

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>DELEGATION OF AUTHORITY TO ISSUE PROCEDURAL ORDERS (199 IAC 7.1)</p>	<p>DOCKET NO. RMU-06-5</p>
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ORDER COMMENCING RULE MAKING

(Issued June 1, 2006)

Pursuant to the authority of Iowa Code §§ 17A.4, 474.3, and, 474.5 the Utilities Board (Board) proposes to amend 199 IAC 7.1 to delegate authority to issue procedural orders in proceedings before the Board as described in the "Notice of Intended Action" attached hereto and incorporated herein by reference. The amendment to rule 7.1 is being proposed as part of the Board's efforts to establish procedures to conduct business when a majority of the Board is not present due to a state of emergency or for any other reason. This docket has been identified as Docket No. RMU-06-5.

As part of the Board's Continuity of Operations Plan, procedures are being developed to ensure the Board can conduct business in emergency situations. A function of the Board is to ensure proceedings before the Board are not unduly interrupted by the unavailability of a majority of the Board members during emergencies or in other situations. The Board is proposing by this rule making to delegate authority to specified officials within the agency to issue procedural orders in

the absence of a majority of the Board members. The delegation will be limited to those specified officials and will only apply to procedural orders that do not affect the ultimate outcome of a proceeding or when the prejudice to a nonmoving party is not great.

The Board has used Iowa Rules of Appellate Procedure (Iowa R. App. P) 6.22(8) as a guide for development of the proposed amendment. That subrule provides that the clerk of the Supreme Court or the clerk's deputy is authorized, subject to the review of the Supreme Court, to take appropriate action for the Supreme Court on motions for procedural orders upon which the Court could rule without awaiting a resistance. The clerk may grant the motion only for good cause shown and when the prejudice to the nonmoving party is not great. An order of the clerk entered under this subrule may be reviewed by the Supreme Court upon the motion of a nonmoving party. The proposed amendment establishes a similar procedure. The specified officials shall issue a procedural order only upon good cause, when the order does not greatly prejudice a nonmoving party, and the procedural order is subject to review by the Board upon motion by any party or other interested persons.

The Board has authority to delegate the authority to issue procedural orders pursuant to the provisions of Iowa Code § 474.3, which states that the Board may in all cases conduct proceedings in such a manner as will best conduce to the proper dispatch of business and to the attainment of justice. The Board has authority to issue the proposed amendment pursuant to Iowa Code § 474.5, which states that the

Board may make or amend rules or orders necessary for the preservation of order and the regulation of proceedings.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-06-5 is commenced for the purpose of receiving comments on the proposed amendments and rescission in the notice attached hereto and incorporated herein by reference in this order.

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

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 1st day of June, 2006.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4, 474.3 and 474.5 the Utilities Board (Board) gives notice that on June 1, 2006, the Board issued an order in Docket No. RMU-06-5, In re: Delegation of Authority to Issue Procedural Orders (199 IAC 7.1), "Order Commencing Rule Making." The proposed revisions establish procedures for issuing procedural orders when a majority of the Board is not present due to an emergency or for other reasons. The order containing the background and support for this rule making can be found on the Board's Web site, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before July 11, 2006, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the statements may determine that an oral presentation should be scheduled.

The amendment is intended to implement Iowa Code sections 17A.4, 474.3, and 474.5.

The following amendment is proposed.

Item 1. Amend rule 199—7.1(17A,476) by adding Iowa Code chapter 474 to the parenthetical implementation statutes.

Item 2. Adopt new subrule 7.1(8) as follows:

7.1(8) Authority to issue procedural orders in contested case proceedings, investigations, hearings, and all other dockets and matters before the board when a majority of the board is not available due to emergency, or for any other reason, is granted to a single board member. If no member of the board is available to issue a procedural order due to emergency, or for any other reason, the procedural order may be issued by an administrative law judge employed by the board. If an administrative law judge is not available to issue a procedural order due to an emergency, or for any other reason, a procedural order may be issued by the executive secretary or general counsel of the board.

Procedural orders under this subrule shall be issued only upon the showing of good cause and when the prejudice to a nonmoving party is not great. The procedural order under this subrule shall state that it is issued pursuant to the delegation authority established in 199 IAC 7.1(8) and that the procedural order so issued is subject to review by the board upon motion by any party or other interested person.

June 1, 2006

/s/ John R. Norris

John R. Norris
Chairman