that notices of hearing must be delivered either by personal service or by certified mail, return receipt requested. It goes on to provide that agencies may provide by rule for the delivery of notices of hearing by other means. Therefore, the second sentence of proposed rule is necessary for the Board to continue its current practice of serving notices of hearing by first-class mail. The Board also notes the phrase "by the presiding officer" is unneeded at the end of the second sentence.

Therefore, the Board will adopt the following changes to proposed rule 7.8:

199—7.8(17A,476) Procedural schedule and notice
Delivery of notice of hearing. ~~The presiding officer will issue an order that includes a procedural schedule and notice of hearing.~~ Delivery When the board or presiding officer issues an order containing a notice of hearing, delivery of the order will be by first-class mail unless otherwise ordered by the presiding officer.

Proposed subrule 7.9(2) Answers.

Consumer Advocate commented that the approach to the issue of the time to answer in proceedings that have shortened timeframes appears to be workable and should bring clarity to the procedures.

IPL commented that subrule 7.9(2) provides for a motion to dismiss when a party's pleadings fail to show a breach of legal duty or grounds for relief. IPL stated that, consistent with the position taken by the Board and IPL in Polk County District Court judicial review proceeding Kinze Manufacturing, Inc., v. Iowa Utilities Board, Polk Co. No. CV 5149, IPL believes it is appropriate to add the following sentence to the paragraph:

A board determination of failure to show a breach of legal duty or ground for relief in a matter that otherwise would be a contested case renders the matter a contested case pursuant to the definition in rule 7.2

IPL stated that this sentence would recognize that Iowa Code § 17A.10A applies to a case where such a motion to dismiss is granted because the petition is "a matter that would be a contested case if there was a dispute over the existence of material facts." IPL noted that the District Court's ruling that it has jurisdiction to hear Kinze is contrary to the Board's and IPL's position on this issue. IPL further noted that this issue is subject to further review by the Supreme Court in any appeal from a subsequent District Court ruling on the merits of the case.

The Board notes that the language of proposed paragraph 7.9(2)"c" is copied without change from current rule 7.5(2). The Board further notes that the proposed paragraph is a procedural rule that provides a party with an additional alternative to filing an answer, that is, the ability to file a motion to dismiss. The proposed sentence does not appropriately fit in paragraph 7.9(2)"c" because it is a statement related to a Board ruling on such a motion to dismiss and is a substantive statement of law rather

than a procedural rule. Therefore, the Board will make no change to the proposed paragraph in response to IPL's comment.

Proposed rule 7.10 Prefiled testimony and exhibits.

MEC commended the Board for adding a specific and detailed description of prefiled testimony and generally agreed with the proposed rule with a few exceptions. MEC stated that prefiled testimony is the norm in utility board contested cases before the Board and the proposed subrule should be amended to require prefiled testimony. MEC further stated that, at a minimum, a statement should be added making prefiled testimony the standard method for providing testimony in Board proceedings.

It would be inappropriate to change the proposed subrule to require prefiled testimony in all cases as suggested by MEC, simply because prefiled testimony is not required in all cases. However, it would be appropriate to state in the rule that the use of prefiled testimony is the standard method for providing testimony in Board contested case proceedings to provide notice to parties of the Board's standard procedure. Therefore, the Board will modify proposed subrule 7.10(1) as stated below.

At the oral comment hearing, the commentators were supportive of the proposed rule because it explained prefiled testimony to parties unfamiliar with its use in Board procedures. The commentators suggested an addition to the proposed rule providing that if all parties agreed, prefiled testimony and exhibits could be

admitted at the hearing without going through the process of moving to spread the prefiled testimony and requesting admission of the exhibits.

The Board has considered this suggestion. The Board notes that sufficient notice to all parties must be provided and a clear record created so any agreement must be made on the record at the hearing. Parties already have the option to make such an agreement and have done so in some hearings even without any statement in the rules. Any such statement in a rule would need to be flexible and provide for a variety of circumstances. All the variations cannot be easily stated in rule form. Therefore, although the Board encourages parties to make such agreements to streamline contested case hearings, this is best done on a case-by-case basis on the record at the hearing. The Board will not add the suggested provision to the rules.

The Board will modify proposed subrule 7.10(1) as follows:

7.10(1) The board or presiding officer may order the parties to file prefiled testimony and exhibits prior to the hearing. The use of prefiled testimony is the standard method for providing testimony in Board contested case proceedings. If ordered to do so, parties must file the prefiled testimony and exhibits according to the schedule in the procedural order.

In subrule 7.10(3), MEC suggested the Board consider prohibiting live testimony in a proceeding where prefiled testimony has been ordered. It stated that, at a minimum, the Board should amend the subrule to require the presiding

officer to allow additional time for parties to review and respond if a party is permitted to offer live or late-filed prepared testimony.

The Board does not agree that the rule should be modified to prohibit live testimony in all proceedings where prefiled testimony has been ordered. The Board agrees that if parties are permitted to provide significant live testimony or late-filed prepared testimony and additional time is needed to respond and is requested by opposing parties, that reasonable accommodation under the particular circumstances to the requesting party will need to be made. Fair notice and due process considerations are involved, and the Board or presiding officer will make an appropriate ruling considering the rights of all parties and the particular situation. However, what is a reasonable accommodation is very circumstance-specific and may include something other than allowing additional time to review and respond. The Board also notes that reorganization subrule 32.9(1) specifically states that failure to file prefiled testimony will not preclude Consumer Advocate and intervenors from presenting evidence at the hearing. For these reasons, the Board will not adopt the suggested language.

The paragraph could be made clearer and therefore the Board will amend proposed subrule 7.10(3) as follows:

7.10(3) ~~Parties who choose not to file prefiled testimony and exhibits before the hearing will not necessarily be precluded from participating in the proceedings. However, when a party has evidence to present, and prefiled testimony has been ordered, the evidence must be presented in the form of prefiled testimony and exhibits filed according to the~~

procedural schedule, unless otherwise ordered. Parties who wish to present a witness or other evidence in a proceeding shall comply with the board's or presiding officer's order concerning prefiled testimony and documentary evidence, unless otherwise ordered, or unless otherwise provided by statute or other provision of law.

IPL requested clarification as to what is needed for a "brief description" as used in the second sentence of subparagraph 7.10(5)"a"(2).

Proposed subparagraph 7.10(5)"a"(2) is not changed from existing subparagraph 7.7(9)"a"(2). The proposed rule means the same as the existing rule, so parties should continue to comply as they have in the past.

Proposed rule 7.12 Motions.

Consumer Advocate questioned whether proposed rule 7.12, relating to motions, should be clearer about its application to the situations in which the Board is authorized to act upon its own motion.

The Board notes this proposed rule is identical to current subrule 7.7(11), except for a slight grammatical change made at the suggestion of the Code Editor, and the Board is not aware of any particular problems with the current provision. The Board will not adopt this suggested change.

Proposed rule 7.12 contains general requirements regarding motions. Proposed subrules 7.15(4) and 7.15(5) contain additional and different requirements regarding motions related to discovery. For example, proposed rule 7.12 provides that parties have 14 days to respond to motions and seven days for response in expedited proceedings. For discovery motions however, proposed

subrule 7.15(5) provides that parties have ten days to respond to motions and five days in expedited proceedings. The Board believes these shorter time frames are appropriate for discovery disputes because the parties are required to make a good-faith effort to resolve a discovery dispute, before involving the Board. Thus, the parties should already be aware of each other's arguments and should have fully developed their own, allowing for shorter time frames. In order to eliminate any confusion, the Board will put a cross-reference to subrules 7.15(4) and 7.15(5) in rule 7.12 as follows:

199—7.12(17A,476) Motions. Motions, unless made during hearing, shall be in writing, state the grounds for relief, and state the relief or order sought. Motions based on matters that do not appear of record shall be supported by affidavit. Motions shall substantially comply with the form prescribed in 199—subrule 2.2(14). Motions shall be filed and served pursuant to rule 7.4(17A,476). Any party may file a written response to a motion no later than 14 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, written responses to a motion must be filed within seven days of the date the motion is filed, unless otherwise ordered by the board or presiding officer. Failure to file a timely response may be deemed a waiver of objection to the motion. Requirements regarding motions related to discovery are contained at 199—subrules 7.15(4) and 7.15(5).

Proposed rule 7.13 Intervention.

In proposed rule 7.13, the Board proposed to eliminate the distinction in the current rules between "intervention of right" and "permissive intervention" and make

all intervention permissive. Proposed rule 7.13 also includes criteria for evaluation of requests to intervene and procedures regarding intervention.

Consumer Advocate, MEC, and IIEG supported eliminating the distinction and making all intervention permissive, particularly since the Board has liberally granted requests to intervene. To ensure that leave to intervene continues to be liberally granted, MEC suggested adding the following sentence to the end of proposed subrule 7.13(5): "Leave to intervene shall be generally granted by the presiding officer to parties with cognizable interests in a proceeding."

Although the Board notes that proposed subrule 7.13(3) provides that "[a]ny person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the presiding officer," it agrees that MEC's suggestion would reinforce the intent of rule 7.13 that requests to intervene be liberally granted.

Therefore, the Board will adopt the following change to proposed subrule 7.13(5):

7.13(5) The board or presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation in the proceeding. Leave to intervene shall generally be granted by the board or presiding officer to any person with a cognizable interest in the proceeding.

In proposed rule 7.13, the Board deleted the following provision that exists in the current intervention rule: "The granting of any petition to intervene shall not have the effect of changing or enlarging the issues specified in the presiding

officer's notice of hearing, unless the presiding officer orders otherwise." In its order commencing this rule making, the Board stated that sometimes intervention does change or enlarge the original issues, and so long as all parties have notice and the opportunity to litigate all issues, there is no due process problem. The proposed rule provides that the presiding officer may limit a person's intervention to particular issues or a particular stage of the proceeding and otherwise condition participation and states that intervenors are bound by previous agreements, arrangements, and orders. The Board stated that these provisions should be sufficient to mitigate any problems that could be created by an intervention in a specific case.

Consumer Advocate commented it did not object to this deletion in light of the control the presiding officer will continue to exercise over the issues and the more general requirements regarding notice and opportunities to present evidence and argument.

IIEG also stated it did not necessarily object to the deletion. IIEG stated that if an intervention causes a major change in the scope of consideration of a docket, others who have already intervened should not necessarily have to bear the costs of the docket expansion. IIEG stated the overall goal should be to encourage effective intervention rather than chill intervention participation through uncertainty of assessment liability. IIEG stated the proposed changes do not necessarily create that chilling effect, but it urged the Board to keep the broader issue in mind

and perhaps state its intention in this regard in any subsequent action on these proposed rules.

The Board's rules regarding cost assessment are contained in Chapter 17. The criteria the Board uses to decide whether it will directly assess persons, including intervenors, are contained in that chapter. The comments by IIEG relate to implementation of the assessment rules and do not require any modification to proposed Chapter 7 rules.

MEC stated that it is possible that a person may only become interested in the settlement phase of a proceeding. It questions whether the provision means that an intervenor could not contest a contested settlement that had not been finalized.

Under MEC's scenario, since the contested settlement is not "finalized," this subrule would not necessarily prevent an intervenor from contesting it. However, the subrule does state that an intervenor would be bound by any agreement, arrangement, or order previously made or issued, unless it could show good cause and the Board or presiding officer ruled otherwise. The Board notes that this situation would also be governed by proposed rule 7.18 regarding settlements. No change is needed to proposed subrule 7.13(7) as a result of MEC's comment.

Proposed rule 7.14 Consolidation and severance.

MEC stated the Board should control consolidation, just as it controls the assignment of presiding officers to cases, and presiding officers should not be able to consolidate cases.

Proposed rule 7.14 is based directly on Iowa's uniform rule X.10. The Department of Inspections and Appeals has a similar rule at 481 IAC 10.10 and the Department of Natural Resources also has one at 561 IAC 7.10(6). Those rules do not limit consolidation and severance to rulings by the agency itself. The Board's administrative law judge has consolidated cases in the past. The proposed rule provides criteria the Board and presiding officer must consider when deciding whether to consolidate. These criteria provide appropriate protection for parties. The Board does not see any reason to limit the authority to consolidate cases as suggested by MEC and will make no change to the proposed rule other than the addition of the reference to the Board.

Proposed rule 7.15 Discovery.

At the oral comment hearing, the participants had a general discussion regarding discovery issues, but recognized that the comments were probably outside the scope of this docket. Qwest suggested the Board consider opening a separate proceeding to discuss discovery issues. The participants supported the requirement that parties make a good-faith effort to resolve discovery disputes. They stated that, in general, parties are cooperative in allowing additional time to

provide answers to data requests when needed. Qwest suggested the Board consider adding a sentence to the end of proposed subrule 7.15(2) that states the parties shall make a good-faith effort to grant reasonable extensions when required due to the nature and extent of discovery requests.

In its written comments, IPL stated it did not object to shortening the standard response time to data requests or interrogatories in expedited proceedings from seven to five days, but notes that it is often difficult to respond to certain requests even within seven days. IPL proposed that subrule 7.15(2) be amended to explicitly state that the presiding officer and parties must continue to recognize the realities faced by the party responding and grant reasonable extensions.

The Board agrees that parties should grant reasonable extensions to each other and notes that proposed subrule 7.15(4) requires parties to make a good-faith effort to resolve discovery disputes without the involvement of the Board prior to filing any discovery motion. This requirement to make a good-faith effort to resolve disputes includes, and is not limited to, the granting of reasonable time extensions to the other parties. Therefore, the addition of the more specific language is not needed.

MEC supported the Board's adoption of a procedure for handling discovery disputes. It noted the rule continues to refer to both interrogatories and data requests. In order to eliminate confusion about what may be requested in an

interrogatory and what is required in a data request, it suggested striking the reference to "interrogatory" in proposed subrule 7.15(2) and expanding the definition of "data request" in proposed rule 7.2 to encompass both "requests for production of documents and specified information." MEC stated the current practice is to produce both with data requests.

The Board notes that the current rule in paragraph 7.7(1)"c" also uses both interrogatories and data requests and provides they must be responded to within seven days. The Board also notes that proposed subrule 7.15(3) provides that time periods for compliance with forms of discovery other than those listed in proposed subrule 7.15(2) are as provided in the Iowa Rules of Civil Procedure. If the Board eliminated "interrogatories" from proposed subrule 7.15(2), the effect would be to change the time for response, and the Board did not seek comment on that change. Therefore, the Board will not eliminate the term "interrogatories" from proposed subrule 7.15(2). However, MEC's suggestion to expand the definition of "data request" in proposed rule 7.2 to encompass both requests for production of documents and requests for information is reasonable and reflects current practice.

The Board notes that a sentence regarding shortened time for responses to discovery motions in expedited proceedings needs to be added to subrule 7.15(5).

Therefore, the Board will adopt the following modifications to the definition of "data request" in rule 7.2 and proposed subrule 7.15(5):

“Data request” means a discovery procedure in which the requesting party asks another person for specified information or requests the production of documents.

7.15(5) Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the board or presiding officer. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, this time is reduced to five days. The board or presiding officer may rule on the basis of the written motion and any response or may order argument or other proceedings on the motion.

Proposed rule 7.17 Prehearing conference.

Consumer Advocate supported elimination of the list of reasons for a prehearing conference that are contained in current rule 7.10 and replacing them with the generalized statement. Consumer Advocate stated this change is acceptable and should reduce uncertainty without affecting the procedure.

Proposed subrule 7.18(2) Required non-unanimous settlement conference.

In its order commencing this rule making, the Board specifically requested comment as to whether proposed subrule 7.18(2), relating to settlement conferences, is used and needed. The subrule is in the current rules at 7.2(11)"b." The Board stated that if comments indicated the subrule is not used and not needed, the Board would delete it from the rules when they are adopted.

MEC, IPL, and Qwest all supported retention of proposed subrule 7.18(2) and believe it is used, useful, and needed. Consumer Advocate commented regarding the pros and cons of the subrule. IIEG supported elimination of the requirement for a

settlement conference, but supported retention of the opportunity to comment to the Board on a proposed settlement.

It is apparent that the rule is used and that most parties find it useful. The Board will retain subrule 7.18(2) as proposed.

Proposed subrule 7.18(4) Contents of comments regarding contested settlements.

Subrule 7.18(4) was proposed as follows:

7.18(4) Contents of comments. A party contesting a proposed settlement must specify in its comments the portions of the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Any failure by a party to file comments, may, at the presiding officer's discretion, constitute waiver by that party of all objections to the settlement.

MEC stated that the Board should rely on the waiver provision of rule 1.3 to exercise this discretion instead of having an explicit provision. MEC is concerned about obstructionist parties who would take advantage of this discretion and cause a settlement to be delayed or not finalized. MEC stated that any waiver of the requirement to file comments in objection while allowing the party to continue to object should be sparingly granted and only in accordance with rule 1.3.

The Board notes that proposed subrule 7.18(4) is the same as current subparagraph 7.2(11)"d." The Board believes the "waiver" in subrule 7.18(4) is different from "waivers" in rule 1.3. Waiver as used in subrule 7.18(4) means that the party itself is waiving any right to object to the settlement by its failure to file comments. Rule 1.3 relates to the situation in which a party has asked the Board to

waive one of the Board's rules. The Board considered whether reference to the rule 1.3 criteria for granting a waiver request would be useful in proposed subrule 7.18(4) and concludes that it would not. The Board will make no change to proposed subrule 7.18(4) other than to add a reference to the Board.

Proposed subrule 7.18(7) Inadmissibility.

Consumer Advocate suggested that it may be of value for this proposed subrule which relates to determining when evidence is inadmissible, to refer Iowa rule of evidence 5.408, which would provide some additional guidance beyond the phrase "to the extent provided by law."

The Board notes that proposed subrule 7.18(7) is the same as current paragraph 7.2(11)"g" with a minor modification. However, it may be useful to include a reference to the rule of evidence and the Board will add it to the proposed rule.

7.18(7) Inadmissibility. Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law, including, but not limited to, Iowa R. Evid. 5.408.

Proposed rule 7.21 Withdrawals.

Qwest suggested amending this rule to permit parties requesting contested case proceedings to withdraw their requests at any time prior to the final decision of the Board in that case in order to encourage parties to continue to negotiate during and after the hearing.

The Board notes this proposed rule is based on uniform rule X.18, which provides for withdrawal only prior to hearing. However, the Board agrees that, so long as there is the protection that withdrawal is only allowed with the permission of the Board or presiding officer, this suggestion may be useful in some cases. The appropriate time period should be at any time prior to the issuance of a proposed or final decision. Therefore, the Board will amend the proposed rule as follows:

199—7.21(17A,476) Withdrawals. A party requesting a contested case proceeding may, with the permission of the board or presiding officer, withdraw that request ~~prior to the hearing~~ at any time prior to the issuance of a proposed or final decision in the case.

Proposed subrule 7.23(3) Order of presenting evidence.

MEC commented that the petitioner should always be entitled to present evidence first and to close. It suggested that the second sentence of the proposed rule be modified to read: "The petitioner shall open and close the presentation of evidence."

The rule should not be as rigid as proposed by MEC. There may be instances in which applicable law, the interest of justice, or the convenience of the parties requires a change to the ordinary order of presentation. There may be cases where the petitioner itself does not wish to open and close the evidence. In addition, in most contested cases before the Board, the petitioner's witnesses are cross-examined on both their prefiled direct testimony and their prefiled rebuttal testimony in a single session. In those cases, although the petitioner opens the presentation of

evidence, their witnesses do not close. Therefore, the Board will not add "and close" to proposed subrule 7.23(3).

Consumer Advocate suggested the proposed subrule could also refer to the preferences of the parties. Consumer Advocate says that in most venues the parties are accorded the ability to present their evidence in the manner they believe is most effective. Consumer Advocate suggests the first sentence be modified to read: "The presiding officer shall determine the order of the presentation of evidence based on applicable law, taking into account the preferences of the parties and the interests of justice and efficiency."

Consumer Advocate is correct that ordinary practice is for the Board or presiding officer to consider the preferences of the parties when determining the order of presentation. The Board will add this to the subrule.

Therefore, the Board will adopt the following modifications to proposed subrule 7.23(3):

7.23(3) Order of presenting evidence. The board or presiding officer shall determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice, taking into account the preferences of the parties. Normally, the petitioner shall open the presentation of evidence. In cases where testimony has been prefiled, each witness shall be available for cross-examination on all testimony prefiled by or on behalf of that witness when the witness takes the stand, either alone or as a member of a witness panel.

Proposed paragraph 7.23(4)"a" Evidence.

Qwest proposed a revision to subrule 7.23(4) to streamline the process of introducing a witness and exhibits and spreading prefiled testimony on the record.

Qwest proposed that where there is no objection, prefiled testimony and associated exhibits would be automatically admitted. Qwest proposed the following addition:

Provided that the sponsoring witness appears to authenticate and support prefiled testimony, and is presented for cross-examination, timely filed and served prefiled testimony, together with any exhibits attached to that prefiled testimony, shall be deemed admitted and made part of the record of a proceeding unless objection is made and sustained to the admission of such testimony and exhibits prior to the close of the hearing.

At the oral comment hearing, the participants discussed the efficiency of this proposal, a concern regarding parties unfamiliar with Board hearings, and the need to make sure actions are taken on the record at the hearing.

As discussed above, sufficient notice to all parties must be provided and a clear record created, so any agreement to spread the testimony in summary fashion must be made on the record at the hearing. Parties currently have the option to make such an agreement and do so. If more options were to specified, it would be difficult to provide for the wide variety of possible circumstances in the rule.

Therefore, as discussed above, the Board believes it is best to handle this procedure on a case-by-case basis and will not add the suggested provision to the rules. The Board will continue to encourage parties to make such agreements on the record at the hearing to improve the efficiency of hearings.

Proposed subrule 7.23(7) Participation in hearings by non-parties.

IPL objected to the proposed subrule allowing participation at hearings by nonparties. It stated the subrule contains no criteria for the presiding officer to use in determining whether to grant participation and without criteria it is impossible to know who will participate and for what purpose. The Board has a generous intervention policy in the rules and it is unfair to those achieving party status to allow nonparties the rights of a party. It also appears contrary to the usual practice of requiring prefiled testimony.

MEC stated that the proposed subrule allows the proceeding to be ambushed by a person who may have reviewed all of the case materials, but chooses not to be a party. The subrule should be made more specific concerning whether it is intended to allow Board staff to participate or removed to rely on the general waiver provisions. MEC suggested this matter should be a focus of the proposed rules in P and E dockets, where there are numerous nonparty landowners who may wish to be involved in the proceedings without becoming parties.

The Board notes proposed subrule 7.23(7) was taken directly from the current rules at paragraph 7.2(7)"f" with minor modification. The Board is unaware that this provision has caused any problem and therefore will make no change to the proposed subrule.

Proposed subrule 7.23(8) Briefs.

MEC questioned whether the deletion of the provision in current paragraph 7.7(12)"a" that specifically states that a reply brief may only be filed by a party who

filed an initial brief is intended to mean that a party could file only a reply brief. MEC stated that the use of "shall" in describing obligations to file initial and reply briefs in the proposed rule means the parties have no discretion and must file both initial and reply briefs.

The Board intentionally dropped the requirement that stated only parties who filed initial briefs could file reply briefs. The Board considered the issue and decided there was no reason to retain the restriction. In some cases, such as when an intervening party or Consumer Advocate has no affirmative position to state in an initial brief, it may be appropriate and useful for the party to file a reply brief without filing an initial brief. The use of "shall" in the second sentence means that parties must file briefs simultaneously unless otherwise ordered. The Board will make no change to the proposed paragraph.

Proposed paragraph 7.23(8)"b" requires parties to serve two copies of briefs on the other parties. This requirement is also in current paragraph 7.7(12)"b." Qwest commented there is no need to serve two copies of briefs on other parties and few parties follow the requirement or object when it is not followed. At the oral comment hearing, Consumer Advocate stated it continues to need three copies of briefs. The other participants stated that it would be most helpful if they were served with one hard copy and a copy sent by electronic mail.

The Board agrees that service of an electronic copy of a brief would be helpful for parties' internal distribution of the brief, which may need to be read by

several persons in different locations. The Board has some concern that this may not be possible for some participants and therefore believes this should be an alternate method of service, rather than a requirement. Therefore, the Board will adopt the following modification to paragraph 7.23(8)"b."

b. Unless otherwise ordered, parties shall file an original and ten copies of briefs with the board and shall serve two copies of briefs on the other parties pursuant to subrule 7.4(6). Parties may serve one paper copy and one copy by electronic mail on the other parties instead of two paper copies. Three copies of briefs shall be served on consumer advocate pursuant to subrule 7.4(6).

The Board will adopt the following modification to proposed paragraph 7.23(8)"d," as there does not appear to be a need to use the formal waiver rule for changes to the number of pages in briefs.

d. Every brief of more than 20 pages shall contain on its front leaves a table of contents with page references. Each party's initial brief shall not exceed 90 pages and each subsequent brief shall not exceed 40 pages, exclusive of the table of contents, unless otherwise ordered. Such orders may be granted ex parte. A brief that exceeds these page limits shall be deemed a defective filing and may be rejected as provided in subrule 7.4(5). ~~Pursuant to 199—1.3(17A,474,476), the presiding officer may grant a waiver of these page limits. Waiver may be granted ex parte.~~

Proposed subrule 7.23(10) The record.

IPL commented that the record of the case contains materials other than the evidence entered in the hearing and matters officially noticed. It stated that Iowa Code § 17A.12(8) requires that findings of fact in contested cases be based solely on evidence in the record and matters officially noticed in the record. IPL proposed

adding the following sentence to the end of subrule 7.23(10) to alleviate any confusion about the meaning of the term "record". "The evidentiary record, which is the part of the record of the case upon which findings of fact must be based, consists of the evidence entered into the record and matters officially noticed in the record."

The Board is unaware of any instance of confusion regarding the meaning of the term "record" and therefore does not believe the addition of the sentence is needed. The Board notes that Iowa Code Chapter 17A and the uniform rules do not use the term "evidentiary record" and the Board has been unable to find such a term used in any other agency rules. Iowa Code § 17A.12 provides sufficient guidance as to what is required with regard to the record and the basis of findings of fact. Adding a term that is not used elsewhere could cause confusion. Therefore, the Board will make no changes to proposed subrule 7.23(10).

Proposed subrule 7.23(11) Default.

Qwest contended that the Board should enter a default decision against a party who does not answer complaints or other claims initiated against them, but not for failure to respond to motions or discovery requests. Qwest suggested the following language be added to paragraph 7.23(11)"a."

a. If a party fails to appear at a hearing after proper service of notice, or answer or otherwise respond to an appropriate pleading directed to and properly served upon that party, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

Iowa Code § 17A.12(3) gives presiding officers the authority to enter a default decision if a party fails to appear or participate in a contested case proceeding after proper service of notice. A reasonable interpretation of this statute could include the authority to grant a default for failure to file a required pleading such as an answer, because filing a required answer is a part of participation in the contested case. There is no default rule in the current Board rules. The basis of proposed rule 7.23(11) was Iowa Code § 17A.12(3) and uniform rule X.22. The uniform rule contains the following sentence: "Where appropriate and not contrary to law, any party may move for default against any party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper notice." There may be cases in which it would be appropriate to order a default for failure to file an answer or other required pleading. Therefore, the Board will adopt the amendment suggested by Qwest in proposed paragraph 7.23(11)"a."

Consumer Advocate suggested several stylistic changes to paragraph 7.23(11)"b." It also stated that the use of "may" in the second sentence of the paragraph applies to the word "served," which is not entirely accurate. The Board agrees with the suggestions by Consumer Advocate and will adopt them.

Therefore, the Board will adopt the following changes to proposed paragraphs 7.23(11)"a" and "b":

- a. If a party fails to appear at a hearing after proper service of notice, or answer or otherwise respond to an appropriate pleading directed to and properly served upon that party, the board or presiding officer may, if no

adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Default decisions or decisions rendered on the merits after a party has failed to appear at a hearing ~~are~~ constitute final agency action unless otherwise ordered by the board or presiding officer. However, within 15 days after the date of notification or mailing of the decision, a motion to vacate may be filed with the board ~~and served on all parties~~. The motion to vacate must state all facts relied on by the moving party that show good cause existed for that party's failure to appear at the hearing or answer or otherwise respond to an appropriate pleading directed to and properly served upon that party. The stated facts must be substantiated by affidavit attached to the motion. Unless otherwise ordered, adverse parties shall have ten days to respond to a motion to vacate. If the decision is rendered by ~~a an administrative-law judge~~ presiding officer, the board may review it on the board's own motion within 15 days after the date of notification or mailing of the decision.

Consumer Advocate commented that paragraph 7.23(11)"g" states that the judgment of default can take effect immediately, subject to appeal or request for stay. Consumer Advocate stated it is not clear how this affects or interacts with the right to ask that the judgment be vacated as provided in paragraph "b." The Board agrees and will adopt the following modification to paragraph 7.23(11)"g":

g. A default decision may award any relief consistent with the record in the case. The default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a timely motion to vacate, an appeal pursuant to rule 7.26(17A,476), or a request for stay pursuant to rule 7.28(17A,476).

Proposed rule 7.25 Interlocutory appeals.

Consumer Advocate noted that there are general procedural steps provided with respect to motions in rule 7.12. It stated rule 7.25 should also specify procedures that apply to a request for interlocutory appeal, particularly the rights of other parties to respond. Consumer Advocate also stated that, if other parties are referred to as "respondents" in connection with "requests" for review of interlocutory orders, a reference to this could be added to the definition of "respondents" in rule 7.2.

The basis of proposed rule 7.25 is uniform rule X.25, which does not contain additional procedures as suggested by Consumer Advocate. The Board notes that there may be a need for speed with respect to interlocutory appeals in many cases, since the proceeding before the presiding officer may be ongoing. The level of complexity of the issues involved in an interlocutory appeal will vary a great deal. Therefore, the Board will need to decide on a case-by-case basis what procedure is necessary. There is no need to state this in the rule and the Board will therefore not add required procedures to proposed rule 7.25. In addition, the other parties will not be referred to as "respondents."

The Board notes that this rule should also apply to presiding officers other than the administrative law judge, such as when a case is assigned to a single Board member or another person designated as a presiding officer. Therefore, the Board

will change the term "administrative law judge" used in the proposed rule to "presiding officer."

Proposed rule 7.26 Appeals to board from ALJ decisions.

The proposed rule specifies a 15-day period for appealing proposed decisions. MEC stated it has no objection to memorializing the 15-day appeal period in subrule 7.26(2). However, it objected to memorializing only three specific grounds for shortening the appeal period. Instead, MEC stated that shortening the appeal period should be at the discretion of the presiding officer, like other matters in the proposed rules, or the standards for shortening should be changed by replacing the second sentence in proposed subrule 7.26(2) with the following:

The administrative law judge may shorten the time for appeal. In determining whether a request for a shortened appeal period should be granted, the administrative law judge may consider relevant objections of the parties, the relevance of any written objections filed in the case on the issue, and whether there are any issues that indicate a need for a 15-day appeal period.

The Board notes the 15-day appeal period is contained in current subrule 7.8(2). The Board agrees the language proposed by MEC would improve the proposed subrule. In addition, it is appropriate to consider the needs of the parties for a shortened appeal period. Therefore, the Board will modify proposed subrule 7.26(2) as stated below.

Consumer Advocate suggested that paragraph 7.26(6)"b" be clarified to make it clear that a party filing a cross-appeal is not subject to the time for filing the notice

of appeal, which is within 15 days of the issuance of the proposed decision. Rather, the party filing a cross-appeal must do so within 7 or 14 days after the filing of the notice of appeal, unless otherwise ordered. The Board agrees that paragraph 7.26(6)"b" could be clarified as suggested.

At the oral comment hearing, MEC suggested the Board consider including time for opposing parties to respond to cross-appeals in the cross-appeal subrule. It is unnecessary to add such a provision to subrule 7.26(6) because subrule 7.26(7) provides that the Board may issue an order establishing a procedural schedule, and the Board will determine the appropriate process, including any needed time for responses to cross-appeals, on a case-by-case basis.

Therefore, the Board will adopt the amendments to proposed subrule 7.26(6) as shown below. The Board will also adopt a modification to proposed subrule 7.26(4) to provide it with the ability to issue an appropriate order if it chooses with regard to the handling of newly-discovered material evidence.

The Board notes that proposed rule 7.26 should apply to appeals from proposed decisions of all presiding officers, not just to appeals from proposed decisions of the administrative law judge. In addition, the caption should be corrected to reflect that presiding officers issue proposed decisions. Therefore, the Board will adopt the following modifications to proposed rule 7.26.

199—7.26(17A,476) Appeals to board from a proposed decision of administrative law judge a presiding officer.

7.26(1) Notification of proposed decision. A copy of the ~~administrative law judge's~~ presiding officer's proposed decision and order in a contested case shall be sent by first-class mail, on the date the order is issued, to the last known address of each party. The decision shall normally include "Proposed Decision and Order" in the title and shall inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

7.26(2) Appeal from proposed decision. A proposed decision and order of the ~~administrative law judge~~ presiding officer in a contested case shall become the final decision of the board unless, within 15 days after the decision is issued, the board moves to review the decision or a party files an appeal of the decision with the board. The ~~administrative law judge~~ presiding officer may shorten the time for appeal. In determining whether a request for a shortened appeal period should be granted, the presiding officer may consider the needs of the parties for a shortened appeal period, relevant objections of the parties, the relevance of any written objections filed in the case, and whether there are any issues that indicate a need for the 15-day appeal period. ~~if no party objects, no written objections were filed in the case, and there are no issues that indicate a need for the 15-day appeal time.~~

7.26(3) Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal. The appellant shall file an original and ten copies of the notice of appeal with the board, provide a copy to the ~~administrative law judge~~ presiding officer, and simultaneously serve a copy of the notice pursuant to subrule 7.4(6) on all parties.

7.26(4) The board shall not consider any claim of error based on evidence which was not introduced before the ~~administrative law judge~~ assigned presiding officer. Newly-discovered material evidence must be presented to the ~~administrative law judge~~ presiding officer pursuant to a motion to reopen the record, unless the board orders otherwise.

7.26(5) Contents of notice of appeal. The notice of appeal shall include the following in separately numbered

paragraphs supported, where applicable, by controlling statutes and rules.

- a. A brief statement of the facts.
- b. A brief statement of the history of the proceeding, including the date and a description of any ruling claimed to be erroneous.
- c. A statement of each of the issues to be presented for review.
- d. A precise description of the error(s) upon which the appeal is based. If a claim of error is based on allegations that the ~~administrative law judge~~ presiding officer failed to correctly interpret the law governing the proceeding, exceeded the authority of an ~~administrative law judge~~ a presiding officer, or otherwise failed to act in accordance with law, the appellant shall include a citation to briefs or other documents filed ~~with the administrative law judge in the proceeding before the presiding officer~~ where the legal points raised in the appeal were discussed. If a claim of error is based on allegations that the ~~administrative law judge~~ presiding officer failed to give adequate consideration to evidence introduced at hearing, the appellant shall include a citation to pages of the transcript or other documents where the evidence appears.
- e. A precise statement of the relief requested.
- f. A statement as to whether an opportunity to file a brief or make oral argument in support of the appeal is requested and, if an opportunity is sought, a statement explaining the manner in which briefs and arguments presented to the ~~administrative law judge~~ presiding officer are inadequate for purposes of appeal.
- g. Certification of service showing the names and addresses of all parties upon whom a copy of the notice of appeal was served.

7.26(6) Responsive filings and cross-appeals. If parties wish to respond to the notice of appeal, or file a cross-appeal, they must file the response or notice of cross-appeal within 14 days after the filing of the notice of appeal, unless otherwise ordered by the board. When a statutory or other provision of law requires the board ~~a presiding officer~~ to issue a decision in the case in less than six months, the response or cross-appeal must be filed within seven days of filing the notice of appeal.

a. Responses shall specifically respond to each of the substantive paragraphs of the notice of appeal and shall state whether an opportunity to file responsive briefs or to participate in oral argument is requested.

b. Parties who file a cross-appeal must comply with the requirements for filing a notice of appeal contained in this rule, other than the requirement to file notice of the cross-appeal within 15 days after the proposed decision is issued.

7.26(7) Ruling on appeal. After the filing of the last appeal, response, or cross-appeal, the board shall issue an order that may establish a procedural schedule for the appeal or may be the board's final decision on the merits of the appeal.

Proposed subrule 7.1(3) Reference to rule 7.26.

The Board will revise the reference to rule 7.26 to reflect the new language in proposed subrule 7.1(3) as follows:

7.1(3) With the exception of rules 7.22(17A,476) (ex parte communications), 7.26(17A,476) (appeals from proposed decisions of administrative law judge a presiding officer), and 7.27(17A,476) (rehearing and reconsideration), none of these procedures shall apply to electric transmission line hearings under Iowa Code Chapter 478 and 199—Chapter 11 or to pipeline or underground gas storage hearings under Iowa Code Chapter 479 or 479B and 199—Chapters 10 and 13. Procedural rules applicable to these proceedings are found in the respective chapters.

Proposed subrule 7.27(1) Rehearing and reconsideration.

IPL stated that Iowa Code § 476.12 is silent with regard to reconsideration of Board decisions in matters other than contested cases. IPL suggested that applications for reconsideration in such matters may give the Board the opportunity to revisit decisions. Without such reconsideration, the person aggrieved or adversely affected by such decisions has no alternative but to go directly to judicial review.

Reconsideration could allow for a more reasonable resolution at the agency level. IPL suggested adding the following language to the subrule: "This subrule shall not be construed as prohibiting reconsideration of Board orders in other than contested cases."

The Board notes that Iowa Code §§ 17A.16(2) and 476.12 are both limited to rehearings of contested cases. Current rule 7.9, which formed the basis for proposed rule 7.27, also relates only to rehearings of contested cases. However, the Board does not see any harm from including this explanatory language in the proposed rule, and will therefore include it as suggested.

MEC stated the scope of the current rule, which is limited to applications for rehearing, has been expanded by the addition of applications for reconsideration. MEC stated there is no statutory support for the filing of an application for reconsideration. Iowa Code § 476.12 refers to applications for rehearing as the procedural device to be used to reconsider a Board order. MEC stated the new reference to reconsideration is confusing.

By adding "or reconsideration" to proposed rule 7.27, the Board was merely recognizing that some parties request the Board to reconsider a decision but do not necessarily request a formal rehearing, that is, an opportunity to present additional evidence. The Board does not believe this is confusing and believes Iowa Code §§ 17A and 476.12 provide sufficient authority for the proposed rule. Therefore, the Board will not remove "or reconsideration" from the proposed rule.

MEC also stated that Iowa Code § 476.12 specifically provides that a Board order is not stayed by the filing of an application for rehearing. However, MEC stated there is no provision in the proposed rules for stays of Board decisions pending rehearing. MEC stated that proposed rule 7.28 only provides for stays pending judicial review, which does not appear to encompass agency rehearings prior to judicial review. MEC stated that either rule 7.27 or 7.28 should address stays pending rehearing.

Iowa Code § 476.12 states that "[n]either the filing of an application for rehearing nor the granting of the application shall stay the effectiveness of an order unless the board so directs." This statute clearly provides the Board with authority to issue such a stay and this authority does not need to be repeated in the rules.

Proposed subrule 7.27(3) Requirements for objections to applications for rehearing or reconsideration.

Subrule 7.27(3) was proposed as follows:

7.27(3) Requirements for objections to applications for rehearing or reconsideration. Notwithstanding the provisions of subrule 7.9(2), an answer or objection to an application for a rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board. The answer or objection to the application shall substantially comply with the form prescribed in 199—subrule 2.2(8).

Consumer Advocate stated that this subrule provides that the answer or objection to an application for rehearing or reconsideration is due in 15 days, which is an exception to the general requirements for answers in rule 7.9. A reference to this

exception could be included in rule 7.9 to alert anyone looking for this information in that location to prevent a misunderstanding. The Board notes that the time for answer in proposed subrule 7.27(3) is 14 days, not 15 days, and therefore no change to the proposed subrule is needed.

IT IS THEREFORE ORDERED:

1. The rules as contained in the accompanying "Adopted and Filed" notice are hereby incorporated by reference and adopted by the Board as the final rules in Docket No. RMU-05-1.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 21st day of October, 2005.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 474.5, and 476.2 (2005), the Utilities Board (Board) gives notice that on October 21, 2005, the Board issued an order in Docket No. RMU-05-1, In re: Revised Procedural Rules, “Order Adopting Amendments.” The order adopts amendments, with certain revisions, which were published under Notice of Intended Action in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 3990B**.

The order adopts 199 IAC Chapters 7 and 26 and amends subrules 1.8(4) and 32.9(4). The Board's current Chapter 7 rules combine procedural rules applicable to all cases, unless specifically excluded, and procedural rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives. In this rule making, the Board leaves the general procedural rules applicable to all proceedings, unless specifically excluded, in Chapter 7. The Board moves all rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives to new Chapter 26 without making any changes to those rules at this time. The Board adopts a new rule 199—26.1(17A,476) setting forth the scope of the chapter, but the remaining rules in new Chapter 26 are the same as in current Chapter 7. Chapter 7 as adopted has been completely reorganized according to the chronological order of a typical contested case. Although the adopted Chapter 7 rules appear very different from the former Chapter 7 rules, most of the changes are grammatical

and organizational. The substantive changes that were made with the reasons for them were discussed in the Board's January 26, 2005, order commencing the rule making and in the order adopting the rules issued with this notice.

In this rule-making docket, the Board took comments only on the proposed Chapter 7 rules. It deferred consideration of the Chapter 26 rules for a separate rule-making docket. In addition, procedural rules applicable only to electric transmission line cases (E dockets) and pipeline permit proceedings (P dockets) will be proposed in a separate rule making docket.

The Board received written comments on the proposed rules from Interstate Power and Light Company (IPL), the Iowa Industrial Energy Group (IIEG), the Iowa Telecommunications Association, MidAmerican Energy Company (MEC), Qwest Corporation (Qwest), and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). An oral comment hearing was held on April 26, 2005. Representatives of IPL, MEC, Qwest, and the Consumer Advocate participated in the oral comment hearing. MEC, Qwest, the IIEG, IPL, and the Consumer Advocate each expressed their overall support for the proposed changes. The commentors also made numerous suggestions for changes to specific proposed rules.

The Board has made a number of revisions to the proposed rules as a result of the comments received. The Board's order adopting the rules, which contains a detailed summary of the oral and written comments received and the Board's responses to those comments, is contained in the file in this docket in the Board's Records and Information Center. The order is also available on the Board's Web site at www.state.ia.us/iub.

The amendments will become effective on December 14, 2005.

These amendments are intended to implement Iowa Code Chapter 17A and sections 474.5 and 476.2.

The following amendments are adopted.

Item 1. Amend subrule 1.8(4) as follows:

1.8(4) ~~Service of documents.~~

~~*a. Method of service.* Unless otherwise specified, the papers which are required to be served in a proceeding may be served by first class mail, properly addressed with postage prepaid, or by delivery in person. When a paper is served, the party effecting service shall file with the board proof of service substantially in the form prescribed in board rule 2.2(16) or by admission of service by the party served or his attorney. The proof of service shall be attached to a copy of the paper served. When service is made by the board, the board will attach an affidavit of service, signed by the person serving same, to the original of the paper.~~

~~*b. Date of service.* The date of service shall be the day when the paper served is deposited in the United States mail or is delivered in person.~~

~~*c. Parties entitled to service.* A party or other person filing a notice, motion, or pleading in any proceeding shall serve the notice, motion, or pleading on all other parties. Unless a different requirement is specified in these rules, a party formally filing any such document or any other material with the board shall serve three copies of the document or material on the consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. "Formal filings" include, but are not limited to, all documents~~

~~that are filed in a docketed proceeding, or that request initiation of a docketed proceeding. The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0069.~~

~~d. Number of copies. An original and ten copies are required for most filings made with the board. There are some exceptions, which are listed below. The board may request additional copies.~~

~~A = Annual Report (rate regulated 2 copies, non rate regulated 1 copy)~~

~~C = Complaints (original)~~

~~CCF = Customer Contribution Fund (original + 1 copy)~~

~~E = Electric Franchise or Certificate (original + 3 copies)~~

~~EAC = Energy Adjustment Clause (original + 3 copies)~~

~~GCU = Generating Certificate Utility (original + 20 copies)~~

~~H = Accident (original + 1 copy)~~

~~P = Pipeline Permit (original + 2 copies)~~

~~PGA = Purchased Gas Adjustment (original + 3 copies)~~

~~R = Reports-Outages (original + 1 copy)~~

~~RFU = Refund Filing Utility (original + 3 copies)~~

~~RN = Rate Notification (original + 2 copies)~~

~~TF = Tariff Filing (original + 3 copies)~~

~~e. Upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.~~

Cross reference to rules regarding placement of docket numbers on filings, service of documents, and required number of copies. The board's rule regarding placement of docket numbers on filings is at 199—subrule 7.4(3). The

board's rule regarding service of documents is at 199—subrule 7.4(6). The board's rule regarding required number of copies is at 199—subrule 7.4(4).

Item 2. Rescind 199—IAC 7 and adopt the following **new** Chapters 7 and 26 in lieu thereof:

CHAPTER 7

PRACTICE AND PROCEDURE

199—7.1(17A,476) Scope and applicability.

7.1(1) This chapter applies to contested case proceedings, investigations, and other hearings conducted by the board or a presiding officer, unless such proceedings, investigations, and hearings are excepted below, otherwise ordered in any proceeding if reasonably necessary to fulfill the objectives of the proceeding, or are subject to special rules or procedures that may be adopted in specific circumstances. If there are no other applicable procedural rules, this chapter applies to other types of agency action, unless the board or presiding officer orders otherwise.

7.1(2) Additional rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives are contained in 199—Chapter 26.

7.1(3) With the exception of rules 7.22(17A,476) (ex parte communications), 7.26(17A,476) (appeals from a proposed decision of a presiding officer), and 7.27(17A,476) (rehearing and reconsideration), none of these procedures shall apply to electric transmission line hearings under Iowa Code chapter 478 and 199—Chapter 11 or to pipeline or underground gas storage hearings under Iowa

Code chapter 479 or 479B and 199—Chapters 10 and 13. Procedural rules applicable to these proceedings are found in the respective chapters.

7.1(4) Notice of inquiry dockets. The board may issue a notice of inquiry and establish a docket through which the inquiry can be processed. The procedural rules in this chapter shall not apply to these dockets. Instead, the procedures for a notice of inquiry docket shall be specified in the initiating order and shall be subject to change by subsequent order or ruling by the board or the assigned inquiry docket manager. The procedures may include some or all of these procedural rules.

7.1(5) Reorganizations. Procedural rules applicable to reorganizations are included in 199—32.9(476). In the event the requirements in 199—32.9(476) conflict with the requirements in this chapter, the 199—32.9(476) requirements are controlling.

7.1(6) Discontinuance of service incident to utility property transfer.

a. Scope. This rule applies to discontinuance of utility service pursuant to Iowa Code section 476.20(1), which includes the termination or transfer of the right and duty to provide utility service to a community or part of a community incident to the transfer, by sale or otherwise, except a stock transfer incident to corporate reorganization. This rule does not limit rights or obligations created by other applicable statutes or rules including, but not limited to, the rights and obligations created by Iowa Code sections 476.22 to 476.26. Additional rules applicable to discontinuance of service by local exchange utilities and interexchange utilities are contained at rule 199—22.16. Discontinuance of service to individual customers is addressed in rules 199—19.4, 20.4, 21.4, and

22.4. Procedures in the event of a sale or transfer of a customer base by a telecommunications carrier are contained in paragraph 199—22.23(2)"e."

b. Application. A public utility shall obtain board approval prior to discontinuance of utility service. The public utility shall file an application for permission to discontinue service that includes a summary of the relevant facts and the grounds upon which the application should be granted. When the discontinuance of service is incident to the transfer of utility property, the transferor utility and the transferee shall file a joint application.

c. Approval. Within 30 days after an application is filed, the board shall approve the application or docket the application for further investigation. Failure to act on the application within 30 days will be deemed approval of the application.

d. Contested cases. Contested cases under paragraph "c" shall be completed within four months after date of docketing.

e. Criteria. The application will be granted if the board finds the utility service is no longer necessary, or if the board finds the transferee is ready, willing, and able to provide comparable utility service.

7.1(7) The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise required by law, may be waived by the board or presiding officer pursuant to 199—1.3(17A,474,476).

199—7.2(17A,476) Definitions. Except where otherwise specifically defined by law:

“Board” means the Iowa utilities board or a majority thereof.

“Complainants” are persons who complain to the board of any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of Iowa Code chapters 476 through 479B, or of any order or rule of the board.

"Consumer advocate" means the consumer advocate referred to in Iowa Code chapter 475A.

”Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a “no factual dispute” contested case under Iowa Code section 17A.10A.

“Data request” means a discovery procedure in which the requesting party asks another person for specified information or requests the production of documents.

"Expedited proceeding" means a proceeding before the board in which a statutory or other provision of law requires the board to render a decision in the proceeding in six months or less.

“Filed” means received at the office of the board in a manner and form in compliance with the board’s filing requirements.

“Intervenor” means any person who, upon written petition, is permitted to intervene in a specific proceeding before the board.

“Issuance” means the date written on the order unless another date is specified in the order.

“Parties” include, but are not limited to, complainants, petitioners, applicants, respondents, and intervenors.

“Party” means each person named or admitted as a party.

“Person” means as defined in Iowa Code section 4.1(20) and includes individuals and all forms of legal entities.

“Petitioner” or "applicant" means any party who, by written petition, application, or other filing, applies for or seeks relief from the board.

“Presiding officer” means one board member, the administrative law judge, or another person so designated by the board for the purposes of a particular proceeding.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case that has been assigned by the board to the presiding officer.

“Respondent” means any person against whom a complaint or petition is filed, or who by reason of interest or possible interest in the subject matter of a petition or application or the relief sought therein is made a respondent, or to whom an order is directed by the board initiating a proceeding.

“Service” means service by first-class mail pursuant to subrule 7.4(6), unless otherwise specified.

199—7.3(17A,476) Presiding officers. Presiding officers may be designated by the board to preside over contested cases and conduct hearings and shall have the following authority, unless otherwise ordered by the board:

1. To regulate the course of hearings;
2. To administer oaths and affirmations;
3. To rule upon the admissibility of evidence and offers of proof;
4. To take or cause depositions to be taken;

5. To dispose of procedural matters, discovery disputes, motions to dismiss, and other motions which may involve final determination of proceedings, subject to review by the board on its own motion or upon application by any party;

6. To certify any question to the board, in the discretion of the presiding officer or upon direction of the board;

7. To permit and schedule the filing of written briefs;

8. To hold appropriate conferences before, during, or after hearings;

9. To render a proposed decision and order in a contested case proceeding, investigation, or other hearing, subject to review by the board on its own motion or upon application by any party; and

10. To take any other action necessary or appropriate to the discharge of duties vested in the presiding officer, consistent with law and with the rules and orders of the board.

199—7.4(17A,474,476) General information.

7.4(1) Orders. All orders will be issued and placed in the board's records and information center. Orders shall be deemed effective upon issuance unless otherwise provided in the order. Parties and members of the public may view orders in the board's records and information center and may also view orders (other than orders granting confidential treatment) and a daily summary of filings on the board's Web site located at www.state.ia.us/iub.

7.4(2) Communications.

a. All communications to the board or presiding officer shall be addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, unless otherwise specifically directed by the board or

presiding officer. Pleadings and other papers required to be filed with the board shall be filed within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt by the executive secretary in a form that complies with the board's filing requirements. Documents filed with the board shall comply with the requirements in 199—subrule 2.1(3). Persons filing a document with the board must comply with the service requirements in subrule 7.4(6) at the time the document is filed with the board.

b. The board may accept filings electronically from time to time pursuant to instructions that will be delineated in the board order or other official statement authorizing those filings. See rule 7.7(17A,476) for requirements for electronic information filed with the board.

7.4(3) Reference to docket number. All filings made in any proceeding after the proceeding has been docketed by the board shall include on the first page a reference to the applicable docket number(s).

7.4(4) Number of copies.

a. An original and ten copies are required for most initial filings in a docket made with the board. There are some exceptions, which are listed below. The board or presiding officer may request additional copies.

A = Annual Report (rate-regulated 2 copies, non-rate-regulated 1 copy)

C = Complaints filed pursuant to 199—6.2(476) (original)

CCF = Customer Contribution Fund (original + 1 copy)

E = Electric Franchise or Certificate (original + 3 copies)

EAC = Energy Adjustment Clause (original + 3 copies)

E DR = Electric Delivery Reliability (original + 3 copies)

ES = Extended Area Services (original + 2 copies)

GCU = Generating Certificate Utility (original + 20 copies)

H = Accident (original + 1 copy)

HLP = Hazardous Liquid Pipeline (original + 2 copies)

NIA = Negotiated Interconnection Agreement (original + 3 copies)

P = Pipeline Permit (original + 2 copies)

PGA = Purchased Gas Adjustment (original + 3 copies)

R = Reports-Outages (original + 1 copy)

RFU = Refund Filing Utility (original + 4 copies)

RN = Rate Notification (original + 3 copies)

TF = Tariff Filing (original + 4 copies)

b. Unless otherwise ordered or specified in this rule, parties must file an original and ten copies of all filings including, but not limited to, pleadings and answers (rule 7.9(17A,476)), prefiled testimony and exhibits (rule 7.10(17A, 476)), motions (rule 7.12(17A,476)), petitions to intervene and responses (rule 7.13(17A,476)), proposals for settlement and responses (rule 7.18(17A,476)), stipulations (rule 7.19(17A,476)), withdrawals (rule 7.21(17A,476)), briefs (subrule 7.23(8)), motions to vacate (subrule 7.23(11)), motions to reopen (rule 7.24(17A,476)), interlocutory appeals (rule 7.25(17A,476)), appeals from proposed decisions of presiding officers and responses (rule 7.26(17A,476)), applications for rehearing and responses (rule 7.27(17A,476)), and requests for stay and responses (rule 7.28(17A,476)).

c. When separate dockets are consolidated into a single case, parties shall file one extra copy for each consolidated docket, in addition to the original and the normally required number of copies. For example, if three separate dockets are consolidated into a single case, parties must file an original plus two copies plus the normally required number of copies of each document.

d. Rule 7.23(17A,476) contains requirements regarding the required number of copies for evidence introduced at hearing and for briefs. Subrule 7.10(5) contains requirements regarding the required number of copies for workpapers and supporting documents.

e. 199—Chapter 26 contains additional requirements regarding the number of copies required to be filed in rate and tariff proceedings.

7.4(5) Defective filings. Only applications, pleadings, documents, testimony, and other submissions that conform to the requirements of an applicable rule, statute, or order of the board or presiding officer will be accepted for filing. Applications, pleadings, documents, testimony, and other submissions that fail to substantially conform with applicable requirements will be considered defective and may be rejected unless waiver of the relevant requirement has been granted by the board or presiding officer prior to filing. The board or presiding officer may reject a filing even though board employees have file-stamped or otherwise acknowledged receipt of the filing. If a filing is defective due only to the number of copies filed, the board's records and information center staff may correct the shortage of copies with the permission of the filing party and the filing party's agreement to cover all costs of reproduction.

7.4(6) Service of documents.

a. Method of service. Unless otherwise specified by the board or presiding officer or otherwise agreed to by the parties, documents that are required to be served in a proceeding may be served by first-class mail or overnight delivery, properly addressed with postage prepaid, or by delivery in person. In expedited proceedings, if service is made by first class mail instead of by overnight delivery or personal service, the sending party must supplement service by sending a copy by electronic mail or facsimile if an electronic mail address or facsimile number has been provided by the receiving party. When a document is served, the party effecting service shall file with the board proof of service in substantially the form prescribed in 199—subrule 2.2(16) or an admission of service by the party served or the party's attorney. The proof of service shall be attached to a copy of the document served. When service is made by the board, the board will attach a service list with a certificate of service signed by the person serving the document to each copy of the document served.

b. Date of service. Unless otherwise ordered by the board or presiding officer, the date of service shall be the day when the document served is deposited in the United States mail or overnight delivery, is delivered in person, or otherwise as the parties may agree. Although service is effective, the document is not deemed filed with the board until it is received by the board pursuant to subrule 7.4(2).

c. Parties entitled to service. A party or other person filing a notice, motion, pleading, or other document in any proceeding shall contemporaneously serve the document on all other parties. Parties shall serve documents containing confidential information pursuant to a confidentiality agreement executed by the

parties, if any. If the parties are unable to agree on a confidentiality agreement, they may ask the board or presiding officer to issue an appropriate order. A party formally filing any document or any other material with the board shall serve three copies of the document or material on the consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. "Formal filings" include, but are not limited to, all documents that are filed in a docketed proceeding, or that request initiation of a docketed proceeding. The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0063.

d. Service upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

7.4(7) Written appearance. Each party to a proceeding shall file a separate written appearance, substantially conforming to the form set forth in 199—subrule 2.2(15), identifying one person upon whom the board may serve all orders, correspondence, or other documents. If a party has previously designated a person to be served on the party's behalf in all matters, filing the appearance will not change this designation, unless the party directs that the designated person be changed in the appearance. If a party files an application, petition, or other initial pleading, or an answer or other responsive pleading, containing the information that would otherwise be required in an appearance, the filing of a separate appearance is not required. The appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed.

7.4(8) Representation by attorney at law.

a. Any party to a proceeding before the board or a presiding officer may appear and be heard through a licensed attorney at law. If the attorney is not licensed by the state of Iowa, permission to appear must be granted by the board or presiding officer. A verified statement that contains the attorney's agreement to submit to and comply with the Iowa Code of Professional Responsibility for Lawyers must be filed with the board and the written appearance of a resident attorney must be provided for service pursuant to Iowa Admission to the Bar rule 31.14(2).

b. A corporation or association may appear and present evidence by an officer or employee. However, only licensed attorneys shall represent a party before the board or a presiding officer in any matter involving the exercise of legal skill or knowledge, except with the consent of the board or presiding officer. All persons appearing in proceedings before the board or a presiding officer shall conform to the standard of ethical conduct required of attorneys before the courts of Iowa.

7.4(9) Cross reference to public documents and confidential filings. The board's rule regarding public documents and confidential filings is at 199—1.9(22).

7.4(10) Expedited proceedings.

a. If a person claims that a statutory or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall include the phrase "Expedited Proceedings Required" in the caption of the first pleading filed by the person in the proceeding. If the phrase is not so included in the caption, the board or presiding officer may find and order that the

proceeding did not commence for purposes of the required time for decision until the date on which the first pleading containing the required phrase is filed or such other date that the board or presiding officer finds is just and reasonable under the circumstances.

b. If a person claims that a statutory or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall state the basis for the claim in the first pleading in which the claim is made.

c. Shortened time limits applicable to expedited proceedings are contained in rules 7.9(17A, 476) (pleadings and answers), 7.12(17A, 476) (motions), 7.13(17A, 476) (intervention), 7.15(17A, 476) (discovery), and 7.26(17A, 476) (appeals from proposed decisions). An additional service requirement applicable to expedited proceedings is contained in subrule 7.4(6) (service of documents).

d. A party may file a motion that proceedings be expedited even though such treatment is not required by statute or other provision of law. Such voluntary expedited treatment may be granted at the board or presiding officer's discretion in appropriate circumstances considering the needs of the parties and the interests of justice. In these voluntary expedited proceedings, the board or presiding officer may shorten the filing dates or other procedures established in this chapter. The shortened time limits and additional service requirement applicable to expedited proceedings established in this chapter and listed in paragraph 7.4(10)"c" do not apply to voluntary expedited proceedings under this paragraph unless ordered by the board or presiding officer.

199—7.5(17A,476) Time requirements.

7.5(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.5(2) In response to a request or on its own motion, for good cause, the board or presiding officer may extend or shorten the time to take any action, except as precluded by statute.

199—7.6(17A,476) Telephone proceedings. The board or presiding officer may hold proceedings by telephone conference call in which all parties have an opportunity to participate. The board or presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when locations are determined.

199—7.7(17A,476) Electronic files. This rule applies to all electronic information (electronic files) filed with the board. The board or presiding officer, on its own motion or at the request of a party, may provide for additional or different requirements in specific cases, if necessary.

7.7(1) Electronic files shall be accompanied by a hard-copy printout and a hard-copy index that identifies each electronic file and includes, for each file, a brief description of the sources of inputs, operations performed, and where outputs are next used.

7.7(2) Electronic files that are compressed shall be accompanied by software and clear documentation to reverse the process of compression. If the software may be downloaded and used by the board without incurring a fee, the person filing the compressed electronic files may provide a reference to the Web source of the software.

7.7(3) Spreadsheets, workbooks, and databases shall include all cell formulae and cell references to allow board staff to analyze and reproduce calculations.

7.7(4) All electronic files shall be provided in editable form. Any files submitted in portable document format (PDF) shall be accompanied by the original files from which the PDF files were created, in native format and including calculations and formulae.

7.7(5) Electronic information shall be filed in accordance with the board's standards for electronic information unless prior arrangements are made. Standards are available from the board's Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319-0069, and may be reviewed on the board's Web site (www.state.ia.us/iub). If a person proposes to submit electronic information that does not comply with the standards, the person shall contact the executive secretary or general counsel of the board prior to submission. The board or presiding officer may order different requirements and standards for good cause.

199—7.8(17A,476) Delivery of notice of hearing. When the board or presiding officer issues an order containing a notice of hearing, delivery of the order will be by first-class mail unless otherwise ordered.

199—7.9(17A,476) Pleadings and answers

7.9(1) Pleadings. Pleadings may be required by statute, rule, or order.

7.9(2) Answers.

a. Unless otherwise ordered by the board or presiding officer, answers to complaints, petitions, applications, or other pleadings shall be filed with the board

within 20 days after the day on which the pleading being answered was served upon the respondent or other party. However, when a statute or other provision of law requires the board to issue a decision in the case in six months or less, the answer shall be filed with the board within ten days of service of the pleading being answered, unless otherwise ordered by the board or presiding officer.

b. Each answer must specifically admit, deny, or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support each answer.

c. Any party who deems the complaint, petition, application, or other pleading insufficient to show a breach of legal duty or grounds for relief may move to dismiss instead of, or in addition to, answering.

d. A party may apply for a more definite and detailed statement instead of, or in addition to, answering, if appropriate.

e. An answer shall substantially comply with the form prescribed in 199--subrule 2.2(8).

7.9(3) Amendments to pleadings. Amendments to pleadings may be allowed upon proper motion at any time during the pendency of the proceeding upon such terms as are just and reasonable.

199—7.10(17A,476) Prefiled testimony and exhibits.

7.10(1) The board or presiding officer may order the parties to file prefiled testimony and exhibits prior to the hearing. The use of prefiled testimony is the standard method for providing testimony in board contested case proceedings. If ordered to do so, parties must file the prefiled testimony and exhibits according to the schedule in the procedural order.

7.10(2) Prefiled testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. If possible, each line should be separately numbered. When a witness who has submitted prefiled testimony takes the stand, the witness does not ordinarily repeat the written testimony or give new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. However, the witness may be permitted to correct or update prefiled testimony on the stand and, in appropriate circumstances and with the approval of the board or presiding officer, may give a summary of the prefiled testimony. If the witness has more than three corrections to make, then the corrections should be filed in written form prior to the hearing.

7.10(3) Parties who wish to present a witness or other evidence in a proceeding shall comply with the board's or presiding officer's order concerning prefiled testimony and documentary evidence, unless otherwise ordered, or unless otherwise provided by statute or other provision of law.

7.10(4) Prefiled testimony and exhibits must be accompanied by an affidavit in substantially the following form: "I, [person's name], being first duly sworn on oath, state that I am the same [person's name] identified in the testimony being filed with this affidavit, that I have caused the testimony [and exhibits] to be prepared and am familiar with its contents, and that the testimony [and exhibits] is true and correct to the best of my knowledge and belief as of the date of this affidavit."

7.10(5) Prefiled testimony and exhibits shall include, where applicable:

- a. All supporting workpapers.

(1) Unless otherwise ordered by the board or presiding officer, electronic workpapers in native electronic formats that comply with the standards in rule 7.7(17A,476) shall be provided. Noncompliant electronic workpapers shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant electronic copies shall be provided upon request by any party, the board, or the presiding officer.

(2) All other workpapers and hard-copy printouts of electronic files shall be clearly tabbed and indexed, and pages shall be numbered. Each section shall include a brief description of the sources of inputs, operations contained therein, and where outputs are next used.

(3) Workpapers' underlying analyses and data presented in exhibits shall be explicitly referenced within the exhibit, including the name and other identifiers (e.g., cell coordinates) for electronic workpapers, and volume, tab, and page numbers for other workpapers.

~~(4) The source of any number used in a workpaper that was not generated by that workpaper shall be identified.~~

b. The derivation or source of all numbers used in either testimony or exhibits that were not generated by workpapers.

c. Copies of any specific studies or financial literature relied upon or complete citations for them if publicly available.

d. Electronic copies, in native electronic format, of all computer-generated exhibits that comply with the standards in rule 7.7(17A,476). Noncompliant electronic computer-generated exhibits shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant

electronic copies shall be provided upon request by any party, the board, or the presiding officer.

e. Unless otherwise ordered by the board or presiding officer, the following number of copies shall be filed:

- (1) Electronic workpapers - two copies and two hard-copy printouts.
- (2) Other workpapers - five copies.
- (3) Specific studies or financial literature - two copies.
- (4) Computer-generated exhibits - two copies.

7.10(6) If a party has filed part or all of prefiled testimony and exhibits as confidential pursuant to 199—1.9(22), and then later withdraws the claim of confidentiality for part or all of the testimony and exhibits, or if the board denies the request to hold the testimony and exhibits confidential, the party must refile the testimony and exhibits without the confidential stamp on each page.

199—7.11(17A,476) Documentary evidence in books and materials. When documentary evidence being offered is contained in a book, report, or other document, the offering party should ordinarily file only the material, relevant portions in an exhibit or read them into the record. If a party offers the entire book, report, or other document containing the evidence being offered, the party shall plainly designate the evidence so offered.

199—7.12(17A,476) Motions. Motions, unless made during hearing, shall be in writing, state the grounds for relief, and state the relief or order sought. Motions based on matters that do not appear of record shall be supported by affidavit. Motions shall substantially comply with the form prescribed in 199—subrule 2.2(14). Motions shall be filed and served pursuant to rule 7.4(17A,476). Any

party may file a written response to a motion no later than 14 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, written responses to a motion must be filed within seven days of the date the motion is filed, unless otherwise ordered by the board or presiding officer. Failure to file a timely response may be deemed a waiver of objection to the motion. Requirements regarding motions related to discovery are contained at 199—subrules 7.15(4) and 7.15(5).

199—7.13(17A,476) Intervention.

7.13(1) Petition. Unless otherwise ordered by the board or presiding officer, a request to intervene in a proceeding shall be by petition to intervene filed no later than 20 days following the order setting a procedural schedule. However, when a statutory or other provision of law requires the board to issue a decision in the case in six months or less, the petition to intervene must be filed no later than ten days following the order setting a procedural schedule, unless otherwise ordered by the board or presiding officer. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10).

7.13(2) Response. Any party may file a response within seven days of service of the petition to intervene unless the time period is extended or shortened by the board or presiding officer.

7.13(3) Grounds for intervention. Any person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of

the board or presiding officer. In determining whether to grant intervention, the board or presiding officer shall consider:

- a. The prospective intervenor's interest in the subject matter of the proceeding;
- b. The effect of a decision that may be rendered upon the prospective intervenor's interest;
- c. The extent to which the prospective intervenor's interest will be represented by other parties;
- d. The availability of other means by which the prospective intervenor's interest may be protected;
- e. The extent to which the prospective intervenor's participation may reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and
- f. Any other relevant factors.

7.13(4) In determining the extent to which the prospective intervenor's interest will be represented by other parties, the consumer advocate's role of representing the public interest shall not be interpreted as representing every potential interest in a proceeding.

7.13(5) The board or presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation in the proceeding. Leave to intervene shall generally be granted by the board or presiding officer to any person with a cognizable interest in the proceeding.

7.13(6) When two or more intervenors have substantially the same interest, the board or presiding officer, in its discretion, may order consolidation of petitions and briefs and limit the number of attorneys allowed to participate actively in the proceedings to avoid a duplication of effort.

7.13(7) A person granted leave to intervene is a party to the proceeding. However, unless the board or presiding officer rules otherwise for good cause shown, an intervenor shall be bound by any agreement, arrangement, or order previously made or issued in the case.

199—7.14(17A,476) Consolidation and severance.

7.14(1) Consolidation. The board or presiding officer may consolidate any or all matters at issue in two or more contested cases. When deciding whether to consolidate, the board or presiding officer shall consider:

- a. Whether the matters at issue involve common parties or common questions of fact or law;
- b. Whether consolidation is likely to expedite or simplify consideration of the issues involved;
- c. Whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and
- d. Any other relevant factors.

7.14(2) Severance. The board or presiding officer may order any contested case or portions thereof severed for good cause.

199—7.15(17A,476) Discovery.

7.15(1) Discovery procedures applicable in civil actions are available to parties in contested cases.

7.15(2) Unless otherwise ordered by the board or presiding officer or agreed to by the parties, data requests or interrogatories served by any party shall either be responded to or objected to, with concisely stated grounds for relief, within seven days of receipt. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, this time is reduced to five days.

7.15(3) Unless otherwise ordered by the board or presiding officer, time periods for compliance with all forms of discovery other than those stated in subrule 7.15(2) shall be as provided in the Iowa Rules of Civil Procedure.

7.15(4) Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer.

7.15(5) Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the board or presiding officer. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, this time is reduced to five days. The board or presiding officer may rule on the basis of the written motion and any response, or may order argument or other proceedings on the motion.

199—7.16(17A,476) Subpoenas.

7.16(1) Issuance.

a. An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In the absence of good cause for permitting later action, a request for a subpoena must be received at least seven days before the scheduled hearing.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

7.16(2) Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason.

199—7.17(17A,476) Prehearing conference. An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

199—7.18(17A,476) Settlements. Parties to a contested case may propose to settle all or some of the issues in the case. The board or presiding officer will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

7.18(1) Proposal of settlements. Two or more parties may by written motion propose settlements for adoption by the board or presiding officer. The motion shall contain a statement adequate to advise the board or presiding officer and

parties not expressly joining the proposal of its scope and of the grounds on which adoption is urged. Parties may propose a settlement for adoption by the board or presiding officer at any time.

7.18(2) Conference. After proposal of a settlement that is not supported by all parties, and prior to approval, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing the settlement proposal. Written notice of the date, time, and place shall be furnished at least seven days in advance to all parties to the proceeding. Attendance at any settlement conference shall be limited to the parties to a proceeding and their representatives. A party that has been given notice and opportunity to participate in the conference and does not do so shall be deemed to have waived its right to contest a proposed settlement, unless good cause is shown for the failure to participate.

7.18(3) Comment period. When a party to a proceeding does not join in a settlement proposed for adoption by the board or presiding officer, the party may file comments contesting all or part of the settlement with the board. Unless otherwise ordered by the board or presiding officer, the party shall file its comments within 14 days of filing of the motion proposing settlement, and shall serve such comments on all parties to the proceeding at the time of filing. Unless otherwise ordered by the board or presiding officer, parties shall file reply comments within seven days of filing of the comments.

7.18(4) Contents of comments. A party contesting a proposed settlement must specify in its comments the portions of the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Any failure by

a party to file comments, may, at the board's or presiding officer's discretion, constitute waiver by that party of all objections to the settlement.

7.18(5) Contested settlements. If the proposed settlement is contested, in whole or in part, on any material issue of fact by any party, the board or presiding officer may schedule a hearing on the contested issue(s). The board or presiding officer may decline to schedule a hearing where the contested issue of fact is not material or where the contested issue is one of law.

7.18(6) Unanimous proposed settlement. In proceedings where all parties join in the proposed settlement, parties may propose a settlement for adoption by the board or presiding officer any time after docketing. Subrules 7.18(2) through 7.18(5) shall not apply to a proposed settlement filed concurrently by all parties to the proceeding.

7.18(7) Inadmissibility. Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law, including, but not limited to, Iowa R. Evid. 5.408.

199—7.19(17A,476) Stipulations. Parties to any proceeding or investigation may, by stipulation filed with the board, agree upon the facts or law or any portion thereof involved in the controversy, subject to approval by the board or presiding officer.

199—7.20(17A,476) Investigations. The availability of discovery pursuant to Iowa Code section 17A.13 or the rules of civil procedure shall not be construed to limit the investigatory powers of the board, its representatives, or the consumer advocate.

199—7.21(17A,476) Withdrawals. A party requesting a contested case proceeding may, with the permission of the board or presiding officer, withdraw that request at any time prior to the issuance of a proposed or final decision in the case.

199—7.22(17A,476) Ex parte communication. Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives shall not communicate directly or indirectly with the board or presiding officer in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The board or presiding officer shall not communicate directly or indirectly with parties or their representatives in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate.

199—7.23(17A,476) Hearings.

7.23(1) Board or presiding officer. The board or presiding officer presides at the hearing and may rule on motions and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The board or presiding officer shall maintain the decorum of the hearing and may refuse to admit, may set limits on, or may expel from the hearing anyone whose conduct is disorderly.

7.23(2) Witnesses. Each witness shall be sworn or affirmed by the board, presiding officer, or the court reporter and be subject to examination and cross-examination. The board or presiding officer may limit questioning in a manner consistent with law. In appropriate circumstances, the board or presiding officer may order that witnesses testify as members of a witness panel.

7.23(3) Order of presenting evidence. The board or presiding officer shall determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice, taking into account the preferences of the parties. Normally, the petitioner shall open the presentation of evidence. In cases where testimony has been prefiled, each witness shall be available for cross-examination on all testimony prefiled by or on behalf of that witness when the witness takes the stand, either alone or as a member of a witness panel.

7.23(4) Evidence.

a. Subject to terms and conditions prescribed by the board or presiding officer, parties have the right to introduce evidence, cross-examine witnesses, and present evidence in rebuttal. Ordinarily, prefiled testimony is used in hearings pursuant to rule 7.10(17A,476). Nonsubstantive corrections to prefiled testimony may be made at the beginning of the testimony. However, if more than three corrections need to be made, the sponsoring party shall file corrected prefiled testimony prior to the hearing. The sponsoring party must provide one copy of prefiled testimony and included exhibits to the court reporter.

b. The board or presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with law.

c. Stipulation of facts is encouraged. The board or presiding officer may make a decision based on stipulated facts.

d. Unless previously included with prefiled testimony, the party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence shall be appropriately marked and made part of the evidentiary

record. If an exhibit is admitted, unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the exhibit to each opposing party, one copy for each board member or presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

e. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with the permission of the board or presiding officer, present the testimony. The board or presiding officer may require the offering party to file a written statement of the excluded oral testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record. Unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the document or exhibit to each opposing party, one copy for each board member or presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

7.23(5) Objections. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. All objections shall be timely made on the record and state the grounds relied on. The board or presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.23(6) Further evidence. At any stage during or after the hearing, the board or presiding officer may order a party to present additional evidence and may conduct additional proceedings as appropriate.

7.23(7) Participation at hearings by nonparties. The board or presiding officer may permit any person to be heard and to examine and cross-examine witnesses at any hearing, but such person shall not be a party to the proceedings unless so designated. The testimony or statement of any person so appearing shall be given under oath and such person shall be subject to cross-examination by parties to the proceeding, unless the board or presiding officer orders otherwise.

7.23(8) Briefs.

a. Unless waived by the parties with the consent of the board or presiding officer, the board or presiding officer shall set times for the filing and service of briefs. Unless otherwise ordered by the board or presiding officer, initial briefs shall be filed simultaneously by all parties and reply briefs shall be filed simultaneously.

b. Unless otherwise ordered, parties shall file an original and ten copies of briefs with the board and shall serve two copies of briefs on the other parties pursuant to subrule 7.4(6). Parties may serve one paper copy and one copy by electronic mail on the other parties instead of two paper copies. Three copies of briefs shall be served on the consumer advocate pursuant to subrule 7.4(6).

c. Initial briefs shall contain a concise statement of the case. Arguments based on evidence introduced during the proceeding shall specify the portions of the record where the evidence is found. Initial briefs shall include all arguments

the party intends to offer in support of its case and against the record case of the adverse party or parties. Unless otherwise ordered, a reply brief shall be confined to refuting arguments made in the brief of an adverse party. Unless specifically ordered to brief an issue, a party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the board or presiding officer from deciding the issue on the basis of evidence appearing in the record.

d. Every brief of more than 20 pages shall contain on its front leaves a table of contents with page references. Each party's initial brief shall not exceed 90 pages and each subsequent brief shall not exceed 40 pages, exclusive of the table of contents, unless otherwise ordered. Such orders may be issued ex parte. A brief that exceeds these page limits shall be deemed a defective filing and may be rejected as provided in subrule 7.4(5).

e. Briefs shall comply with the following requirements.

(1) The size of pages shall be 8½ by 11 inches.

(2) All printed matter must appear in at least 11-point type.

(3) There shall be margins of at least one inch on the top, bottom, right, and left sides of the sheet.

(4) The body of the brief shall be double-spaced.

(5) Footnotes may be single-spaced but shall not exceed one-half page in length.

(6) The printed matter may appear in any pitch, as long as the characters are spaced in a readable manner. Any readable font is acceptable.

7.23(9) Oral arguments. The board or presiding officer may set a time for oral argument at the conclusion of the hearing, or may set a separate date and time for oral argument. The board or presiding officer may set a time limit for argument. Oral argument may be either in addition to or in lieu of briefs. Unless specifically ordered to argue an issue, a party's failure to address an issue in oral argument shall not be deemed a waiver of the issue.

7.23(10) Record. The record of the case is maintained in the board's records and information center at the office of the board. Unless held confidential pursuant to 199—1.9(22), parties and members of the public may examine the record and obtain copies of documents other than the transcript. The transcript will be available for public examination, but copying of the transcript may be restricted by the terms of the contract with the court reporting service.

7.23(11) Default.

a. If a party fails to appear at a hearing after proper service of notice, or answer or otherwise respond to an appropriate pleading directed to and properly served upon that party, the board or presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Default decisions or decisions rendered on the merits after a party has failed to appear at a hearing constitute final agency action unless otherwise ordered by the board or presiding officer. However, within 15 days after the date of notification or mailing of the decision, a motion to vacate may be filed with the board. The motion to vacate must state all facts relied on by the moving party that show good cause existed for that party's failure to appear at the hearing or

answer or otherwise respond to an appropriate pleading directed to and properly served upon that party. The stated facts must be substantiated by affidavit attached to the motion. Unless otherwise ordered, adverse parties shall have 10 days to respond to a motion to vacate. If the decision is rendered by a presiding officer, the board may review it on the board's own motion within 15 days after the date of notification or mailing of the decision.

c. The time for appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Properly substantiated and timely filed motions to vacate shall be granted for good cause shown. The burden of proof as to good cause is on the moving party. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

e. A presiding officer's decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case. A presiding officer's decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 7.25(17A,476).

f. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the board or presiding officer shall schedule another hearing and the contested case shall proceed accordingly.

g. A default decision may award any relief consistent with the record in the case. The default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take

effect immediately, subject to a timely motion to vacate, an appeal pursuant to rule 7.26(17A,476), or a request for stay pursuant to rule 7.28(17A,476).

199—7.24(17A,476) Reopening record. The board or presiding officer, on its own motion or on the motion of a party, may reopen the record for the reception of further evidence. When the record was made before the board, a motion to reopen the record may be made any time prior to the issuance of a final decision. When the record was made before a presiding officer, a motion to reopen the record shall be made prior to the expiration of the time for appeal from the proposed decision, and the motion shall stay the time for filing an appeal. A motion to reopen the record shall substantially comply with the form prescribed in 199—subrule 2.2(12). Affidavits of witnesses who will present new evidence shall be attached to the motion and shall include an explanation of the competence of the witness to sponsor the evidence and a description of the evidence to be included in the record.

199—7.25(17A,476) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board may consider the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision would provide an adequate remedy. Any request for interlocutory review must be filed within ten days of issuance of the challenged order, but no later than the time for compliance with the order or ten days prior to the date of hearing, whichever is first.

199—7.26(17A,476) Appeals to board from a proposed decision of a presiding officer.

7.26(1) Notification of proposed decision. A copy of the presiding officer's proposed decision and order in a contested case shall be sent by first-class mail, on the date the order is issued, to the last known address of each party. The decision shall normally include "Proposed Decision and Order" in the title and shall inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

7.26(2) Appeal from proposed decision. A proposed decision and order of the presiding officer in a contested case shall become the final decision of the board unless, within 15 days after the decision is issued, the board moves to review the decision or a party files an appeal of the decision with the board. The presiding officer may shorten the time for appeal. In determining whether a request for a shortened appeal period should be granted, the presiding officer may consider the needs of the parties for a shortened appeal period, relevant objections of the parties, the relevance of any written objections filed in the case, and whether there are any issues that indicate a need for the 15-day appeal period.

7.26(3) Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal. The appellant shall file an original and ten copies of the notice of appeal with the board, provide a copy to the presiding officer, and simultaneously serve a copy of the notice pursuant to subrule 7.4(6) on all parties.

7.26(4) The board shall not consider any claim of error based on evidence which was not introduced before the presiding officer. Newly discovered material evidence must be presented to the presiding officer pursuant to a motion to reopen the record, unless the board orders otherwise.

7.26(5) Contents of notice of appeal. The notice of appeal shall include the following in separately numbered paragraphs supported, where applicable, by controlling statutes and rules.

- a. A brief statement of the facts.
- b. A brief statement of the history of the proceeding, including the date and a description of any ruling claimed to be erroneous.
- c. A statement of each of the issues to be presented for review.
- d. A precise description of the error(s) upon which the appeal is based. If a claim of error is based on allegations that the presiding officer failed to correctly interpret the law governing the proceeding, exceeded the authority of a presiding officer, or otherwise failed to act in accordance with law, the appellant shall include a citation to briefs or other documents filed in the proceeding before the presiding officer where the legal points raised in the appeal were discussed. If a claim of error is based on allegations that the presiding officer failed to give adequate consideration to evidence introduced at hearing, the appellant shall include a citation to pages of the transcript or other documents where the evidence appears.
- e. A precise statement of the relief requested.
- f. A statement as to whether an opportunity to file a brief or make oral argument in support of the appeal is requested and, if an opportunity is sought, a

statement explaining the manner in which briefs and arguments presented to the presiding officer are inadequate for purposes of appeal.

g. Certification of service showing the names and addresses of all parties upon whom a copy of the notice of appeal was served.

7.26(6) Responsive filings and cross-appeals. If parties wish to respond to the notice of appeal, or file a cross-appeal, they must file the response or notice of cross-appeal within 14 days after the filing of the notice of appeal, unless otherwise ordered by the board. When a statutory or other provision of law requires the board to issue a decision in the case in less than six months, the response or cross-appeal must be filed within seven days of filing the notice of appeal.

a. Responses shall specifically respond to each of the substantive paragraphs of the notice of appeal and shall state whether an opportunity to file responsive briefs or to participate in oral argument is requested.

b. Parties who file a cross-appeal must comply with the requirements for filing a notice of appeal contained in this rule, other than the requirement to file notice of the cross-appeal within 15 days after the proposed decision is issued.

7.26(7) Ruling on appeal. After the filing of the last appeal, response, or cross-appeal, the board shall issue an order that may establish a procedural schedule for the appeal or may be the board's final decision on the merits of the appeal.

199—7.27(17A,476) Rehearing and reconsideration.

7.27(1) Application for rehearing or reconsideration. Any party to a contested case may file an application for rehearing or reconsideration of the final decision.

The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the contested case is issued. This subrule shall not be construed as prohibiting reconsideration of board orders in other than contested cases.

7.27(2) Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included. An application shall substantially comply with the form prescribed in 199—subrule 2.2(13).

7.27(3) Requirements for objections to applications for rehearing or reconsideration. Notwithstanding the provisions of subrule 7.9(2), an answer or objection to an application for a rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board. The answer or objection to the application shall substantially comply with the form prescribed in 199—subrule 2.2(8).

199—7.28(17A,476) Stay of agency decision.

7.28(1) Any party to a contested case proceeding may petition the board for a stay or other temporary remedy pending judicial review of the proceeding. The petition shall state the reasons justifying a stay or other temporary remedy and be served on all other parties pursuant to subrule 7.4(6).

7.28(2) In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)(c).

7.28(3) A stay may be vacated by the board upon application of any party.

199—7.29(17A,476) Emergency adjudicative proceedings.

7.29(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue an emergency adjudicative order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency adjudicative order, the board may consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to provide reasonably reliable information under the circumstances;
- b. Whether the specific circumstances that pose immediate danger to the public health, safety, or welfare are likely to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

7.29(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the board's discretion, to justify the determination of an immediate danger and the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by the most reasonably available method, which may include one or more of the following methods: personal delivery; certified mail; first-class mail; fax; or E-mail. To the degree practical, the board shall select the method or methods most likely to result in prompt, reliable delivery.

c. Unless the written emergency adjudicative order is delivered by personal service on the day issued, the board shall make reasonable efforts to contact the persons who are required to comply with the order by telephone, in person, or otherwise.

7.29(3) Completion of proceedings. Issuance and delivery of a written emergency adjudicative order will normally include notification of a procedural schedule for completion of the proceedings.

These rules are intended to implement Iowa Code chapter 17A and sections 474.5 and 476.2.

CHAPTER 26

RATE CASES, TARIFFS, AND RATE REGULATION ELECTION

PRACTICE AND PROCEDURE

199—26.1(17A,476) Scope and applicability.

26.1(1) This chapter contains procedural rules applicable only to rate cases, tariff filings, and rate regulation election by electric cooperatives. The board's general contested case procedural rules that also apply to these types of proceedings are contained in 199—Chapter 7.

26.1(2) The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise required by law, may be waived by the board pursuant to 199—1.3(17A,474,476).

199—26.2(17A,476) Defective filings. No application, pleading, document, testimony or other submission filed with a tariff incorporating changes in rates, charges, schedules, or regulations for public utility service shall be rejected as defective under this rule after the date of a board order docketing investigation of the tariff as a formal proceeding.

199—26.3(17A,476) Proposal of settlements. In proposed settlements which resolve all revenue requirement issues in a rate case proceeding, parties to the settlement shall jointly file the revenue requirement calculations reflecting the adjustments proposed to be settled. In proposed settlements which resolve some revenue requirement issues in a rate case proceeding and retain some issues for litigation, each party to the settlement who has previously filed a complete revenue requirement calculation shall file its revenue requirement calculation reflecting the adjustments proposed to be settled and any remaining issues to be litigated. In proposed settlements which produce an agreed-upon revenue requirement as a mutually acceptable outcome to the proceeding without an agreement on each revenue requirement issue, parties to the

settlement shall jointly file schedules reflecting the specific adjustments for which the parties reached agreement. For those issues included in the proposed settlement which were not specifically resolved, the schedules should identify the range between the positions of the parties.

199—26.4(476) Rate case expense.

26.4(1) A utility making an application pursuant to Iowa Code section 476.6 shall file, within one week of docketing of the rate case, the estimated or, if available, actual expenses incurred or to be incurred by the utility in litigating the rate case. Except for expenses incurred in preparation of the rate filing and notification of customers, the expenses shall be limited to expenses incurred in the time period from the date the initial application is filed through the utility's reply brief. Each expense shall be designated as either estimated or actual.

26.4(2) Estimated or, if available, actual expenses shall identify specifically:

a. Printing costs for the following:

(1) Rate notification letters

(2) Initial filing

(3) Testimony

(4) Briefs

(5) Other (specify)

b. Postage costs

c. Outside counsel cost

(1) Number of attorneys engaged as outside counsel

(2) Hours

(3) Cost/hour

d. Outside expert witness/consultant

(1) Number of outside consultants employed

(2) Hours per consultant employed

(3) Cost/hour per consultant employed

e. Expenses stated by individual for both outside consultants and utility personnel

(1) Travel

(2) Hotel

(3) Meals

(4) Other (specify)

f. Other (specify)

26.4(3) Rate case expense shall not include recovery for expenses that are otherwise included in test year expenses, including salaries for staff preparing filing, staff attorneys, and staff witnesses. Rate case expense shall include only expenses not covered by test year expenses for the period stated in subrule 26.4(1).

26.4(4) Total allowable rate case expense shall include expenses incurred by board staff and the consumer advocate for the time period stated in subrule 26.4(1). The rate case expense to be filed by the utility shall not include these expenses.

26.4(5) The reasonableness of the estimates shall be litigated during the proceeding. At the request of the consumer advocate or the utilities board, company shall make witnesses available on any item included in the estimated rate case expense for cross-examination during the hearing.

26.4(6) Actual utility expenses shall be filed in the same format and detail as estimated expenses and shall be filed within two weeks after filing the final brief. All material variances shall be fully supported and justified.

26.4(7) The board may schedule any additional hearings to litigate the reasonableness of the final expenses.

This rule is intended to implement Iowa Code section 476.6(8).

199—26.5(476) Applications and petitions.

26.5(1) Customer notification procedures.

a. Definitions. Terms not otherwise defined in these rules shall be understood to have their usual meaning.

(1) “Rates” shall mean amounts per unit billed to customers for a recurring service or commodity rendered or offered by the public utility. “Rate amounts” shall mean the total bill rendered to a customer pursuant to a given rate schedule.

(2) “Charges” shall mean amounts billed to customers for a nonrecurring service or commodity rendered or offered by the public utility.

(3) “Commodity” or “commodities” shall mean water, electricity, or natural gas.

(4) “Effective date” shall mean the date on which the first customer begins receiving the service or commodity under the new rate or charge.

b. Notification of customers. All public utilities, except those exempted from rate regulation by Iowa Code section 476.1 which propose to increase rates or charges, shall mail or deliver a written notice pursuant to paragraph “c” or “d” to all customers in all affected rate classifications. The written notice shall be

mailed or delivered before the application for increase is filed, but not more than 62 days prior to the filing. Any public utility exempt from rate regulation by Iowa Code section 476.1, which proposes to increase rates or charges, shall mail or deliver, not less than 30 days prior to the proposed effective date, a written notice pursuant to paragraph "c" or "d" of the rate or charge increase to all customers in all affected rate classifications.

Provided, however, that if a telephone utility is proposing to increase rates for only interexchange services, excluding EAS and intrastate access services, the utility shall cause the notice of proposed increase to be published, in at least one newspaper of general circulation in each county where such increased rates are proposed to be effective. The notice shall be published at least twice in such newspaper no more than 62 days prior to the time the application for the increase is filed with the board.

c. Standardized notice.

(1) Rate-regulated utilities. Any rate-regulated utility company may use the following forms for notification of its customers without seeking prior board approval. If the utility is asking for a general and interim increase, it should use Form A below. If the utility is asking for only a general increase, it should use Form B below.

Form A

Dear Customer:

(Company Name) (We) are asking the Iowa Utilities Board for an increase in (type of service) utility (rates) (and) (charges) with a proposed effective date of (date).

The proposed increase in annual revenues will be approximately \$(number), or (number)% .

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges)	Current (Charge)				Proposed (Charge)	
(Customer <u>Class</u>)	(Monthly <u>Rate</u>)	+	Proposed <u>Increase</u>	=	(Monthly <u>Rate</u>)	Percentage <u>Increase</u>

This proposed increase in (rates) (and) (charges) may be docketed by the Board, which suspends the effective date of the proposed (rates) (and) (charges). If the proposed (rates) (and) (charges) are suspended, we are asking the Board for temporary authority to place into effect the following interim increase (collected subject to refund), to be effective (date). The Board may set interim (rates) (and) (charges) other than these:

Proposed Interim Rate Increase

(Charges)	Current (Charge)				Proposed (Charge)	
(Customer <u>Class</u>)	(Monthly <u>Rate</u>)	+	Proposed <u>Increase</u>	=	(Monthly <u>Rate</u>)	Percentage <u>Increase</u>

After a thorough investigation, the Board will order final (rates) (and) (charges) which may be different from those proposed, and determine when the (rates) (and) (charges) will become effective. If the final (rates) (and) (charges) are lower than the interim (rates) (and) (charges), the difference between the final and interim (rates) (and) (charges) will be refunded with interest.

You have the right to file a written objection to this proposed increase with the Board and to request a public hearing. The address of the Board is: Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The Board should be provided with any facts that would assist it in determining the justness and reasonableness of this requested increase. This information will be made available to the Consumer Advocate, who represents the public interest in rate cases before the Board.

A written explanation of all current and proposed rate schedules is available without charge from your local business office. If you have any questions, please contact your local business office.

Form B

Dear Customer:

(Company Name) (We) are asking the Iowa Utilities Board for an increase in (type of service) utility (rates) (and) (charges) with a proposed effective date of (date).

The proposed increase in annual revenues will be approximately \$(number), or (number)%.

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

<u>(Charges)</u> <u>(Customer Class)</u>	Current (Charge) (Monthly <u>Rate)</u>	+ <u>Proposed</u> <u>Increase</u>	=	Proposed (Charge) (Monthly <u>Rate)</u>	<u>Percentage</u> <u>Increase</u>
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This proposed increase in (rates) (and) (charges) may be docketed by the Board, which suspends the effective date of the proposed (rates) (and) (charges). After a thorough investigation, the Board will order final (rates) (and) (charges) which may be different from those we requested. These final (rates) (and) (charges) will become effective at a date set by the Board.

You have the right to file a written objection to this proposed increase with the Board and to request a public hearing. The address of the Board is Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The Board should be provided with any facts that would assist it in determining the justness and reasonableness of this requested increase. This information will be available to the Consumer Advocate, who represents the public interest in rate cases before the Board.

A written explanation of all existing and proposed rate schedules is available without charge from your local business office. If you have any questions, please contact your local business office.

(2) Utilities not subject to rate regulation. A utility not subject to rate regulation may use the following form for notification of its customers without seeking prior board approval.

Dear Customer:

On (date), (responsible party) approved an increase in (rates) (and) (charges) affecting prices for (type of service) that you receive. The increase will apply to your usage beginning on (date).

The increase in annual revenues will be approximately \$(number), or (number)%.

Although the effect of the increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges) (Customer Class)	Current (Charge) (Monthly Rate)	+ Proposed Increase	=	(Charge) (Monthly Rate)	Percentage Increase
	<u>Rate</u>			<u>Rate</u>	<u>Increase</u>

A written explanation of all current rate schedules is available without charge from our local business office. If you have any questions, please contact our business office.

(3) General requirements for a form notice. The standardized notice provided under this subsection shall be of a type size and of a quality which is easily legible. A copy of the notice with dates, cost figures, and cost percentages shall be filed with the board at the time of customer notification.

Any utility offering services or systems involving detailed rate schedules must include in its notification to customers a paragraph specifically noting the services or systems for which any increase is proposed and advising customers to contact the utility's local business office for further explanation of the increase.

Any "average" used in the standard form shall be a median average.

d. Other customer notification forms.

(1) Prior approval. Any public utility, as defined in Iowa Code section 476.1, which proposes to increase rates or charges and is not in substantial compliance with the form prescribed in 26.5(1)"c" above, shall submit to the board not less than 30 days before providing notification to its customers in accordance with

26.5(1)"b," ten copies of such proposed notice for approval. The board, for good cause shown, may permit a shorter period for approval of the proposed notice.

(2) Form. The proposed notice as submitted to the board pursuant to 26.5(1)"d"(1) may contain blank spaces for dates, cost figures and cost percentages; however, a copy of the approved notice with dates, cost figures, and cost percentages shall be filed with the board at the time of the customer notification. The form of the notice, as approved by the board, may not be altered in the final form except to include dates, cost figures, and cost percentages reflecting the latest updates. The notice shall be of a type size and of a quality which is easily legible and shall be of the same format as that which was approved by the board.

(3) Required content of notification. The notice submitted for approval pursuant to 26.5(1)"d"(1) shall include, at a minimum, all of the information contained in the standard notice of 26.5(1)"c."

(4) Notice of deficiencies. Within 30 days of the proposed notice's filing, the utility shall be notified of either the approval of the notice or of any deficiencies in the proposed notice. In the event deficiencies are found to exist in the proposed notice, the board will describe the corrective measures necessary to bring the notice into compliance with Iowa Code chapter 476 and board rules. A notice found to be deficient under this rule shall not constitute adequate notice under Iowa Code section 476.6.

(5) Fuel adjustment clause. Nothing in this subsection shall be taken to prohibit a public utility from establishing a sliding scale of rates and charges or from making provision for the automatic adjustment of rates and charges for

public utility service, provided that a schedule showing such sliding scale or automatic adjustment of rates and charges is first filed with the board. Such adjustment factors that result from the sliding scale shall be printed on the customer's bill.

e. Reserved.

f. Delivery of notification.

(1) The notice, as it appears in 26.5(1)"c" or as approved by the board in accordance with 26.5(1)"d," shall be mailed or delivered to all affected customers pursuant to the timing requirements of 26.5(1)"b."

(2) Rate-regulated utilities. Notice of all proposed increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice, except for proposed nonrecurring service charge increases, shall be conspicuously marked, "Notice of proposed rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification except for proposed nonrecurring service charge increases, the outside of the mailing shall also be conspicuously marked, "Notice of proposed rate increase."

(3) Utilities not subject to rate regulation. Notice of all increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice of all increases, except nonrecurring service charge increases, shall be conspicuously marked, "Notice of rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification of an increase, except a nonrecurring service charge

increase, the outside of the mailing shall also be conspicuously marked, "Notice of rate increase." This subparagraph does not apply to municipal utilities.

(4) Failure of the postal service to deliver the notice to any customers shall not invalidate or delay a proposed rate increase proceeding.

(5) After the date the first notice is mailed or delivered to any affected customer and until such rates are resolved in proceedings before the board, any person who requests service and is affected by the proposed increase in rates shall receive a notice specified in paragraph 26.5(1)"b" not later than 60 days after the date of commencement of service to the customer.

(6) Approved notice will be required for each filing proposing an increase that is not directly identifiable with a previous customer notification.

(7) This subrule shall not apply to telephone utilities proposing to increase rates for only interexchange services, excluding EAS and intrastate access services.

26.5(2) Applications filed in accordance with the provisions of Iowa Code section 476.7.

a. Any rate-regulated public utility filing an application with the board requesting a determination of the reasonableness of its rates, charges, schedules, service, or regulations shall submit at the time the application is filed, factual evidence and written argument offered in support of its filing and provided that the public utility is not a rural electric cooperative, it shall also submit affidavits containing testimonial evidence in support of its filing for a general rate increase. All such testimony and exhibits shall be given or presented by competent witnesses, under oath or affirmation, at the proceeding ordered by the

board as a result of the application, and the proceeding itself shall be governed by the applicable provisions of 199—Chapter 7 and rule 26.4(476).

b. All of the foregoing requirements shall likewise apply in the event the board shall, on its own motion, initiate a formal proceeding to determine the reasonableness of a public utility's rates, charges, schedules, service, or regulations.

26.5(3) Tariffs to be filed. A rate-regulated public utility shall not make effective any new or changed rate, charge, schedule, or regulation until it has been approved by the board and the board has determined an effective date, except as provided in Iowa Code section 476.6, subsections 11 and 13. If the proposed new or changed rate, charge, schedule, or regulation is neither rejected nor approved by the board, the board will docket the tariff filing as a formal proceeding within 30 days after the filing date. Proposed new or changed rates, charges, schedules, or regulations which contain energy efficiency expenditures and related costs which are incurred after July 1, 1990, for demand-side programs shall not be included in a rate-regulated utility's proposed tariff which relates to a general increase in revenue. A utility may propose to recover the costs of process-oriented industrial assessments not related to energy efficiency as defined in rule 199—35.2(476). The filing is not a contested case proceeding under the Iowa administrative procedure Act unless and until the board docket it as a formal proceeding. No person will be permitted to participate in the filing prior to docketing, except that the consumer advocate and any customer affected by the filing, except as limited by 199—subrules 22.12(1) and 22.13(1), may submit within 20 days after the filing date a written objection to

the filing and a written request that the board docket the filing, which request the board may grant in its discretion. Such written objections and requests for docketing shall set forth specific grounds relied upon in making the objection or request.

26.5(4) Letter of transmittal. Three copies of all tariffs and all additional, original, or revised sheets of tariffs and the accompanying letter of transmittal shall be filed with the board and shall include or be accompanied with such information as is necessary to explain the nature, effect, and purpose of the tariff or additional, original, or revised sheets submitted for filing. Such information shall include, when applicable:

- a. The amount of the aggregate annual increase or decrease proposed.
- b. The names of communities affected.
- c. The number and classification of customers affected.
- d. A summary of the reasons for filing and such other information as may be necessary to support the proposed changes.
- e. A marked version of the pages to be changed or superseded showing additions and deletions, if the tariff is prepared with word processing software supporting such marking. All new language must be marked by highlight, background shading, bold text, or underlined text. Deleted language must be indicated by strike-through. The marked version may be in either paper or electronic form and may be prepared manually or by word processing. When a marked version is infeasible or not meaningful, the letter or transmittal should state the reason for its omission.

26.5(5) Evidence. Unless otherwise authorized by the board in writing prior to filing, a utility must when proposing changes in tariffs or rate schedules, which changes relate to a general increase in revenue, prepare and submit with its proposed tariff the following evidence in addition to the information required in 26.5(8). The board shall act on requests for waivers not later than 14 days after filing of those requests. If no action is taken on a request for waiver, it shall be deemed denied.

a. Factors relating to value. A statement showing the original cost of the items of plant and facilities, for the beginning and end of the last available calendar year, any other factors relating to the value of the items of plant and facilities the utility deems pertinent to the board's consideration, together with information setting forth budgeting accounts for the construction of scheduled improvements.

b. Comparative operating data. Information covering the latest available calendar year immediately preceding the filing date of the application.

(1) Operating revenue and expenses by primary account.

(2) Balance sheet at beginning and end of year.

c. Test year and pro forma income statements. Schedules setting forth revenues, expenses, net operating income of the last available calendar year, the adjustment of unusual items, and by adjustment to reflect operations for a full year under existing and proposed rates.

d. Additional evidence for rural electric cooperatives. In addition to the foregoing evidence, a rural electric cooperative shall file schedules setting forth utility long-term debt and debt costs, accrued utility operating margins and other

components of patronage capital, the cooperative's plan to refund utility patronage credits, the ratio of utility long-term debt to retained utility operating margins, the times interest earned ratio, the debt service coverage, authorized utility construction programs, utility operating revenues from base rates, and utility operating revenues from power cost adjustment clauses.

e. Additional evidence for investor-owned utilities. In addition to the foregoing evidence, an investor-owned utility shall file, at the same time the proposed increase is filed, the following information. For the purposes of these rules, "year of filing" means the calendar year in which the filing is made. Unless otherwise specified in these rules, the information required shall be based upon the calendar year immediately preceding the year of filing.

(1) Rate base for both total company and Iowa jurisdictional operations calculated by utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis, except for the cash working capital component of this figure, which will be computed on the basis of a lead-lag study as set forth in subparagraph (5).

The rate base for the Iowa jurisdictional operations of rate-regulated telephone utilities will be computed on the basis of actual month-end balances which have been verified and adjusted to reflect the results of true-up procedures. True-up is the comparison of actual usage for each deregulated service with any previous estimates of deregulated usage for a given time period for the purpose of adjusting rate base and income statement allocations between deregulated and regulated services. Trued-up month-end balances for each

deregulated service will be completed through the end of the test year prior to the date of filing a general rate case.

(2) Revenue requirements for both total company and Iowa jurisdictional operations to include: operating and maintenance expense, depreciation, taxes, and return on rate base. The Iowa jurisdictional expenses of rate-regulated telephone utilities will be adjusted to reflect allocation factors which have been computed as a result of actual month-end balances which have been verified and adjusted to reflect the results of true-up procedures. True-up is the comparison of actual usage for each deregulated usage for a given time period for the purpose of adjusting rate base and income statement allocations between deregulated and regulated services. Trued-up month-end balances for each deregulated service will be completed through the end of the test year prior to the date of filing a general rate case.

(3) Capital structure calculated utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis.

(4) Schedules supporting the proposed capital structure, schedules showing the calculation of the proposed capital cost for each component of the capital structure and schedules showing requested return on rate base with capital structure and corresponding capital cost.

(5) Cash working capital requirements, including a recent lead-lag study which accurately represents conditions during the test period. For the purposes of this rule, a lead-lag study is defined as a procedure for determining the

weighted average of the days for which investors or customers supply working capital to operate the utility.

(6) Complete federal and state income tax returns for the two calendar years preceding the year of filing and all amendments to those returns. If a tax return or amendment has not been prepared at the time of filing, the return shall be filed with the board under this subrule at the time it is filed with the Internal Revenue Service or the state of Iowa department of revenue.

(7) Schedule of monthly Iowa jurisdictional expense by account as required by chapter 16 of the board's rules unless, upon application of the utility and prior to filing, the board finds that the utility is incapable of reporting jurisdictional expense on a monthly basis and prescribes another periodic basis for reporting jurisdictional expense.

(8) For gas, electric and water utilities, a schedule of monthly consumption (units sold) and revenue by customer-rate classes, reflecting separately revenue collected in base rates and adjustment clause revenues. For telephone companies, a rate matrix as set forth in the company's annual report (page B-16), shall be filed along with a statement of the total amount of revenue produced under the rate matrix.

(9) Schedules showing that the rates proposed will produce the revenues requested. In addition to these schedules, the utility shall submit in support of the design of the proposed rate a narrative statement describing and justifying the objectives of the design of the proffered rate. If the purpose of the rate design is to reflect costs, the narrative should state how that objective is achieved, and should be accompanied by a cost analysis that would justify the

rate design. If the rate design is not intended to reflect costs, a statement should be furnished justifying the departure from cost-based rates. This filing shall be in compliance with all other rules of the board concerning rate design and cost studies.

(10) All monthly or periodic financial and operating reports to management beginning in January two years preceding the year of filing. The item or items to be filed under this rule include: (a) reports of sales, revenue, expenses, number of employees, number of customers, or similar data; (b) related statistical material. This requirement shall be a continuing one, to remain in effect through the month that the rate proceeding is finally resolved. Notwithstanding other provisions concerning the number of copies to be filed, one copy of each report shall be filed under this rule.

(11) Schedule of monthly tax accruals separated between federal, state, and property taxes, including the methods used to determine these amounts.

(12) Allocation methods, including formulas, supporting revenue, expense, plant or tax allocations.

(13) Schedule showing interest rates, dividend rates, amortizations of discount and premium and expense, and unamortized 13 monthly balances of discount and premium and expense, ending on December 31 of the year preceding the year of filing, for long-term debt and preferred stock.

(14) Schedule showing the 13 monthly balances of capital stock expense associated with common stock, ending on December 31 of the year preceding the year of filing.

(15) Schedule showing the 13 monthly balances of capital surplus, separated between common and preferred stock, ending on December 31 of the year preceding the year of filing. For the purpose of this rule, capital surplus means amounts paid in that are less than or are in excess of par value of the respective stock issues.

(16) Stockholders' reports, including supplements for the year of filing and the two preceding calendar years. If such reports are not available at the time of filing, they shall be filed immediately upon their availability to stockholders.

(17) If applicable, securities and exchange commission Form 10Q for all past quarters in the year of filing and the preceding calendar year, and Form 10K for the two preceding calendar years. If these forms have not been filed with the Securities and Exchange Commission at the time the rate increase is filed, they shall be filed under this subrule immediately upon filing with the Securities and Exchange Commission. This requirement is not applicable for any such reports which are routinely and formally filed with the board.

(18) Any prospectus issued during the year of filing or during the two preceding calendar years.

(19) Consolidated and consolidating financial statements.

(20) Revenue and expenses involving transactions with affiliates and the transfer of assets between the utility and its affiliates.

(21) A schedule showing the following for each of the 15 calendar years preceding the year of filing, and for each quarter from the first quarter of the calendar year immediately preceding the year of filing through the current quarter.

Earnings, annual dividends declared, annual dividends paid, book value of common equity, and price of common equity (each item should be shown per average actual common share outstanding, adjusted for stock splits and stock dividends).

Rate of return to average common equity.

Common stock earnings retention ratio.

For common stock issued pursuant to tax reduction act stock ownership plans, employee stock option plans, and dividend reinvestment plans: net proceeds per common share issued, and number of shares issued and previously outstanding at the beginning of the year. This shall be set forth separately for each of the three types of plans, and reported as annual aggregates or averages.

For other issues of common stock: net proceeds per common share issued, and number of shares issued and previously outstanding for each issue of common stock.

(22) If the utility is applying for a gas rate increase, a schedule for weather normalization, including details of the method used.

(23) All testimony and exhibits in support of the rate filing attached to affidavits of the sponsoring witnesses. All known and measurable changes in costs and revenues upon which the utility relies in its application shall be included.

Unless otherwise required, an original plus ten copies of all testimony and exhibits, and four copies of all other information, shall be filed. Three copies of each of the preceding items shall be provided to the consumer advocate. In

addition, two electronic copies of each computer-generated exhibit which complies with the standards in 199—7.7(476) and two copies of a brief description of the software and hardware requirements of noncomplying electronic copies of computer-generated exhibits shall be filed with the board and the consumer advocate. Two copies of the noncomplying electronic copies shall be provided upon request by any party or the board.

If the utility which has filed for the rate increase is affiliated with another company as either parent or subsidiary, the information required in subparagraphs (3), (4), (6), (13) to (19), and (21) shall be provided for the parent company (if any) and for all affiliates which are not included in the consolidating financial statements filed pursuant to this rule.

(24) Information relating to advertisements including:

1. A portfolio of all advertisements charged to ratepayers either produced, recorded or a facsimile thereof;
2. Cost data for all advertisements and the accounting treatment utilized; and
3. An account of total advertising expense including a breakdown of the expense by category.

f. All rate-regulated utilities shall submit at the time of filing an application for increased rates, all workpapers used to prepare the analysis and data submitted in support of the application. All workpapers shall substantially comply with the standards in 199—subrule 7.10(5).

g. Additional evidence. The applicant may submit any other testimony, schedules, exhibits, and data which it deems pertinent to the application.

(1) Additional evidence may include:

1. Testimony, schedules, exhibits, and data concerning the cost of capital infrastructure investment that will not produce significant revenues and will be in service in Iowa within nine months of the test year.

2. Testimony, schedules, exhibits, and data concerning cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

(2) The utility shall specifically identify and support the information, including providing an estimate at the time of filing and addressing prudence issues, regarding the changes that will be verifiable within nine months of the test year, with such verification provided to other parties as soon as the data is available. To be considered, the verifiable information must be offered into the record prior to the closing of the record at the hearing in the proceeding.

(3) A utility electing to file additional evidence under this paragraph shall include in the reports required in subparagraph 26.5(5)"e"(1) any capital infrastructure investments that will not produce significant revenues and have been placed in service in Iowa, or capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

(4) A utility electing to file additional evidence under this paragraph shall provide additional schedules as required by subparagraphs 26.5(5)"e"(13), (14), and (15) related to capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Subparagraphs 26.5(5)"g"(1) through (4) are repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if subparagraphs 26.5(5)"g"(1) through (4) had not been repealed. Upon repeal of subparagraphs 26.5(5)"g"(1) through (4), the board may still consider the adjustments addressed in those subparagraphs, but shall not be required to consider them.

26.5(6) Evidence requested by the board. The applicant shall furnish any additional evidence as ordered by the board at any time after the filing of the tariff.

26.5(7) Applications pursuant to Iowa Code section 476.6 that are not general rate increase applications. At the time a rate-regulated public utility, other than a rural electric cooperative, files for new or changed rates, charges, schedules, or regulations except in conjunction with general rate increase applications, it shall submit the following:

- a. Any cost, revenue, or economic data underlying the filing.
- b. An explanation of how the proposed tariff would affect the rates and service of the public utility.
- c. All testimony and exhibits in support of the filing attached to affidavits of the sponsoring witnesses.

26.5(8) Requests for temporary authority pursuant to Iowa Code section 476.6.

a. A request for temporary authority to place in effect any suspended rates, charges, schedules, or regulations shall be separately identified and shall include:

(1) For each adjustment or issue, a brief explanation of the adjustment or issue and its purpose which includes the specific regulatory principles relied on to support the adjustment or issue and citations to either the rules, statutes, or decisions in which the regulatory principle was codified or previously applied.

(2) Schedules supporting the proposed temporary rate capital structure, schedules showing the calculation of the proposed capital cost for each component of the capital structure, and schedules showing requested return on rate base with capital structure and corresponding capital cost.

(3) All workpapers supporting the request for temporary authority. The workpapers shall substantially comply with the standards in subrule 199—subrule 7.10(5).

b. Within 30 days of the filing of a request for temporary authority, an objection may be filed. An objection to a request for temporary authority shall separately identify each disputed adjustment or issue and shall include:

(1) A brief explanation of the basis for the disputed adjustment or issue which includes the specific regulatory principles relied on and citations to either the rules, the statutes, or decisions in which the regulatory principle was codified or previously applied.

(2) All workpapers supporting the objection to the request for temporary authority. The workpapers shall substantially comply with the standards in 199—subrule 7.10(5).

c. Within 15 days of the filing of the objection, the utility may file a reply.

d. For this rule, the following filing requirements apply:

(1) Request for temporary authority—original plus ten copies.

(2) Objections to request—original plus ten copies.

(3) Replies—original plus ten copies.

(4) Exhibits—original plus ten copies. In addition, two electronic copies of each computer-generated exhibit shall be filed. Only electronic copies of computer-generated exhibits that comply with 199—7.7(476) shall be filed.

(5) Electronic workpapers—two copies and two hard-copy printouts.

(6) Other workpapers—five copies.

(7) Specific studies or financial literature—two copies. In addition, three copies of each document filed shall be provided to consumer advocate.

199—26.6(476) Answers.

26.6(1) Time for. Answers to applications for new or changed rates, charges, schedules, or regulations shall be permitted only if and when the application is docketed as a formal proceeding by the board, and shall be filed with the board within 20 days after the date of docketing. All answers must specifically admit, deny or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support such answer; except that a party's failure to file an answer to an application for new or changed rates, charges, schedules, or regulations will be deemed a denial of all allegations of the application.

26.6(2) Motion to dismiss. Motions to dismiss applications for new or changed rates, charges, schedules, or regulations shall be permitted only if and when the application is docketed as a formal proceeding by the board.

199—26.7(476) Rate investigation. The board shall commence a rate investigation upon the motion of the general counsel or the consumer advocate alleging that a rate-regulated utility's annual report, a special audit, or an investigation by the board staff or the consumer advocate, indicates that the earnings of that public utility may have been or will be excessive. The board may also commence a rate investigation upon the motion of any interested person.

199—26.8(476) Procedural schedule in Iowa Code sections 476.3 and 476.6 proceedings.

26.8(1) In any proceeding initiated as a result of the filing by a public utility of new or changed rates, charges, schedules or regulations, the utilities board or presiding officer shall set a procedural schedule based on the following guidelines, unless otherwise ordered by the utilities board or presiding officer pursuant to this rule. The times and places of consumer comment hearings shall be set at the discretion of the utilities board or presiding officer.

Prepared direct testimony and exhibits in support of the filing—date of initial filing.

Docket case as a formal proceeding, suspend effective date of new or changed rates, charges, schedules or regulations and establish procedural schedule—not later than 30 days from the date of initial filing.

All further testimony—completed not later than six months from date of initial filing.

Cross-examination of all testimony—completed not later than seven months from date of initial filing.

Briefs of all parties—filed not later than eight and one-half months from date of initial filing.

26.8(2) In a proceeding initiated as a result of the filing of a complaint pursuant to Iowa Code section 476.3, the utilities board or presiding officer shall set a procedural schedule based on the following guidelines, unless otherwise ordered by the utilities board or presiding officer pursuant to this rule.

Prepared direct testimony and exhibits in support of the filing—date of initial filing.

Docket case as a formal proceeding to suspend effective date of new or changed rates, charges, schedules or regulations and establish procedural schedule—not later than 30 days from the date of initial filing.

All further testimony—completed not later than six months from date of initial filing.

Cross-examination of all testimony—completed not later than seven months from date of initial filing.

Briefs of all parties—filed not later than eight and one-half months from date of initial filing.

26.8(3) In setting the procedural schedule in a case, the board or administrative law judge shall take into account the existing hearing calendar and shall give due regard to other obligations of the parties, attorneys and witnesses. The board or administrative law judge may on its own motion or upon the motion of any party, including consumer advocate, for good cause shown change the

time and place of any hearing. Any effect such a change has on the remainder of the procedural schedule or the deadline for decision shall be noted when the change is ordered.

26.8(4) Additional time may be granted a party, including consumer advocate, upon a showing of good cause for the delay, including but not limited to:

- a. Delay of completion of previous procedural step.
- b. Delays in responding to discovery or consumer advocate data requests.

Any effect such an extension has on the remainder of the procedural schedule or the deadline for decision shall be noted in the motion for extension and the board order granting the extension.

26.8(5) If any party, including consumer advocate, wishes to utilize the electric generating facility exception to the ten-month decision deadline contained in Iowa Code section 476.6, it shall expeditiously file a motion seeking this exception including an explanation of that portion of the suspended rates, charges, schedules or regulations necessarily connected with the inclusion of the generating facility in rate base. Any other party may file a response to such a motion.

199—26.9(476) Consumer comment hearing in docketed rate case of an investor-owned utility company. The board shall hold consumer comment hearings to provide an opportunity for members of the general public who are customers of an investor-owned utility company involved in a docketed rate case to express their views regarding the case before the board as well as the general quality of service provided by the utility. However, specific service complaints

must follow the procedure prescribed in 199—6.2(476). Nothing shall prohibit the board from holding consumer comment hearings on any other docketed rate case.

26.9(1) The consumer comment hearing will be presided over by either the board member(s) or an administrative law judge assigned by the board. Representatives from the utility company shall be present to explain, in a concise manner, the pertinent points of the company's proposal. The company's representatives shall also respond to any questions directed to them. All representatives from the utility company that are participating, except for legal counsel, shall be under oath. All board staff members that are participating in the hearing shall be under oath.

26.9(2) Individuals who wish to testify at the consumer comment hearing need not preregister with the board but need only sign up at the time of the hearing. The board member(s) or administrative law judge may limit the length of testimony when a large number of persons wish to testify. Sworn testimony shall become a part of the permanent record of the rate proceeding.

26.9(3) All participants in the hearing may correct misinformation within testimony. Correction of misinformation may be made at the time of the hearing during oral presentation or, if the misinformation does not come to the attention of the participants until after the hearing, correction of misinformation may be submitted in writing to the board within 20 days after the oral presentation. Written submissions shall be limited to a statement identifying the party whose testimony is to be corrected, and a brief statement of the incorrect testimony. This shall be followed by a brief statement of the correct information. This

procedure shall be utilized to correct only such information that is clearly erroneous. Written submissions of corrections of misinformation shall not be used to slant, clarify or add to the testimony given during oral presentation. Corrections of misinformation which comply with this rule shall become a part of the permanent record.

The consumer comment hearing is not an appropriate forum for any party to make a record for or against the rate case.

26.9(4) The consumer comment hearing shall be held in a major population center served by the utility company at a time of day convenient to the largest number of customers. It shall be conducted in a facility large enough to accommodate all who wish to attend. Notice of the consumer comment hearing shall be sent by the board's public information office to newspapers, radio, and television stations in the area served by the utility company.

26.9(5) Individuals unable to attend a consumer comment hearing may submit written comments to the board. Written comments shall become part of the permanent file of the rate proceeding, but not part of the record as sworn testimony.

26.9(6) Consumer comment hearing may be waived by the board if the interests of the public are better served without a hearing.

This rule is intended to implement Iowa Code sections 474.5, 476.1 to 476.3, 476.6, 476.8, 476.10, 476.31 to 476.33.

199—26.10(476) Appeal from administrative law judge's decision. When an appeal is taken from an administrative law judge's decision determining the reasonableness of rates after formal docketing of the proceeding pursuant to

Iowa Code section 476.6, the filing of a notice of appeal in compliance with this rule may be deemed a request for additional time to complete the proceeding, for good cause shown and, if the board so determines, shall extend the date when any rates approved on a temporary basis become permanent for a period not to exceed one-half of the additional time, shown in the procedural schedule, for a final board decision on the appeal.

199—26.11(476) Consideration of current information in rate regulatory proceedings.

26.11(1) Test period. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider the use of the most current test period possible in light of existing and verifiable data respecting costs and revenues available as of the date of commencement of the proceedings.

26.11(2) Known and measurable changes. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider:

a. Verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within 12 months after the date of commencement of the proceedings.

b. Data which becomes verifiable prior to the closing of the record at the hearing respecting known and measurable:

(1) Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.

(2) Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Verifiable data filed pursuant to paragraph 26.11(2)"b" shall be provided to other parties as soon as the data is available so that other parties have a reasonable opportunity to verify the data to be considered by the board.

Paragraph 26.11(2)"b" is repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if paragraph 26.11(2)"b" had not been repealed. Upon repeal of paragraph 26.11(2)"b," the board may still consider the adjustments addressed in the paragraph, but shall not be required to consider them.

26.11(3) Postemployment benefits other than pensions. For rate-making purposes, the amount accrued for postemployment benefits other than pensions in accordance with Financial Accounting Standard No. 106 will be allowed in rates where:

a. The net periodic postemployment benefit cost and accumulated postemployment benefit obligations have been determined by an actuarial study completed in accordance with the specific methods required and outlined by SFAS No. 106.

b. The accrued postemployment benefit obligations have been funded in a board-approved, segregated and restricted trust account, or alternative arrangements have been approved by the board. Cash deposits shall be made

to the trust at least quarterly in an amount that is proportional and, on an annual basis, at least equal to the annual test period allowance for postemployment benefits other than pensions.

c. The transition obligation is amortized over a period of time determined by the board that does not exceed 20 years.

d. Any funds, including income, returned to the utility from the trust not actually used for postemployment benefits other than pensions shall be refunded to customers in a manner approved by the board.

e. The board finds the benefit program and all calculations are prudent and reasonable.

26.11(4) An actuarial study of the net periodic postemployment benefit cost and accumulated postemployment benefit obligations shall be determined and filed with the board at the time a rate increase is requested, when there has been a change in postemployment benefits other than pensions offered by the utility, or every three years, whichever comes first.

26.11(5) For a period not to exceed three years commencing January 1, 1993, a rate-regulated utility may record on its books each year as a deferral the difference between the amount accrued in accordance with SFAS 106 and the amount which would have been recorded for postemployment benefits other than pensions on a pay-as-you-go basis for that year. In calculating the amount to be deferred, the utility may include in the deferral the amortization of transition obligation costs in accordance with SFAS 106.

26.11(6) Recovery of the deferrals authorized in subrule 26.11(5) will be considered only in rate cases filed prior to December 31, 1995.

This rule is intended to implement Iowa Code sections 476.1 to 476.3, 476.6, 476.8, 476.10 and 476.31 to 476.33.

199—26.12(476) Rate regulation election—electric cooperative corporations and associations.

26.12(1) Application of rules. Electric cooperative corporations and associations shall not be subject to the jurisdiction of the utilities board except as provided in Iowa Code section 476.1A and paragraphs “a,” “b,” and “c” of this subrule.

a. Procedure for election by members. Upon petition of not less than 10 percent of the members of an electric cooperative or upon its own motion, the board of directors of an electric cooperative shall order a referendum election to be held to determine whether the electric cooperative shall be subject to the jurisdiction of the utilities board. A petition for election shall be completed within 60 days of commencement.

(1) Any member of an electric cooperative desiring a referendum election shall sign a petition for election addressed to the board of directors of an electric cooperative, in substantially the following form:

PETITION FOR ELECTION

TO: (Board of Directors of subject electric cooperative)

The undersigned members request you call an election to submit to the members the following proposition:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the utilities board?

Signature Address Date

(2) Where signatures are made on more than one sheet, each sheet of the petition shall reproduce above the signatures the same matter as is on the first sheet. Each petitioner shall sign their name in their own handwriting and shall write their address and the date on which they signed.

(3) The petition shall be filed with the board of directors of the electric cooperative and an election shall be held not less than 60 days nor more than 90 days from the date on which the petition was filed.

(4) On the election date, the board of directors of the electric cooperative shall mail by first-class mail to each member of the electric cooperative a ballot containing the following language:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the utilities board?

Yes No

(5) The ballot shall also contain a self-addressed envelope to return the ballot to the secretary of the board of directors of the electric cooperative. The ballot shall be dated when received by the secretary. The ballot must be received by the secretary not more than 30 days after it was mailed to the members. The election procedure shall require a signature form for verification, but shall not allow the signature to be traced to the vote of a particular member.

(6) The issue in the election shall be decided by a majority of the members voting whose ballots are received by the secretary. Fifty-one percent of the membership shall constitute a quorum for the election. The secretary shall certify

the results of the election and file the results with the executive secretary of the utilities board within 30 days of the election.

b. Procedure for election by board. Upon the resolution of a majority of the board of directors of an electric cooperative, the board may elect to be subject to the jurisdiction of the utilities board. The secretary of the board of directors of the electric cooperative shall file a certified copy of the resolution with the executive secretary of the utilities board within 30 days of the adoption of the resolution.

c. Effective date. Upon the resolution of a majority of the board of directors of an electric cooperative or when a majority of the members voting vote to place the cooperative under the jurisdiction of the utilities board, the utilities board shall determine an effective date of its jurisdiction which shall be not more than 90 days from the election. On and after the effective date of jurisdiction, the cooperative shall be subject to regulation by the utilities board.

d. Prohibited acts. Funds of an electric cooperative shall not be used to support or oppose the issue presented in the election. Nothing shall prohibit a letter of explanation and direction from being enclosed with the ballot.

e. Procedure for exemption. After the cooperative has been under the jurisdiction of the utilities board for two years, the members may elect to remove the cooperative from under the jurisdiction of the utilities board in the same manner as when electing to be placed under the jurisdiction of the utilities board.

f. Frequency of election. An electric cooperative shall not conduct more than one election pursuant to this subsection within a two-year period.

26.12(2) Rate increase considerations—rural electric cooperatives. The board’s consideration of the fair and reasonable level of rates necessary for rural electric cooperatives shall include the following:

a. After investigation of the historical test year results and pro forma adjustments thereto, the board shall determine the extent to which the applicant has met the following conditions:

(1) Revenues are sufficient for a times interest earned ratio of from 1.5 to 3.0 for coverage of interest on outstanding utility short-term and long-term debt; or

(2) Revenues are sufficient for a debt service coverage ratio of from 1.25 to 2.50 on utility long-term debt; or

(3) Utility operating margins are sufficient for a ratio of from 1.5 to 2.5 of utility operating margins to interest on utility short-term and long-term debt; or

(4) Utility operating margins are sufficient for a ratio of from 1.25 to 1.75 of utility operating margins plus utility depreciation, all divided by utility long-term interest plus principal; and

(5) Utility operating margins are sufficient to return utility patronage capital credits accumulated from utility operating margins, with a retention of such credits of no more than 20 years allowed, subject to modification where compelling circumstances require time period adjustments.

b. In addition to the information in “a” above, evidence of the necessity for the requested rate relief may include, but need not be limited to, utility operating margins which will enable the cooperative to attain and maintain a reasonable ratio of utility long-term debt to retained utility operating margins. Cooperative’s authorized construction program and an official policy statement of its board of

directors on a desired ratio will be considered factors in the determination of the reasonableness of any such ratio.

c. The utilities board's initial decision will become final 15 days following its date of issuance; however, if filed within that 15-day period, allegations of error by the cooperative, staff or any intervenor as to the utilities board's findings of fact, together with a statement of readiness to present testimony, will serve to hold final disposition in abeyance pending the scheduling and completion of an evidentiary hearing. When such allegation is made, testimony in support of such position must be filed within 30 days of such filing. Upon receipt of the testimony, the utilities board will schedule additional filing dates and set the matter for hearing. When hearing is scheduled, final disposition of the rate proceeding will be accomplished under the contested case provisions of the Iowa administrative procedure Act and the utilities board's rules and regulations thereunder.

These rules are intended to implement Iowa Code sections 474.3, 474.5, 474.6, 476.1 to 476.3, 476.6, 476.8 to 476.10, 476.15, 476.31 to 476.33 and 546.7.

Item 3. Amend 199—subrule 32.9(4) as follows:

32.9(4) Intervention. Notwithstanding the provisions of 199— ~~IAC 7.2(8)~~ subrule 7.13(1) regarding the time to petition to intervene, a party may petition to intervene subsequent to the filing of an application for reorganization, but no later than a date for intervention established by the board in a notice of hearing.

October 21, 2005

/s/ John R. Norris

John Norris
Chairman