

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>ELECTRONIC FILING [199 IAC 1, 6, 7,<br>10, 11, 13, 14] | DOCKET NO. RMU-08-2 |
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**ORDER ADOPTING AMENDMENTS**

(Issued October 31, 2008)

Pursuant to Iowa Code §§ 17A.4 and 476.2, the Utilities Board (Board) adopts amendments to chapters 1, 6, 7, 10, 11, and 13, and the amendment adding new chapter 199 IAC 14, "Electronic Filing," as described in the "Adopted and Filed" notice attached hereto and incorporated herein by reference. This proceeding was initiated by an "Order Commencing Rule Making" issued March 21, 2008.

The Board is developing an electronic filing system that will be used by external users to submit filings for the Board's consideration and by the Board to publish documents issued by the Board. The system will make Board orders and most non-confidential documents filed with the Board available on the Board's Web site for public searching and download.

New chapter 14 specifies that electronic filing is generally mandatory, identifies exceptions to the electronic filing requirement, and establishes procedures for electronic filing of documents. The other amendments change several existing procedural rules to reflect the implementation of electronic filing.

On April 9, 2008, the proposed amendments were published in the Iowa Administrative Bulletin at IAB Vol. XXX, No. 21 (4/9/08), p. 1523, as ARC 6707B. Written comments were received from Victoria J. Place, an attorney who appears before the Board; the Technology, Energy & Communications Practice Section of the Dickinson, Mackaman, Tyler & Hagen law firm (Dickinson firm); the Iowa Association of Electric Cooperatives (IAEC); the Iowa Telecommunications Association (ITA); Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom); Interstate Power and Light Company (IPL); MidAmerican Energy Company (MidAmerican); Qwest Corporation (Qwest); and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

An oral presentation was held on May 12, 2008. The Dickinson firm, IAEC, IPL, MidAmerican, Qwest, and Consumer Advocate participated in the oral presentation.

The Board will summarize the comments received and the revisions made to the rules as proposed. Any proposed amendments which were not the subject of comments or which are not being revised will not be discussed in this order, are adopted as proposed, and are included in the "Adopted and Filed" document attached to this order. Other editorial changes may be made by the Code Editor before publication. The final version of the adopted amendments will be available in the November 19, 2008, Iowa Administrative Bulletin. These amendments will become effective on December 24, 2008.

## **SUMMARY OF COMMENTS AND DESCRIPTION OF ADOPTED AMENDMENTS**

### **Items 1 through 4**

Items 1 through 4 of the "Notice of Intended Action" as published in the Iowa Administrative Bulletin amend subrules 1.8(2), 1.8(4), 6.5(2), and 7.1(1) by adding references to the new electronic filing requirement in chapter 14. No comments were received about these amendments. The Board will adopt the amendments in Items 1 through 4 as proposed, with one minor exception. In Item 3, the Board proposed to amend subrule 6.5(2) to add a reference to electronic filing. The Board will adopt the amendment proposed in Item 3, but will revise it to add an example of the new four-digit numbering system (C-XXXX-XXXX) to the existing parenthetical example of a file numbering pattern.

### **Item 5**

Item 5 includes amendments adding cross-references to the electronic filing requirement and procedures to existing procedural rule 7.4. As proposed, Item 5 added new paragraph "a" to subrule 7.4(2), which provided, in part, that unless "otherwise specifically provided, all electronic communications and documents are officially filed upon publication on the board's Web site, as provided in 199—14.9(17A,476)." Proposed rule 14.3 defines "accepted for filing" as follows:

"Accepted for filing" ordinarily means a filing will be published on the board's Web site. Certain documents will be accepted for filing without being published on the board's Web site. A filing that has been accepted for filing

can be rejected at a later date if found not to comply with a board rule or order.

In written comments, IAEC identified a possible conflict between the definitions of "officially filed" and "accepted for filing." IAEC suggested that 7.4(2)"a" could be changed to refer to documents being "officially filed" when they are "accepted for filing" as defined in rule 14.3, instead of linking official filing to publication on the Web site. Moreover, the statement in the proposed amendment to subrule 7.4(2) that documents are officially filed upon publication on the Web site does not account for instances when a document will be officially filed without being published on the Web site. The Board agrees with IAEC's suggested revision and will adopt the following revised paragraph 7.4(2)"a":

**7.4(2) Communications.**

a. Electronic communications. Pleadings and other documents required to be electronically filed with the board shall be filed within the time limit, if any, for such filing, in accordance with the board's electronic filing rules at 199—Chapter 14. Unless otherwise specifically provided, all electronic communications and documents are officially filed when they are accepted for filing as defined in 199—14.3(17A,476). Persons electronically filing a document with the board must comply with the service requirements in 199—14.16(17A,476).

The Board will adopt all other amendments in Item 5 as proposed.

**Item 6**

In Item 6, the Board proposed to rescind existing rule 7.7, which predates the implementation of the Board's electronic filing system. Rule 7.7 applied to all electronic information filed with the Board and specified requirements for filing

electronic information. The Board proposed to replace existing rule 7.7 with a reference to the Board's new electronic filing rules at chapter 14 and the Board's standards for electronic information.

The Board did not receive comments specifically relating to the proposed new rule 7.7, but did receive comments about the Board's standards for electronic information, which are referred to in several existing and proposed rules. These standards are available in the Board's Records and Information Center (Records Center) and on the Board's Web site. The standards were last updated in 2005 and address issues such as which versions of software the Board is currently using. The Board will update the standards to make any changes necessary due to the transition to electronic filing.

Consumer Advocate comments that the standards for electronic information should be included in the Board's administrative rules and should not be adopted, changed, or updated without notice and opportunity for comment from affected parties. IAEC asked about the criteria that will be used to develop the standards and whether industry stakeholders would have an opportunity to participate in the process of developing the standards. Iowa Telecom asked that parties be notified of changes to the Board's standards for electronic information through the electronic service process in order to give the parties maximum notice of the changes.

The Board will continue its current practice and maintain the standards for electronic information separate from its administrative rules. Given the need to

respond quickly to changing technology and software updates, the standards must be developed outside of the rule making process. However, because the Board recognizes that external users need information about the standards, the Board plans to include a discussion about the standards in the training sessions being planned for users of the electronic filing system.

Also, the Board agrees with Iowa Telecom's recommendation that notice of any changes to the standards for electronic information should be sent to users electronically. The Board will inform users of changes in the standards for electronic information by sending a notice to registered users through the electronic filing system. Notice will also be posted on the Board's Web site and on the Electronic Filing System home page when the electronic information standards change. The Board will adopt new rule 7.7 as proposed.

**Item 7**

In Item 7, the Board proposed to amend existing rule 7.8 to add electronic notice through the electronic filing system to the list of ways an order containing a notice of hearing can be delivered. No comments on this proposed amendment were received. The Board will adopt the amendment to rule 7.8 as proposed.

**Item 8**

In Item 8, the Board proposed to rescind subrule 7.10(4), which requires an affidavit to accompany prefiled testimony and exhibits. Consumer Advocate did not support the proposal to eliminate the affidavit. At the oral presentation, Consumer

Advocate acknowledged that where a witness is present at a hearing and can attest to the truthfulness of his or her testimony in person, requiring an affidavit does not necessarily benefit the process. Consumer Advocate noted, though, that there are cases in which the Board resolves issues based on filed information without conducting a hearing and in such cases there is a benefit to requiring a witness to sign an affidavit. (Transcript of oral presentation of May 12, 2008, hereinafter "Tr.," at 46-47.)

Iowa Telecom supported the proposal, but questioned whether affidavits would still be required by other Board rules. Iowa Telecom asked the Board to provide a procedure by which electronically scanned copies of affidavits may be included in electronic filings with originals provided by personal delivery or deposited in the mail within one business day of the underlying filing. The Board will address questions about how affidavits will be electronically filed in the discussion of Item 17, which contains the adopted version of new chapter 14.

MidAmerican's concern about the proposed amendment is that it is not clear whether the proposed change to rule 7.10(4) applies to all other affidavits required by the Board.

To avoid confusion about when an affidavit is required, the Board will not eliminate the affidavit required with prefiled testimony and exhibits at this time. The question of which affidavits are still useful can be explored in a later rule making

proceeding, if necessary. The Board will adopt all of the other proposed changes to rule 7.10 contained in Item 8 without substantive revision.

### **Items 9 through 13**

The amendments proposed in Items 9 through 13 of the "Notice of Intended Action" add references to electronic filing to several of the Board's procedural rules. The Board did not receive any comments on these proposed changes. The Board will adopt the amendments in Items 9 through 13 as proposed.

### **Items 14 through 16**

In Items 14 through 16, the Board proposed to add references to electronic filing in three existing subrules governing permits for gas pipelines, electric transmission lines, and hazardous liquid pipelines. The Board did not receive any comments on the proposed amendment in Item 14. The Board will adopt the amendment in Item 14 without revision.

In Item 15, the Board proposed to amend subrule 11.2(1) to add a reference to electronic filing. Based on further review, the Board concludes it is more appropriate to include the reference to electronic filing in subrule 11.3(1), instead of subrule 11.2(1). This revision is consistent with the manner in which the reference to electronic filing will be included in chapters 10 and 13. The Board will adopt the following amendment to subrule 11.3(1):

**11.3(1)** Forms. The following forms are available from the board, and the appropriate form shall be used when filing any petition. An original and three copies of the petition and exhibits shall be filed, unless the petition and

exhibits are filed electronically pursuant to the board's electronic filing rules at 199—Chapter 14.

The Board did not receive any comments on the amendment proposed in Item 16. The Board will adopt the amendment in Item 16 as proposed.

**Item 17**

In Item 17, the Board proposed to add a new chapter 14 to its administrative rules, titled "Electronic Filing." Most of the comments received by the Board in this proceeding relate to the proposed subrules in chapter 14.

***Scope of electronic filing requirement (Proposed rule 14.2)***

At the oral presentation, MidAmerican asked the Board to clarify whether "compliance filings" could be filed electronically. One example of a compliance filing would be the copies of contracts for purchase or sale (for resale) of energy or capacity submitted by rate-regulated electric utilities pursuant to Board rule 15.3. In response to MidAmerican's question, the Board emphasizes that its goal in adopting an electronic filing requirement is to receive as many filings as possible electronically, with few exceptions. All compliance filings, including copies of contracts for purchase or sale (for resale) of energy or capacity submitted by rate-regulated electric utilities pursuant to Board rule 15.3, should be filed electronically, unless an exception applies.

The Board received several comments about proposed rule 14.2, which identifies the scope and applicability of the electronic filing requirement.

Proposed rule 14.2 provides that the new electronic filing rules override the old paper filing rules. In written comments, MidAmerican suggested that using the word "replace" instead of "override" might better express the effect of the requirements.

As proposed, the relevant part of rule 14.2 provides:

The provisions of this chapter override any rule regarding filing and service of paper documents contained in 199—Chapter 7. In all circumstances in which the electronic filing requirement applies, the provisions of this chapter override any other board rule regarding number of copies, filing requirements and service of papers. All other Chapter 7 rules otherwise apply to proceedings, investigations, and other hearings conducted by the board or a presiding officer which are subject to the electronic filing requirement.

The Board does not agree that "replace" better expresses the Board's intent. The Board proposed the rule to acknowledge that, at least for some time, the rules regarding paper filings would remain in effect because filings in some cases will continue to be made on paper, but that where the electronic filing requirement applies, the paper rules do not apply. On further review, however, the Board believes the proposed rule can be improved by striking the redundant first sentence in the excerpt quoted above and by adding the phrase, "including the rules in 199—Chapter 7" to the next sentence in the excerpt. As adopted, rule 14.2 will read as follows:

**199—14.2(17A,476) Scope and applicability of electronic filing requirement.** As of the date determined by the board, electronic filing is mandatory, unless specifically excepted by these rules. The board will publish on its Web site the effective date of the electronic

filing requirement. When the electronic filing requirement is effective, all persons filing documents with the board shall file those documents electronically, subject to the exceptions in this chapter. The board will accept filings electronically pursuant to the rules in this chapter and the board's published standards for electronic information, available on the board's Web site ([www.state.ia.us/iub](http://www.state.ia.us/iub)) or from the board's records and information center, or as delineated in the board order or other official statement requiring those filings. In all circumstances in which the electronic filing requirement applies, the provisions of this chapter override any other board rule regarding number of copies, filing requirements, and service of papers, including the rules in 199—Chapter 7. All other Chapter 7 rules otherwise apply to proceedings, investigations, and other hearings conducted by the board or a presiding officer which are subject to the electronic filing requirement. The board may suspend the electronic filing requirement by further notice as necessary.

Proposed rule 14.2 also provides that as of the date determined by the Board, electronic filing will be mandatory, unless an exception applies, and that the Board will publish on its Web site the effective date of the requirement. In written comments, Iowa Telecom requested that the Board revise proposed rule 14.2 to provide that the Board would send notice of the effective date of the electronic filing requirement "by paper service." The Board agrees it would be a good idea to send notice of the effective date by letter to reach as many people who will be affected by the requirement as possible, but does not agree it is necessary to revise the proposed rule to make this one-time commitment. The Board will send a written notice specifying the effective date of the electronic filing requirement to all utilities and associations and all persons on the list of stakeholders participating in

Docket No. NOI-05-1 (which includes the names of attorneys and law firms representing utilities).

***Definitions (Proposed rule 14.3)***

Proposed rule 14.3 contains definitions of terms used in chapter 14. The term "accepted for filing" is defined as follows:

"Accepted for filing" ordinarily means a filing will be published on the board's Web site. Certain documents will be accepted for filing without being published on the board's Web site. A filing that has been accepted for filing can be rejected at a later date if found not to comply with a board rule or order.

In written comments, MidAmerican questioned the meaning of the term "ordinarily" in proposed rule 14.3 and in proposed subrules 14.4(4) (objections to facility permits will "ordinarily" be published on the Web site) and 14.4(5) (comments from individuals will "ordinarily" be published on the Web site). MidAmerican suggested that instead of using "ordinarily," the rules should be clarified to explain when objections and comments will *not* be published on the Web site. The Board will not adopt MidAmerican's requested clarification. The Board's purpose in using "ordinarily" in the context of defining "accepted for filing" was to address the situation where a document is filed but will not be published (e.g., where a filing consists of a confidential document only, with no public version). There, the filing will be "accepted for filing" without publication.

With respect to the use of "ordinarily" in proposed subrules 14.4(4) and 14.4(5), the Board anticipates that at some time it may not be appropriate to publish

certain objections or comments. For that reason, use of the word "ordinarily" is appropriate. Limiting the Board's discretion to determine when something should not be published by adopting a rule that attempts to specify all possible situations when comments will not be published would be premature. The Board will not adopt MidAmerican's requested revisions. Subrule 14.3 will be adopted as proposed. Revisions to proposed subrules 14.4(4) and 14.4(5) are explained below.

***Exceptions to electronic filing requirement***

Proposed rule 14.4 identifies the following six exceptions to the electronic filing requirement, most of which are based on the fact that some individuals may not have ready access to the technology necessary to participate in electronic filing:

- (1) Proposed subrule 14.4(1) contemplates that some filers may ask the Board for permission to continue to submit paper filings, either on a short-term or long-term basis, for reasons not yet known.
- (2) Proposed subrule 14.4(2) explains that the electronic filing requirement will apply only to proceedings initiated after the effective date of the requirement. The proposal to apply the requirement primarily on a going-forward basis is intended to maintain the record in any particular proceeding in a single medium. The Board anticipates that it will be easier to search for information in a docket if it is in either the Board's paper files or electronic files, but not mixed between the two.
- (3) Proposed subrule 14.4(3) explains that informal consumer complaints will not be part of the electronic filing system. If an informal matter results in formal proceedings, the informal consumer complaint file will be made available on the Board's Web site, to the extent reasonable.
- (4) Proposed subrule 14.4(4) provides an exception for objections and other comments related to applications for electric transmission line franchises, pipeline permits, or hazardous liquid pipeline permits. Written objections and comments related to these applications can be filed using the

electronic filing system, but electronic submission of an objection will not be mandatory at this time.

(5) Proposed subrule 14.4(5) contains a broad exception for individuals in any proceeding in which comments from the public are permitted. An example of the type of filing covered by this exception would be written objections from ratepayers affected by a proposed utility rate increase.

(6) Proposed subrule 14.4(6) provides that any payment required at the time a document is filed must be delivered to the Board's Records Center in person or by mail or delivery service.

The Board did not receive any comments about proposed subrules 14.4(1) and 14.4(2) and will adopt both subrules as proposed. In reference to proposed subrule 14.4(3), which provides that consumers filing informal complaints against utilities are not required to file those complaints electronically, ITA asked the Board to revise the proposed rules to provide that informal consumer complaints received on paper will be scanned and distributed by E-mail to affected companies. The Board will not adopt ITA's suggested revision at this time. It is too early to commit to scanning all informal complaints into the system. The Board plans to scan written complaints originally filed on paper if and when formal proceedings are granted relating to those complaints. When more is known about the volume of complaints submitted on paper, and when a means of protecting sensitive, personally identifiable information in those complaints is developed, the Board may consider scanning all informal consumer complaints into the system.

The Board will adopt proposed subrule 14.4(3) with one minor revision. The Board will add personal delivery to the Board's Records Center to the list of ways a consumer can submit a written informal complaint against a utility.

Proposed subrule 14.4(4) provides that written objections to applications for electric transmission line franchises, pipeline permits, or hazardous liquid pipeline permits are not subject to the electronic filing requirement. This proposed subrule did not prompt any comments from external participants. However, based on further review, the Board will revise the proposed subrule to more accurately describe the intended exception for objectors in these proceedings. As adopted, the subrule will read as follows:

**14.4(4)** Written objections to applications for electric transmission line franchises, pipeline permits, or hazardous liquid pipeline permits. Objectors are not required to electronically file written objections. Written objections in these cases may be submitted through the electronic filing system pursuant to these rules or may be submitted in writing. Electronic filing of objections is preferred but is not required. Written objections will ordinarily be published on the board's Web site. A suggested objection form is available on the board's Web site, but objectors are not required to use this form.

As provided in proposed subrule 14.4(5), individuals submitting comments in any proceeding in which comments from the public are permitted are not subject to the electronic filing requirement. MidAmerican suggested that the term "individuals" be replaced with "persons" to include all forms of organizations as defined in Iowa

Code section 4.1(20).<sup>1</sup> The Board chose the term "individuals" (as a more narrow category of potential paper filers than "persons") to encourage electronic filing as much as possible. However, in order not to discourage comment from community groups, such as volunteer or faith-based organizations, or other categories of "persons" that might not be able to submit comments electronically in a proceeding in which the Board invites public comment, the Board will adopt MidAmerican's suggested revision. The Board emphasizes, however, that the exception in the revised version of subrule 14.4(5) is not meant to apply to businesses, community organizations, associations, governmental subdivisions, and other "persons" that are able to submit comments electronically or that are participating in a proceeding as a party or intervenor. In other words, the exception is meant to provide relief for persons who do not have ready access to the Internet and who have not otherwise been excused from the electronic filing requirement, not to allow persons who have such access to avoid electronic filing.

Proposed subrule 14.4(6) provides that any payment required at the time of filing a document must be delivered to the Board's Records Center in person or by first-class mail or other delivery service. The filing will not be deemed complete and accepted until the required payment is received. The Dickinson firm suggested that requiring two filing processes (electronically for the document filed and filing by mail

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<sup>1</sup> Iowa Code § 4.1(20) defines "person" as an "individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity."

or personal delivery for the payment) would make filing electronically more difficult than the current system and negate the benefit of electronic filing. The firm suggested that payments to the Board could be made online or on account, as is done with the Iowa Secretary of State's office and the federal district court. Alternatively, the firm suggested that the rules should provide that for documents accompanied by a fee, the entire filing can be made non-electronically.

At this point, the Board does not use or have access to a system that would allow electronic payment of required fees. The Board is aware that other state agencies are updating their e-payment systems. The Board will monitor that process to determine whether using the e-payment systems in place at other agencies will be a cost-effective way for the Board to receive payments electronically.

If the Board were to revise the proposed amendment to allow parties to make entire filings non-electronically, Board staff would have to scan and upload the paper documents in a manual process in order for those documents to be available in the electronic filing system. The Board believes the more efficient solution at this time is to require filers to submit the documents electronically and place the check in the mail. The Board notes that very few types of filings must be accompanied by a payment. Two are applications for certificates of franchise authority to provide cable or video service (VCA dockets) and applications to become a certified natural gas provider (CGP dockets). In both types of dockets, the Board is subject to a statutory deadline to process the application.

Under subrule 14.4(6), the filing (an application) will remain in the electronic filing system's "staging area"<sup>2</sup> until the required check is received. The date the payment is received will be the date the filing is accepted for filing. Because filings in the staging area will be listed in order of the earliest filing date, Records Center will be aware of filings that have not been processed and will be able to initiate follow-up procedures for any filing for which the payment has not been received in a reasonable time. The Board will adopt proposed subrule 14.4(6) without revision.

***Required formats and technical issues***

Proposed rule 14.5 addresses electronic filing procedures and required formats. The Board will adopt proposed subrules 14.5(1) through 14.5(3), 14.5(5), 14.5(6), and 14.5(9) as proposed.

Proposed subrules 14.5(4) through 14.5(8) include the following formatting requirements:

**14.5(4)** Electronically filed documents shall be named in a way that accurately describes the contents of each document.

**14.5(5)** All documents shall be formatted in accordance with applicable rules governing formatting of paper documents.

**14.5(6)** All documents shall be formatted in accordance with the board's standards for electronic

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<sup>2</sup> The staging area is the part of the system where filings are received, reviewed, and processed for publication and distribution (i.e., date stamped, given docket numbers if necessary, checked for whether the documents are what the document and filing information say they are, are filed in the correct proceeding, etc.) by Records Center staff and where filings are either accepted for filing or rejected.

information, which are available on the board's Web site or from the board's records and information center.

**14.5(7)** Any text-based document which has been scanned for electronic filing must be full-text searchable.

**14.5(8)** Spreadsheets, workbooks, and databases included in filings shall include all cell formulae and cell references.

Several comments addressed these technical requirements. Consumer Advocate suggested that the rules include a uniform labeling system so that documents can be clearly and consistently identified.

Other commenters suggested that the requirement in proposed subrule 14.5(7) that a text-based document which has been scanned must be full-text searchable should be limited to documents created by the filer. IAEC suggested that the subrule be modified to require text-based documents be full-text searchable only to the extent reasonably possible.

ITA stated it is not aware of a way to make scanned documents full-text searchable. ITA recommended that the proposed rules be modified to provide that the text of all primary documents in a filing be full-text searchable, but that documents such as attachments and exhibits which were not created electronically are not subject to the full-text searchability requirement.

With respect to the requirement in proposed subrule 14.5(8) that spreadsheets, workbooks, and databases included in filings include all cell formulae and cell references, IPL raised concerns about whether publishing the cell formulae

would violate software licensing agreements. IAEC noted that in some cases cell formulae constitute the intellectual property of the filer or another party. IAEC's preference is that the formulae only be available to Board staff for internal use.

MidAmerican stated it interpreted the requirement that documents be filed in searchable format to mean that PDF files are not sufficient and must be accompanied by the original Word or Excel document. MidAmerican's concern with this requirement is that it would make documents vulnerable to corruption. MidAmerican suggested changing this rule to require filing of these documents (scanned text-based documents, spreadsheets, workbooks, and databases) in permanent, unchangeable form so the Board has a "control" copy.

At the oral presentation, in response to MidAmerican's concerns about a control copy of a document, Board staff explained that if spreadsheets are available on the Web site, people can download and manipulate them but cannot save them back to the system, so the original, unchanged document will always be available for reference. (Tr. 30.)

The Board agrees with Consumer Advocate that naming conventions will be useful, but does not believe they must be included in the rules, other than the requirements specified for public and confidential versions of documents for which confidential treatment is sought. The Board will cover recommended naming conventions in the training it will offer on electronic filing and will address this topic in

the "help" materials that will be developed for the electronic filing system Web site.

The Board will adopt proposed subrule 14.5(4) without revision.

The Board has considered the comments regarding the difficulties of complying with the requirement in proposed subrule 14.5(7) that any text-based document which has been scanned for electronic filing be full-text searchable. The Board recognizes that a party might have difficulty ensuring that an electronic version of a document not originally prepared by that party is full-text searchable. Therefore, the Board will adopt the following revised version of proposed subrule 14.5(7):

**14.5(7)** Any text-based document which has been scanned for electronic filing must be full-text searchable to the extent that is reasonably possible.

With respect to the requirement in proposed subrule 14.5(8) that spreadsheets, workbooks, and databases include cell formulae and references, the Board concludes it needs access to the formulae and should not have to request that information. The Board acknowledges, however, that filers may wish to limit public access to the formulae used in the spreadsheets or may wish to limit access to the results produced by the formulae. In those cases, the filer should file two versions of the document: a public version with the formulae deactivated and one non-publishable version with active formulae, along with a request for confidential treatment. To clarify this issue, the Board will adopt the following revised version of the proposed subrule:

**14.5(8)** Spreadsheets, workbooks, and databases included in filings shall include all cell formulae and cell references. Where a filer requests confidential treatment of cell formulae and cell references or any other information included in a spreadsheet, workbook, or database, the filer shall file a request for confidential treatment and two versions of the document: a public version of the document with the cell formulae deactivated and other confidential information redacted and a version not for publication containing live formulae and the information for which confidential treatment is requested.

***"Filing Complete" message***

Proposed subrule 14.5(10) explains that the electronic filing system will display a "Filing Complete" notice when the upload of a filing is completed. IAEC correctly noted that a filing is really not complete at the point the system displays the proposed "Filing Complete" message. IAEC suggested that if the Board does not modify the rules to allow the filing to be complete at the point of submission regardless of the time the filing is submitted, the notice generated when a filing is uploaded should say "Upload Complete" to avoid confusion over the actual filing date of a document.

The Board agrees with IAEC's suggestion that "Upload Complete" is the more appropriate message to be displayed at this particular point in the filing process. The Board will adopt the following revised version of proposed subrule 14.5(10):

**14.5(10)** The electronic filing system will display an "Upload Complete" notice when the upload of the filing is completed. If an "Upload Complete" notice does not appear, it is the filer's responsibility to contact the board's records and information center during regular business hours to determine the status of the filing.

***Acceptance or rejection of filing after Records Center review; link to filing***

Proposed subrule 14.5(11) provides that after reviewing a filing,

the board's records and information center will either accept or reject the filing. If the filing is accepted, the document (if not confidential) will be published on the board's Web site, and an electronic file stamp indicating the docket number(s) and date of filing will be added to the published document. A "Notice of Electronic Filing" containing a link to the published document will be sent by E-mail to the filer and to all parties identified on the service list as able to receive electronic service. Where a document is accompanied by a request for confidential treatment, the link will be to the public version of the document, in which information identified as confidential has been redacted (see 199—14.12(17A,476)). Where a filing consists only of a confidential document, such as a response to a board survey or other inquiry, which the board has deemed confidential pursuant to an order requiring the response, the document will not be published on the board's Web site. Acceptance of a document for filing is not a final determination that the document complies with all board requirements and is not a waiver of such requirements. If a filing is rejected, a "Notice of Rejection" explaining why the filing has been rejected will be sent by E-mail to the filer or the filer will be contacted by other appropriate means.

MidAmerican suggested that the proposed subrule be amended to provide that staff's review of a filing will normally take place within 15 minutes of issuance of the "Filing Complete" (now "Upload Complete") notice. The Board will not adopt MidAmerican's suggested revision. The Board intends that the review be completed as quickly as possible, but at this point cannot predict whether 15 minutes will normally be enough time to review a filing before publication. At this point, the Board anticipates that processing of electronic filings will be handled as follows: Records

Center staff will monitor the staging area to identify filings as they come in. Normally, filings will be processed in the order they are received, on a first-in/first-out basis. If Records Center is aware of a filing that requires urgent attention, that filing will be given priority in processing.

The length of time that a filing remains in the staging area is likely to depend on the following factors:

1. the total number of filings received;
2. the size and complexity of the filings;
3. the number of urgent filings;
4. whether payment for the filing is required and has been received; and
5. the number of Records Center staff available to process filings.

Because these factors are variable, it is difficult to provide an estimate of how long it will normally take Records Center staff to process a filing through the staging area to the point of sending the "Notice of Electronic Filing," at which point the filing will be published (if it does not contain confidential information). As Board staff processes filings in the early days of electronic filing, staff will monitor how long certain types of filings take to process (e.g., simple, one or two-document type filings with no request for confidential treatment as opposed to multi-document filings with requests for confidential treatment) and how long it takes to process the queue of filings on peak filing days (e.g., during times of the year when annual reports or other reports such as those associated with Universal Service Fund eligibility are filed). The Board will use that experience to develop appropriate estimates for processing times.

Consumer Advocate stated it is not clear whether the link mentioned in proposed subrule 14.5(11) will allow parties to easily identify, access, and download all electronic files in a large filing with numerous electronic files. Consumer Advocate also stated it is not clear in other proposed rules whether the "Notice of Electronic Filing" will specifically identify each of the files or documents included in a multi-document filing, such as the initial filing in a rate case. The notice will identify the title of the filing and will contain a link to a list of published documents included in the filing. From the list, the recipient of the notice can link to the published documents included in the filing. Downloads, when necessary, will be document by document. To clarify what the notice will contain, the Board will adopt the following revised version of the relevant part of proposed subrule 14.5(11):

**14.5(11)** ... A "Notice of Electronic Filing" containing a link to a list of published documents included in the filing will be sent by E-mail to the filer and to all parties identified on the service list as able to receive electronic service. From the list, the recipient of the notice can link to each published document included in the filing. Where a document is accompanied by a request for confidential treatment, the list will include a link to the public version of the document, in which information identified as confidential has been redacted (see 199—14.12(17A,476)).

### ***Errors***

Proposed subrule 14.5(12) provides that if a

filer discovers an error in the electronic filing or publishing of a document, the filer shall contact the board's records and information center as soon as possible. The records and information center will review the situation and advise

the filing party how the error will be addressed by the records and information center and what further action by the filer, if any, is required. Ordinarily, any modifications to a published document will require a revised filing with the board. If errors in the filing or publishing of a document are discovered by the board's records and information center, board staff will ordinarily notify the filer of the error and advise the filer of what further action, if any, is required to address the error. If the error is a minor one, the records and information center may either correct or disregard the error.

ITA suggested that where the system rejects only a part or portion of a filing, the Board (not the filing party) should identify the defective document(s) and notify the filer about the rejection. ITA also recommended that the parts of the filing that were not defective should be considered as timely filed and asked the Board to revise the proposed rules by defining a "minor" error that might be corrected or disregarded by Board staff.

The Board will not adopt a definition of "minor" error at this time. Instead, the Board anticipates this will be a topic addressed in training materials, where examples of minor errors that will be corrected by Records Center staff or disregarded can be offered. In response to ITA's suggestion that the system reject only the defective-parts of a filing (not the entire filing), the Board notes that, based on system design, filings must be accepted or rejected as an entire filing, not on a document-by-document basis. The Board will adopt subrule 14.5(12) as proposed.

***Documents altered at hearing***

Proposed subrule 14.5(13) provides that if

any prefiled testimony or exhibit that is electronically filed before the hearing is altered or corrected at the hearing in any way and admitted into evidence, the sponsoring party must electronically file the altered document at the earliest opportunity, but no later than three business days after the material is admitted into evidence. If any paper documents which have not been electronically filed before the hearing are admitted into evidence as exhibits at the hearing, the sponsoring party must electronically file the exhibits at the earliest opportunity, but no later than three business days after the material is admitted into evidence.

Consumer Advocate suggested that in long hearings it may not be possible to fix and file the electronic version of altered or corrected documents prior to the conclusion of the hearing. Consumer Advocate proposed that the Board modify the rule to allow the sponsoring party to file the altered document no later than three days after the conclusion of the hearing. The Board agrees with Consumer Advocate and will adopt the suggested revision. As adopted, subrule 14.5(13) will require the sponsoring party to file the altered document no later than three business days after the conclusion of the hearing.

***Official agency record***

As proposed, rule 14.7 provides that the "official agency record in any proceeding is the electronic file maintained by the board's executive secretary." After further review, the Board notes that there may be instances where the official record will include paper filings as well as electronically filed documents. For example, if a

party submits a paper document which cannot be legibly scanned, the Board might allow that paper document to be included in the record. The Board will adopt a revised version of proposed rule 14.7 to provide that the official agency record is the electronic file maintained by the Board's Executive Secretary and any paper filings that are not stored in an electronic form.

Also, for purposes of identifying everything that has been filed in a proceeding, the Board's Records Center staff will prepare and file in the electronic filing system an electronic document containing a brief description of the paper filing. When that descriptive document is accepted into the system, an electronic notice to all parties in the proceeding will be generated. The notice will not constitute service or relieve filers of the obligation to serve such paper filings on all the parties on the service list.

***Paper copies required***

Proposed rule 14.8 explains that some paper copies will be required in addition to, or in lieu of, certain electronic filings. Because it may not be possible for the Board and the general public to print usable copies of maps, drawings, or other oversized documents that are electronically filed, the proposed version of subrule 14.8(1) provides that paper copies of these documents will be required in addition to any electronic version filed. The Board did not receive comments about this proposed amendment from external participants. However, the Board's engineering staff concluded they do not need paper copies of maps, drawings, and documents

they can print in usable form using Board printers. The Board will adopt the following revised version of proposed subrule 14.8(1):

**14.8(1)** Any map, plan and profile drawing, or oversized document that is required to be filed with the board shall be electronically filed as a PDF (Portable Document Format) file or a TIFF (Tag Image File Format) file, if the filer has access to an electronic version of the map. If the map, drawing, or oversized document cannot be printed on 11 by 17 inch or smaller-sized paper in legible and usable form, as determined by the board, the original and four paper copies of each map, drawing, or other document filed pursuant to this rule shall also be filed, unless more copies are required by board order or request. Maps and other documents shall be drawn to a scale appropriate for the level of detail to be shown. However, if the map, drawing, or other document is not electronically filed, then the number of paper copies specified in 199—subrule 7.4(4) or other applicable rule shall be filed.

As proposed, subrule 14.8(2) provided that until December 31, 2008, filers shall provide the Board with one paper copy of each document filed electronically, unless more copies are required by Board order. ITA proposed that the dual filing requirement last only for 60 days after the electronic filing requirement goes into effect. ITA suggested 60 days provides sufficient time to identify and analyze problems. ITA also asked that the Board revise the proposed rules to provide that during the transition period (the dual filing period), a timely filed paper copy will not be deemed untimely if the electronic copy was rejected.

Because the Board is not sure whether 60 days will be enough time to identify, analyze, and correct problems arising in the early days of electronic filing, the Board

will not adopt ITA's proposed revision. Instead, the Board will make the dual filing requirement more flexible by revising the proposed subrule to add the phrase, "unless the Board orders otherwise," thereby allowing the Board to shorten or extend the dual filing requirement based on experience during the early days of electronic filing. The Board will also change the date of the expected end of the dual filing requirement from December 31, 2008, to March 31, 2009, to reflect the current anticipated implementation date of the electronic filing requirement. The Board will adopt the following revised version of proposed subrule 14.8(2):

**14.8(2)** Unless the board orders otherwise, until March 31, 2009, filers shall provide the board with one paper copy of each document that is filed electronically, other than maps or other documents for which supplemental paper copies are required pursuant to subrule 14.8(1), unless more copies are required by board order. The paper copy may be provided by personal delivery or by first-class mail and shall be delivered or deposited in the mail within 24 hours of electronic filing. The electronic document stored in the electronic filing system and published on the board's Web site will function as the official filing.

With respect to ITA's suggested revision about timely-filed paper copies, the Board notes that the intent of the dual filing requirement is to have identical information in electronic and paper form. Therefore, the paper filing made during the dual filing period must be exactly the same as the electronic copy in order to meet the filing requirement. The Board anticipates that if the electronic version of the filing were rejected, the paper copy would likely have those same characteristics and would normally likewise be rejected. The Board believes ITA's concern might relate

to situations where a paper filing is made because of a technical failure. That issue is addressed later in this order.

***Filing deadline***

As proposed, rule 14.9 reads as follows:

**199—14.9(17A,476) When electronic filings can be made; official filing date.** Unless otherwise ordered, an electronic filing can be made at any time outside of any maintenance periods during which the system will not be available. The "Notice of Electronic Filing" generated when the document is published will record the date of the filing of the document. This date will be the official filing date of the document regardless of when the filer actually submitted the document to the electronic filing system. Documents uploaded into the electronic filing system by 3:30 p.m. central time on a business day, if accepted for publication, will be considered filed on that day. Documents uploaded into the electronic filing system after 3:30 p.m. central time on a business day or at any time on a nonbusiness day may, if accepted, be considered filed on the next business day. Filings which require a payment will be considered filed on the date the board receives the payment.

This proposed rule generated the most comments. Several participants urged the Board to revise the rule to allow filings made up until 11:59 p.m. to be accepted on the date of upload, as is the case with electronic filing systems used by the Federal Communications Commission (FCC) and the federal district court. Other comments suggested that if a filing made by 11:59 p.m. were deemed as filed on the calendar day it is received electronically, review and publication could occur the next day.

ITA stated it understood why the Board would want to establish a 3:30 p.m. cut-off time for filing to give staff time to address potentially defective filings. ITA asked whether the Board will be lenient where a filing is made close to or at 3:30 p.m. and a problem is discovered after the filing deadline.

Iowa Telecom noted potential confusion from the use of the word "may" in the sentence in the proposed rule, which provides that documents "uploaded into the electronic filing system after 3:30 p.m. central time on a business day or at any time on a non-business day, may, if accepted, be considered filed on the next business day." Iowa Telecom asked the Board to amend the rule if the use of "may" is not meant to imply that the Board has discretion to consider filings made after 3:30 p.m. as filed on the day the document is uploaded.

The Dickinson firm did not agree with the Board's observation in the "Order Commencing Rule Making" that, for practical purposes, the current paper filing system already has an effective deadline of about 3:30 p.m., given the time required to finalize, execute, copy, and hand-deliver a typical filing.

The participants engaged in a lengthy discussion of the proposed 3:30 p.m. filing deadline at the oral presentation. (Tr. 10-29.) The discussion focused on the participants' experience with electronic filing systems used in other jurisdictions where filings are considered as timely if made by 11:59 p.m.; participants' expectation that electronic filing should make the Board's processes as accessible as possible; the occasional need to work up to a filing deadline; and the difficulties a

3:30 p.m. deadline would pose in cases where out-of-state clients and counsel are involved.

Consumer Advocate noted at the oral presentation that it would be reasonable for the Board to retain the proposed 3:30 p.m. filing deadline. Consumer Advocate stated it cannot afford to lose some of the response time associated with filings that would come in after 3:30 p.m. and not be posted until the next business day. (Tr. 9.) Consumer Advocate stated that where a filing is made after hours on a Friday or on a day before a mid-week holiday, the responding parties would effectively lose the weekend or the entire next day. Consumer Advocate stated that in a case with tight time constraints, it cannot afford to lose that response time.

The Dickinson firm referred to the process used by the federal district court, which automatically "pushes out" a filing when it is successfully uploaded into the system. (Tr. 14.) In response to the concerns of the Consumer Advocate about diminished response time, the Dickinson firm stated that those concerns and potential for abusing the deadlines are "inherent in deadlines," whatever they may be. (Tr. 16.) The Dickinson firm also noted that its main concern was that the time in which to submit a timely filing not be shortened. The firm stated that it was not suggesting to expand from the current paper-based deadline of 4:30 p.m. to 11:59 p.m. as much as it was "trying to defend that hour from 3:30 to 4:30." (Tr. 28.)

The Board notes that whatever filing deadline is established, filers will be able to upload files to the system at any time except during scheduled maintenance. The

Board proposed the 3:30 p.m. filing deadline to allow time for Records Center staff to review electronic filings before they are published and served upon parties. The Board proposed the review-before-publication approach because it anticipates that the consequences of having a filing associated with an incorrect docket number or having confidential information inadvertently disclosed are more serious in an electronic environment, where the information is published on the Board's Web site, than they are in a paper environment. As staff explained at the oral presentation, the Board is concerned about how filings would be removed from the record if an error is discovered after a filing is published. (Tr. 18.) This is particularly an issue for confidential information; if posted automatically and in error, it may be impossible to fully correct the situation.

The Board believes that the 3:30 p.m. filing deadline is reasonable. The 3:30 p.m. deadline approximates the current paper-based 4:30 p.m. filing deadline (accounting for the time saved for in-town filers by not having to print multiple copies for delivery to the Board's offices and the time saved for out-of-town filers by not having to prepare copies of filings for mailing). Compared to the current 4:30 p.m. filing deadline for paper filings, the 3:30 p.m. filing deadline does not significantly reduce the time available for filing. The Board's goal is to make sure that all parties – the filing and responding parties, Consumer Advocate, and the Board and its staff – have access to the filings through the Web site as quickly as possible on the day the filings are considered "filed."

Of all the options considered by the Board, the 3:30 p.m. deadline maximizes response time for responding parties, while at the same time allowing filers to use the time they would otherwise have spent on printing, copying, collating, and delivery to prepare the filing. Filings will be available before the typical close of business on the date they are uploaded, not on a later date (as they would be if staff review, publication, and service are delayed because the filing is received and dated outside the Board's normal business hours). The 3:30 p.m. deadline avoids the scenario identified by Consumer Advocate of a filing received late on a Friday or the day before a mid-week holiday where the clock is ticking, the filing party has met the filing deadline, but the responding parties do not have access to the filing.

The Board notes that the filing deadline and the review process are aspects of the electronic filing system that will be monitored closely, especially during the first year of implementation. Experience with the electronic filing system may lead to adjustment of the filing deadline.

In response to Iowa Telecom's question about the meaning of the word "may" in proposed subrule 14.9 ("Documents uploaded into the electronic filing system after 3:30 p.m. central time on a business day or at any time on a nonbusiness day may, if accepted, be considered filed on the next business day."), the Board notes that discretion is implied by the word "may." Certainly, if Board staff is able to review and accept filings received after 3:30 p.m. before the Records Center closes for the day, they will do so and those filings will be deemed filed on the day they are uploaded.

Seeking an appropriate balance between the needs of filers, responding parties, and the Board, the Board will adopt the 3:30 p.m. deadline.

The Board will make two minor changes to rule 14.9 to reflect other clarifications discussed earlier in this order. As adopted, subrule 7.4(2) will provide that electronically-filed documents will be considered officially filed when they are accepted for filing instead of when they are accepted for publication, as was originally proposed. Similar changes will be made to rule 14.9. The Board will adopt the following revised version of rule 14.9, which clarifies that the "Notice of Electronic Filing" will be generated when the document is accepted for filing, not upon publication, and which replaces "accepted for publication" with "accepted for filing" in the fourth sentence:

**199—14.9(17A,476) When electronic filings can be made; official filing date.** Unless otherwise ordered, an electronic filing can be made at any time outside of any maintenance periods during which the system will not be available. The "Notice of Electronic Filing" generated when the document is accepted for filing will record the date of the filing of the document. This date will be the official filing date of the document regardless of when the filer actually submitted the document to the electronic filing system. Documents uploaded into the electronic filing system by 3:30 p.m. central time on a business day, if accepted for filing, will be considered filed on that day. Documents uploaded into the electronic filing system after 3:30 p.m. central time on a business day or at any time on a nonbusiness day may, if accepted, be considered filed on the next business day. Filings which require a payment will be considered filed on the date the board receives the payment.

***Technical failures, jurisdictional deadlines***

Proposed rule 14.10 provides that when

the electronic filing system will not be available due to scheduled maintenance, a notice of the date, time, and expected duration of the unavailability will be posted on the board's Web site. When the electronic filing system is unexpectedly unable to receive filings during regular business hours continuously or intermittently for more than two hours, registered users will be notified of the problem by E-mail, if possible, and the public will be notified by the posting of a notice of the problem on the board's Web site, if possible.

Proposed rule 14.11 provides that it is the filer's responsibility

to ensure that a document is timely filed to comply with jurisdictional deadlines. A technical failure of the electronic filing system, the filer's own computer equipment, or any other part of the filing system will not excuse the filer from compliance with a jurisdictional filing deadline. If a filer is not able to meet a nonjurisdictional deadline because of a technical failure, the filer must, by the earliest available conventional or electronic means, file the document and seek appropriate relief from the board.

IAEC suggested that the Board accept paper filings when the electronic filing system is unavailable. IAEC also asked whether the Board intends to schedule maintenance on weekends and evenings, as the federal court schedules its system maintenance.

ITA recommended that the notice of system downtime include an estimate of the time the system will be unavailable. ITA asked the Board to provide a 24-hour extension for all filings due during the time that the system was unavailable.

IPL asked the Board to consider allowances for situations where the data transmission failure is caused by a Board system outage.

MidAmerican asked whether, in the event of system downtime and if the Board retains the 3:30 p.m. deadline, a party could deliver a disk to make a filing on time.

MidAmerican suggested revising the second sentence of proposed rule 14.11 as follows:

A technical failure of the electronic filing system during times when a notice of system unavailability has been posted on the Web site or failure of, the filer's own computer equipment, ~~or any other part of the filing system~~ will not excuse the filer from compliance with a jurisdictional filing deadline.

In response to ITA's comments, the Board notes that when possible, notice of outages will be posted on the Board's Web site, along with an estimate of the duration of the outage. Also, the Board intends to schedule maintenance of the system during times of light use, likely on evenings or weekends. Whenever possible, advance notice of any scheduled maintenance will be provided.

In response to IAEC's request that the Board accept paper filings when the electronic filing system is not available, the Board notes that this was the intent of the provision in rule 14.11 that if a filer is not able to meet a nonjurisdictional deadline because of a technical failure, the filer must, by the earliest available conventional or electronic means, file the document and seek appropriate relief from the Board. The Board anticipates that in such a case a filer could file the document on paper along with a motion to accept the late, non-electronic filing (if the document is late).

For this reason, the Board does not agree with ITA's suggestion to provide a 24-hour extension for all filings due during a time the system is unavailable or with IPL's suggestion that the Board consider allowances where the failure is on the Board's side of the system. Situations where a filer misses a non-jurisdictional deadline due to technical failure (even failure of the Board's system) are covered by the proposed rule's provision allowing the filer to file conventionally or electronically as soon as possible and seek relief from the Board. That provision also answers MidAmerican's question about whether, in the event of system downtime, a filer could deliver a disk to submit a timely filing. The Board intends that rule 14.11 will cover these circumstances.

The Board notes that the provision regarding jurisdictional deadlines is based on the federal court rule, which provides that a technical failure, including a failure of the court's filing system, will not excuse a filer from complying with a jurisdictional deadline.<sup>3</sup> The Board does not agree with MidAmerican's proposed revision to rule 14.11 as it appears to create a circumstance where technical failure will excuse missing a filing deadline. The Board reads MidAmerican's suggestion to mean that if the system failure prevents the Board from posting notice of an outage on the Web site, the technical failure would excuse the filer from complying with a jurisdictional filing deadline. This would be inconsistent with the federal court practice. It is also

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<sup>3</sup> See Local Rule 5.2(l)(1), Local Rules of the United States District Courts for the Northern and Southern Districts of Iowa, Revised January 1, 2008.

beyond the Board's authority to extend a statutory deadline by rule. The Board will adopt proposed rules 14.10 and 14.11 without revision.

***Filing of documents containing confidential material***

Proposed rule 14.12 explains that confidential documents will not be published on the Board's Web site. The rule provides that when filing a document containing confidential information, a person shall file a public version of the document with the confidential information redacted according to the Board's standards for electronic information and a non-publishable version of the document containing the confidential information.

MidAmerican asked the Board to clarify that there is no requirement that the confidential version of a document be filed in paper. At the oral presentation, the participants discussed how documents containing confidential information would be electronically filed and whether the move to electronic filing would require a change in the way protective agreements are handled and asked whether the Board's system would serve confidential documents. (Tr. 34-41.)

In response to the questions in written comments and at the oral presentation, the Board offers the following explanation of how confidential material will be handled in the electronic environment. Parties must electronically file documents containing confidential material unless an exception applies. A party filing a confidential document with the Board should also file a redacted public version of that document. Notice of the filing of the public version will be sent to all parties in the docket and the

public document will be posted. The filing party is responsible for sending the confidential document to the other parties, either on paper or electronically, depending on how the parties have agreed to share confidential materials. The Board does not want the parties to file protective agreements with the Board as a regular matter. (Tr. 39-40.)

Upon further review, the Board concludes it would be helpful to clarify proposed rule 14.12 to emphasize that parties filing documents containing confidential materials with the Board are responsible for serving those documents on other parties. The Board will adopt the following revised version of proposed rule 14.12. The revision adds a reference to subrule 14.16(4) (which will be the subject of another clarifying revision discussed later in this order) which states that electronic service will not be used to serve a document which the filer asserts contains confidential material:

**199—14.12(17A,476) Documents containing confidential material.** Confidential documents will not be published on the board's Web site. When filing a document containing confidential information, a person shall file one public version of the document with the confidential information redacted according to the board's standards for electronic information and one version of the document containing the confidential information. The two versions of the document shall be named according to the following convention: "Document Title – Public" and "Document Title – Confidential." It is the responsibility of the person submitting a public version of the electronic document to take appropriate measures to ensure that any embedded information for which confidential treatment is sought is nonviewable, nonsearchable, and nonreversible. Each page of the confidential version of

the document shall be marked in a way that identifies it as belonging to the confidential version of the document. The confidential material itself shall be highlighted or otherwise distinguished on the page to identify what specific information is confidential. A filing including a document the filer asserts contains confidential information shall also include a separate document containing the request for confidential treatment pursuant to 199—subrule 1.9(6). Documents which the filer asserts contain confidential information will not be electronically served by the Board's electronic filing system, as provided in 199—subrule 14.16(4).

### ***User IDs and passwords***

Proposed subrule 14.13(1) provides that the use of a user ID and password constitutes the filer's signature and that all electronic filings are presumed to have been made by the person whose user ID and password have been used to make the filing. The Dickinson firm suggested that the presumption should be that the responsible party is the person indicated in the signature. The firm also recommended that administrative staff at law firms and companies should be allowed to get user IDs and passwords.

With the understanding that an attorney is ultimately responsible for a filing, the Board acknowledges that the attorney's administrative staff may use an attorney's user ID and password to submit a filing. The Board will adopt subrule 14.13(1) as proposed.

### ***Affidavits***

Proposed subrule 14.13(3) covers documents with handwritten signatures. The subrule was intended to apply to affidavits and provides that any

document bearing a handwritten signature must be scanned and filed electronically. The filer must retain the original document for a period of two years or until the conclusion of the proceeding or the conclusion of an appeal, whichever is greater.

Based on the comments and the discussion at the oral presentation, the Board believes that the proposed subrule should be clarified to explain how affidavits will be filed under the electronic filing system. The comments at the oral presentation indicated it might not be possible to have a full-text searchable scanned affidavit containing a handwritten signature. Therefore, to make it easier to comply with the requirement that documents be full-text searchable to the maximum extent possible, the Board will revise the proposed requirement that affidavits be scanned for electronic filing. Instead of scanning an affidavit, a filer will file the electronic version of the affidavit, signed by the affiant using an electronic signature. The original affidavit containing the handwritten signature and the notarization must be retained by the filer for at least two years, as provided in the proposed rule. The filed version of the affidavit does not need to show the handwritten signature and notary's stamp and signature as long as the original has the handwritten signature and is properly notarized. To make it easier for parties to electronically file affidavits, the Board will adopt the following revised version of proposed subrule 14.13(3), which is based on the federal rule:<sup>4</sup>

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<sup>4</sup> See Local Rule 5.2(g)(7), Local Rules of the United States District Courts for the Northern and Southern Districts of Iowa, Revised January 1, 2008.

**14.13(3)** Documents with handwritten signatures. Any document bearing a handwritten signature, such as an affidavit, shall be filed electronically using "/s/" followed by the signer's name to indicate a signature. The filer must retain the original paper version of any such document bearing the original signature and any notarization or verification for a period of two years or until the conclusion of the proceeding or the conclusion of any appeal or related judicial proceeding, whichever is greater, and must promptly file the original if ordered by the board or requested by another party.

***Electronic service***

The electronic service function of the electronic filing system has been designed to send a notice (the "Notice of Electronic Filing") by E-mail to parties on the service list (created and maintained by Records Center staff) upon acceptance for filing, unless the entire filing is confidential. The E-mail message will contain a link to a list of documents included in the filing. From the list a user can link to each document. Proposed subrule 14.16(1) provides, in part, that the notice of electronic filing sent to the filer and other parties will include a service list providing names, addresses, and E-mail addresses of the persons who were sent the notice. The Dickinson firm suggested revising proposed subrule 14.16(1) to provide that a filing party can have multiple E-mail addresses registered in the system for notices and service, including addresses for administrative staff.

The Board acknowledges that it would be useful for a filing party to have more than one E-mail address in the system to receive notices from the system, but it is not necessary for the rules to include an explanation of this feature. Users will be

able to specify an alternate E-mail address when signing up as a registered user. Registered users can enter the E-mail address of an administrative staff person as the alternate E-mail address. The electronic filing system will send notices of electronic filing and other notices to both the registered user's primary and alternate E-mail addresses; only the primary E-mail address will appear on the service list.

Proposed subrule 14.16(4) provides that electronic service shall not be used to serve a document which (1) the filer asserts contains confidential material or (2) initiates a proceeding, such as a complaint or application, except for orders opening inquiries, investigations, or rule making proceedings where the Board has an electronic service list on file.

At the oral presentation, Board staff noted that the Board's electronic filing system follows the federal court model to the extent that it will provide service of most documents filed electronically with the Board. Board staff asked the participants if they would prefer a different approach, such as the one used by the Illinois Commerce Commission and the Federal Energy Regulatory Commission (FERC), where the parties, not the agency, are responsible for service. IPL and IAEC stated they prefer that the Board provide service. (Tr. 18, 20.) The Dickinson firm noted that the Board is probably in a better position to maintain an accurate service list. (Tr. 22.)

Several participants had questions about the proposed electronic service feature. Consumer Advocate noted it was not clear whether proposed subrule

14.16(4) is meant to prohibit a utility from using the electronic filing system to file such things as an application for increased rates and to prevent Consumer Advocate from using the system to file a rate reduction request, or whether it is intended to require a party making an initial filing to separately serve other parties instead of relying on the "Notice of Electronic Filing" to effectuate service on other parties. Consumer Advocate asked the Board to clarify this issue in the final rules.

IAEC noted that the changes to subparagraph 7.4(6)"c"(4) contemplate that documents filed electronically will be electronically served on the Consumer Advocate. IAEC stated it understands that the Board will not have service lists ready for initiating documents, but suggested that because Consumer Advocate is always on the service list for any proceeding, service on the Consumer Advocate could be by electronic means for all proceedings. Similarly, Iowa Telecom suggested that documents initiating any proceeding in which the Consumer Advocate is the only third party being served be eligible for electronic service.

At the oral presentation, MidAmerican indicated it would expect that there would be electronic service of everything, including confidential information, to persons who have signed protective agreements. (Tr. 39.) This comment points out a potential ambiguity in proposed subrule 14.16(4), which will be addressed below.

The Board notes that proposed subrule 14.16(4) was meant to limit electronic *service* of documents initiating a proceeding, not to limit electronic *filing* of such documents. The Board does not believe it is necessary to revise the proposed rules

to make this clear because the filing of an initiating document does not appear as an exception to the electronic filing requirement in rule 14.4.

In response to MidAmerican's comment at the oral presentation that it expects to be able to serve everything electronically, the Board notes that proposed subrule 14.16(4) was not meant to restrict how parties serve confidential documents to each other; parties will continue to serve confidential materials to each other subject to the protective agreements they execute. Instead, proposed subrule 14.16(4) was meant to provide that the Board's electronic filing system would not be used to electronically serve documents containing confidential information. The Board will revise the proposed subrule to resolve any potential ambiguity.

The Board agrees with the comments suggesting that documents otherwise not eligible for electronic service could be served electronically on Consumer Advocate because there should never be a question about the proper E-mail address for Consumer Advocate. The Board will adopt the following revised version of proposed subrule 14.16(4) to allow electronic service on Consumer Advocate of all filings and to clarify that the parties can serve documents containing confidential material electronically, but that such electronic service will not be accomplished through the Board's system:

**14.16(4) Exceptions.** Electronic service through the board's electronic filing system to parties other than the Consumer Advocate Division of the Department of Justice shall not be used to serve a document which (1) the filer asserts contains confidential material or (2) initiates a proceeding, such as a complaint or application, except for

orders opening inquiries, investigations, or rule-making proceedings, or other similar proceedings where the board has an electronic service list on file.

**IT IS THEREFORE ORDERED:**

1. A rule making identified as Docket No. RMU-08-2 is adopted.
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

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 31<sup>st</sup> day of October, 2008.

## UTILITIES DIVISION [199]

### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives notice that on October 31, 2008, the Board issued an order in Docket No. RMU-08-2, In re: Electronic Filing [199 IAC chapters 1, 6, 7, 10, 11, 13, 14], "Order Adopting Amendments." The order adopted amendments which were published under Notice of Intended Action in IAB Vol. XXX, No. 21 (4/09/2008) p. 1523, as **ARC 6707B**, with revisions described in this order.

The amendments add new Chapter 14, which establishes an electronic filing requirement, identifies exceptions to the requirement, and specifies procedures for electronic filing. The amendments make other changes to existing Board rules to reflect the electronic filing requirement.

Written comments addressing the proposed amendments were filed by Victoria J. Place, an attorney who appears before the Board; the Technology, Energy & Communications Practice Section of the Dickinson, Mackaman, Tyler & Hagen law firm (Dickinson firm); the Iowa Association of Electric Cooperatives (IAEC); the Iowa Telecommunications Association (ITA); Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom); Interstate Power and Light Company (IPL); MidAmerican Energy Company

(MidAmerican); Qwest Corporation (Qwest); and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

An oral presentation was held on May 12, 2008.

The Board made several revisions to the amendments based on the comments received and on the Board's final review of the proposed amendments. Specifically, revisions have been made to the proposed amendments to the following subrules and rules: 6.5(2), 7.4(2), 7.10, 11.2(1), 14.2, 14.4(3), 14.4(4), 14.4(5), 14.5(7), 14.5(8), 14.5(10), 14.5(11), 14.5(13), 14.7, 14.8, 14.9, 14.12, 14.13(3), and 14.16(4). The order containing the background and discussion of the comments and revisions adopted by the Board can be found on the Board's Web site, [www.state.ia.us/iub](http://www.state.ia.us/iub).

The amendments will become effective December 24, 2008.

The amendments are intended to implement Iowa Code sections 17A.4 and 476.2.

The following amendments are adopted.

ITEM 1. Amend subrule 1.8(2) as follows:

**1.8(2)** Office hours. Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law. Time provisions for electronic filing are found at 199—14.9(17A,476).

ITEM 2. Amend subrule 1.8(4) as follows:

**1.8(4)** Cross reference to rules regarding electronic filing, placement of docket numbers on filings, service of documents, and required number of copies.

The board's rules regarding electronic filing are found at 199—Chapter 14. The board's rules regarding paper filing are found at 199—Chapter 7, including the board's rule regarding placement of docket numbers on filings is at 199—subrule 7.4(3); The the board's rule regarding service of documents is at 199—subrule 7.4(6); and The the board's rule regarding required number of copies of documents filed on paper is at 199—subrule 7.4(4).

ITEM 3. Amend subrule 6.5(2) as follows:

**6.5(2)** The request for formal complaint proceedings shall be filed within 14 days after issuance of the proposed resolution or the specified date of utility action, whichever is later. The request shall be considered as filed on the date of the United States Postal Service postmark, the date personal service is made, or the date received and accepted in the board's records and information center. The request shall be in writing and must be delivered by United States Postal Service, other delivery service, ~~or personal service,~~ or through the board's electronic filing system pursuant to 199—Chapter 14. The request shall include the file number (C-XX-XXX or C-XXXX-XXXX) marked on the proposed resolution. It shall explain why the proposed resolution should be modified or rejected and propose an alternate resolution, including any temporary relief desired. Copies of the request shall be mailed to the consumer advocate and the parties.

ITEM 4. Amend subrule 7.1(1) as follows:

**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. The rules in this chapter regarding the content and format of pleadings, testimony, workpapers, and other supporting documents apply to both paper filings and electronic filings made pursuant to 199—Chapter 14. The rules in this chapter regarding filing, service, and number of copies required apply to paper filings. Where electronic filing is required, documents shall be filed and served according to 199—Chapter 14.

ITEM 5. Amend rule 199—7.4(17A,474,476) as follows:

**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](http://www.state.ia.us/iub).

**7.4(2) Communications.**

a. Electronic communications. Pleadings and other documents required to be electronically filed with the board shall be filed within the time limit, if any, for such filing, in accordance with the board's electronic filing rules at 199—

Chapter 14. Unless otherwise specifically provided, all electronic communications and documents are officially filed when they are accepted for filing as defined in 199—14.3(17A,476). Persons electronically filing a document with the board must comply with the service requirements in 199—14.16(17A,476).

ab. Paper communications. All paper 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~~ documents required to be filed on paper 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.

bc. The board may ~~accept~~ order that filings be submitted electronically ~~from time to time~~ in proceedings in which the electronic filing requirement in 199—14.2(17A,476) does not apply. Such filings shall be made pursuant to instructions ~~that will be~~ in 199—Chapter 14 and the board's published standards for electronic information or as delineated in the board order or other official

statement ~~authorizing~~ requiring those filings. ~~See rule 7.7(17A,476) for requirements for electronic information filed with the board.~~

**7.4(3)** No change.

**7.4(4)** Number of copies for paper filings.

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)

EDR = 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 either file an original and ten copies or make an electronic filing pursuant to 199—Chapter 14 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 the 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. to e. No change.

**7.4(5)** No change.

**7.4(6)** Service of documents.

a. Method of service.

(1) Paper service. In situations where service of a paper document is permitted or required, and ~~Unless~~ 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.

(2) Electronic service. The board's rule regarding electronic service is at 199—14.16(17A,476).

b. Date of service.

(1) Paper 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).

(2) Electronic service. The board's rule regarding the date of electronic service is at 199—14.16(17A,476).

c. Parties entitled to service.

(1) Paper service. A party or other person filing a notice, motion, pleading, or other paper document in any proceeding shall contemporaneously serve the document on all other parties.

(2) Electronic service. The board's rule regarding electronic service is at 199—14.16(17A,476).

(3) Service of documents containing confidential information. 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.

(4) Service on consumer advocate. A party formally filing any paper document or any other material on paper 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. No change.

**7.4(7)** and **7.4(8)** No change.

**7.4(9)** Cross reference to public documents, ~~and~~ confidential filings, and electronic filings. The board's rule regarding public documents and confidential

filings is at 199—1.9(22). The board's rule regarding electronic filing of documents containing confidential material is at 199—14.12(17A,476).

**7.4(10)** No change.

ITEM 6. Rescind rule 199—7.7(17A,476) and adopt in lieu thereof the following **new** rule:

**199—7.7(17A,476) Electronic information.** Filing of electronic information shall comply with the board's rules on electronic filing at 199—Chapter 14 and the board's published standards for electronic information, available on the board's Web site at www.state.ia.us/iub or from the board's records and information center.

ITEM 7. Amend rule 199—7.8(17A,476) as follows:

**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 or by electronic notice through the electronic filing system, unless otherwise ordered.

ITEM 8. Amend rule 199—7.10(17A,476) as follows:

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

**7.10(1) to 7.10(4)** No change.

**7.10(5)** Prefiled testimony and exhibits submitted on paper 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) board's standards for electronic information, which are available on the board's Web site or from the board's records and information center, 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)~~ board's standards for electronic information, which are available on the board's Web site

or in the board's records and information center. 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)** Any prefiled testimony, including workpapers and exhibits, that is subject to the electronic filing requirement shall comply with the board's standards for electronic information, which are available on the board's Web site or in the board's records and information center, and the electronic filing rules in 199—Chapter 14.

**7.10(6)(7)** 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.

ITEM 9. Amend rule 199—7.12(17A,476) 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 filed on paper shall substantially comply with the form prescribed in 199—subrule 2.2(14). ~~Motions and~~ shall be filed and served pursuant to rule 7.4(17A,476). Motions filed electronically shall substantially comply with the form prescribed in 199—subrule 2.2(14) and shall be filed according to 199—Chapter 14. 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 7 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).

ITEM 10. Amend subrule 7.16(1) as follows:

**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. The board will issue subpoenas only on paper, not through the electronic filing system.

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. Subpoenas cannot be served electronically through the electronic filing system.

ITEM 11. Amend subrule 7.23(8) as follows:

**7.23(8)** Briefs.

a. No change.

b. Unless otherwise electronically filed and served pursuant to 199—Chapter 14 or 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. and d. No change.

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) Briefs filed electronically shall comply with the requirements in this paragraph and the standards for electronic information available on the board's Web site or in the board's records and information center.

ITEM 12. Amend rule 199—7.26(17A,476) as follows:

**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~~ Notice of the presiding officer's proposed decision and order in a contested case shall be sent through the electronic filing system or by first-class mail if any paper filing requirements apply to the proceeding, 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 normally inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

**7.26(2)** No change.

**7.26(3)** Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal. ~~The~~ If the electronic filing requirement applies to the proceeding in which the appeal is taken, the notice of appeal shall be electronically filed unless the appellant has received permission from the board to submit paper filings. If the electronic filing requirement does not apply, 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) to 7.26(7)** No change.

ITEM 13. Amend subrule 7.29(2) as follows:

**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: notice through the electronic filing system; 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.

ITEM 14. Amend subrule 10.2(1), introductory paragraph, as follows:

**10.2(1)** A petition for a permit shall be made to the board upon the form prescribed and shall include all required exhibits. The petition shall be

considered as filed upon receipt at the office of the board. An original and two copies of the petition and exhibits shall be filed, unless the petition and exhibits are filed electronically pursuant to the board's electronic filing rules at 199—

Chapter 14. Required exhibits shall be in the following form:

ITEM 15. Amend subrule 11.3(1), introductory paragraph, as follows:

**11.3(1)** Forms. The following forms are available from the board, and the appropriate form shall be used when filing any petition. An original and three copies of the petition and exhibits shall be filed, unless the petition and exhibits are filed electronically pursuant to the board's electronic filing rules at 199—

Chapter 14.

ITEM 16. Amend subrule 13.2(1), introductory paragraph, as follows:

**13.2(1)** A petition for a permit shall be made to the board upon the form prescribed and shall include all required exhibits. The petition shall be considered as filed upon receipt at the office of the board. An original and two copies of the petition and exhibits shall be filed, unless the petition and exhibits are filed electronically pursuant to the board's electronic filing rules at 199—

Chapter 14. Required exhibits shall be in the following form:

ITEM 17. Adopt the following **new** chapter:

#### CHAPTER 14

#### ELECTRONIC FILING

**199—14.1(17A,476) Purpose.** The purpose of these rules is to establish an electronic filing requirement, to identify exceptions to the electronic filing

requirement, and to specify procedures regarding electronic filing and service of documents filed with or issued by the board.

**199—14.2(17A,476) Scope and applicability of electronic filing requirement.**

As of the date determined by the board, electronic filing is mandatory, unless specifically excepted by these rules. The board will publish on its Web site the effective date of the electronic filing requirement. When the electronic filing requirement is effective, all persons filing documents with the board shall file those documents electronically, subject to the exceptions in this chapter. The board will accept filings electronically pursuant to the rules in this chapter and the board's published standards for electronic information, available on the board's Web site ([www.state.ia.us/iub](http://www.state.ia.us/iub)) or from the board's records and information center, or as delineated in the board order or other official statement requiring those filings. In all circumstances in which the electronic filing requirement applies, the provisions of this chapter override any other board rule regarding number of copies, filing requirements, and service of papers, including the rules in 199—Chapter 7. All other Chapter 7 rules otherwise apply to proceedings, investigations, and other hearings conducted by the board or a presiding officer which are subject to the electronic filing requirement. The board may suspend the electronic filing requirement by further notice as necessary.

**199—14.3(17A,476) Definitions.** Except where otherwise specifically defined by law:

"Accepted for filing" ordinarily means a filing will be published on the board's Web site. Certain documents will be accepted for filing without being

published on the board's Web site. A filing that has been accepted for filing can be rejected at a later date if found not to comply with a board rule or order.

"Electronic filing" means the process of transmitting a document or collection of documents via the Internet to the board's electronic filing system for the purpose of submitting the document for board consideration.

"Electronic filing system" means the system used by the board's records and information center to accept and publish documents filed electronically and which allows the public and parties to view most documents filed with or issued by the board on the board's Web site.

"Guest user" means a person who uses the electronic filing system no more than twice a year to submit filings for the board's consideration.

"Publish" means to make a document available for public viewing or download by posting it on the board's Web site.

"Registered user" means a person who has complied with the board's requirements at 199—14.6(17A,476) to obtain a user ID and password in order to submit filings for the board's consideration through the board's electronic filing system.

**199—14.4(17A,476) Exceptions; numbers of paper copies required.** The following types of filings are not subject to the electronic filing requirement:

**14.4(1)** Filings made by any person who has been excused from the requirement by board order granting a request for permission to file paper documents. The board order granting permission to file paper documents shall specify the required number of paper copies of a document that must be filed.

**14.4(2)** Filings made in proceedings initiated before the effective date of the electronic filing requirement shall comply with all board rules regarding paper filings and number of copies provided, unless the board orders otherwise.

**14.4(3)** Informal consumer complaints. Consumers filing informal complaints pursuant to 199—6.2(476) are not required to electronically file complaints against utilities. Consumers may submit complaints electronically by using the online complaint form available on the board's Web site or by E-mail; on paper by mail or facsimile; or by personally delivering the written complaint to the board's records and information center. Informal consumer complaint files are available for public inspection in the board's records and information center. An informal complaint file will be made available on the board's Web site, to the extent reasonable, only if formal complaint proceedings are granted pursuant to 199—6.5(476).

**14.4(4)** Written objections to applications for electric transmission line franchises, pipeline permits, or hazardous liquid pipeline permits. Objectors are not required to electronically file written objections. Written objections in these cases may be submitted through the electronic filing system pursuant to these rules or may be submitted in writing. Electronic filing of objections is preferred but is not required. Written objections will ordinarily be published on the board's Web site. A suggested objection form is available on the board's Web site, but objectors are not required to use this form.

**14.4(5)** Comments from persons in any other proceeding in which comments from the public are permitted. Persons may submit comments

electronically through the electronic filing system pursuant to these rules, by using any applicable online comment form available on the board's Web site, or by E-mail; or comments may be submitted by letter or facsimile. Comments from persons will ordinarily be published on the electronic filing system.

**14.4(6)** Payment of required fees. Any payment required at the time of filing of a document must be delivered to the board's records and information center in person or by first-class mail or other delivery service. The filing will not be deemed complete and accepted until the required payment is received.

**199—14.5(17A,476) Electronic filing procedures and required formats.**

Electronic documents shall be filed in accordance with the following procedures and required formats:

**14.5(1)** Persons who make infrequent filings with the board (i.e., no more than twice annually) may file as a guest user. Persons who make regular filings with the board shall register to obtain a user ID and password pursuant to registration procedures specified in 199—14.6(17A,476). The board may require an infrequent filer to become a registered user.

**14.5(2)** Electronic filings shall be made by uploading a document or collection of documents into the electronic filing system. E-mailing a document to the board does not constitute filing the document.

**14.5(3)** A filer must provide all required information when electronically filing a document.

**14.5(4)** Electronically filed documents shall be named in a way that accurately describes the contents of each document.

**14.5(5)** All documents shall be formatted in accordance with applicable rules governing formatting of paper documents.

**14.5(6)** All documents shall be formatted in accordance with the board's standards for electronic information, which are available on the board's Web site or from the board's records and information center.

**14.5(7)** Any text-based document which has been scanned for electronic filing must be full-text searchable to the extent that is reasonably possible.

**14.5(8)** Spreadsheets, workbooks, and databases included in filings shall include all cell formulae and cell references. Where a filer requests confidential treatment of cell formulae and cell references or any other information included in a spreadsheet, workbook, or database, the filer shall file a request for confidential treatment and two versions of the document: a public version of the document with the cell formulae deactivated and other confidential information redacted and a version not for publication containing live formulae and the information for which confidential treatment is requested.

**14.5(9)** Hyperlinks and other navigational aids may be included in an electronically filed document. Each hyperlink must contain a text reference to the target of the link. Although hyperlinks may be included in a document as an aid to the reader, the material referred to by the hyperlinks is not considered part of the official record or filing unless the material itself is filed. Hyperlinks to cited authority may not replace standard citation format for constitutional citations, statutes, cases, rules, or other similarly cited materials.

**14.5(10)** The electronic filing system will display an "Upload Complete" notice when the upload of the filing is completed. If the "Upload Complete" notice does not appear, it is the filer's responsibility to contact the board's records and information center during regular business hours to determine the status of the filing.

**14.5(11)** After reviewing the filing, the board's records and information center will either accept or reject the filing. If the filing is accepted, the document (if not confidential) will be published on the board's Web site, and an electronic file stamp indicating the docket number(s) and date of filing will be added to the published document. A "Notice of Electronic Filing" containing a link to a list of published documents included in the filing will be sent by E-mail to the filer and to all parties identified on the service list as able to receive electronic service. From the list, the recipient of the notice can link to each published document included in the filing. Where a document is accompanied by a request for confidential treatment, the list will include a link to the public version of the document, in which information identified as confidential has been redacted (see 199—14.12(17A,476)). Where a filing consists only of a confidential document, such as a response to a board survey or other inquiry, which the board has deemed confidential pursuant to an order requiring the response, the document will not be published on the board's Web site. Acceptance of a document for filing is not a final determination that the document complies with all board requirements and is not a waiver of such requirements. If a filing is rejected, a "Notice of Rejection"

explaining why the filing has been rejected will be sent by E-mail to the filer or the filer will be contacted by other appropriate means.

**14.5(12) Errors.** If a filer discovers an error in the electronic filing or publishing of a document, the filer shall contact the board's records and information center as soon as possible. The records and information center will review the situation and advise the filing party how the error will be addressed by the records and information center and what further action by the filer, if any, is required. Ordinarily, any modifications to a published document will require a revised filing with the board. If errors in the filing or publishing of a document are discovered by the board's records and information center, board staff will ordinarily notify the filer of the error and advise the filer of what further action, if any, is required to address the error. If the error is a minor one, the records and information center may either correct or disregard the error.

**14.5(13) Electronic documents and the hearing process.** If any prefiled testimony or exhibit that is electronically filed before the hearing is altered or corrected at the hearing in any way and admitted into evidence, the sponsoring party must electronically file the altered document at the earliest opportunity, but no later than three business days after the conclusion of the hearing. If any paper documents which have not been electronically filed before the hearing are admitted into evidence as exhibits at the hearing, the sponsoring party must electronically file the exhibits at the earliest opportunity, but no later than three business days after the material is admitted into evidence.

**199—14.6(17A,476) Registration.** To become a registered user, a person must complete a registration form, which is available on the board's Web site, and obtain a user ID and password. If a user believes the security of an existing password has been compromised, the user must change the password immediately.

**199—14.7(17A,476) Electronic file.** The official agency record in any proceeding is the electronic file maintained by the board's executive secretary and any paper filings accepted by the board which are not stored in electronic form. The board's executive secretary is responsible for maintaining an official electronic file in the board's electronic filing system for all documents filed electronically, receiving filings into the electronic filing system by electronic transmission, and scanning documents into the system that are not filed electronically, if feasible. The executive secretary may certify documents by digital signature and seal.

**199—14.8(17A,476) Paper copies required.**

**14.8(1)** Any map, plan and profile drawing, or oversized document that is required to be filed with the board shall be electronically filed as a PDF (Portable Document Format) file or a TIFF (Tag Image File Format) file, if the filer has access to an electronic version of the map. If the map, drawing, or oversized document cannot be printed on 11 x 17 inch or smaller-sized paper in legible and usable form, as determined by the board, the original and four paper copies of each map, drawing, or other document filed pursuant to this rule shall also be filed, unless more copies are required by board order or request. Maps and

other documents shall be drawn to a scale appropriate for the level of detail to be shown. However, if the map, drawing, or other document is not electronically filed, then the number of paper copies specified in 199—subrule 7.4(4) or other applicable rule shall be filed.

**14.8(2)** Unless the board orders otherwise, until March 31, 2009, filers shall provide the board with one paper copy of each document that is filed electronically, other than maps or other documents for which supplemental paper copies are required pursuant to subrule 14.8(1), unless more copies are required by board order. The paper copy may be provided by personal delivery or by first-class mail and shall be delivered or deposited in the mail within 24 hours of electronic filing. The electronic document stored in the electronic filing system and published on the board's Web site will function as the official filing.

**199—14.9(17A,476) When electronic filings can be made; official filing date.** Unless otherwise ordered, an electronic filing can be made at any time outside of any maintenance periods during which the system will not be available. The "Notice of Electronic Filing" generated when the document is accepted for filing will record the date of the filing of the document. This date will be the official filing date of the document regardless of when the filer actually submitted the document to the electronic filing system. Documents uploaded into the electronic filing system by 3:30 p.m. central time on a business day, if accepted for filing, will be considered filed on that day. Documents uploaded into the electronic filing system after 3:30 p.m. central time on a business day or at any time on a nonbusiness day may, if accepted, be considered filed on the next

business day. Filings which require a payment will be considered filed on the date the board receives the payment.

**199—14.10(17A,476) Notice of system unavailability.** When the electronic filing system will not be available due to scheduled maintenance, a notice of the date, time, and expected duration of the unavailability will be posted on the board's Web site. When the electronic filing system is unexpectedly unable to receive filings during regular business hours continuously or intermittently for more than two hours, registered users will be notified of the problem by E-mail, if possible, and the public will be notified by the posting of a notice of the problem on the board's Web site, if possible.

**199—14.11(17A,476) Technical difficulties.** It is the responsibility of the filer to ensure that a document is timely filed to comply with jurisdictional deadlines. A technical failure of the electronic filing system, the filer's own computer equipment, or any other part of the filing system will not excuse the filer from compliance with a jurisdictional filing deadline. If a filer is not able to meet a nonjurisdictional deadline because of a technical failure, the filer must, by the earliest available conventional or electronic means, file the document and seek appropriate relief from the board.

**199—14.12(17A,476) Documents containing confidential material.**

Confidential documents will not be published on the board's Web site. When filing a document containing confidential information, a person shall file one public version of the document with the confidential information redacted according to the board's standards for electronic information and one version of

the document containing the confidential information. The two versions of the document shall be named according to the following convention: "Document Title - Public" and "Document Title - Confidential." It is the responsibility of the person submitting a public version of the electronic document to take appropriate measures to ensure that any embedded information for which confidential treatment is sought is nonviewable, nonsearchable, and nonreversible. Each page of the confidential version of the document shall be marked in a way that identifies it as belonging to the confidential version of the document. The confidential material itself shall be highlighted or otherwise distinguished on the page to identify what specific information is confidential. A filing including a document the filer asserts contains confidential information shall also include a separate document containing the request for confidential treatment pursuant to 199—subrule 1.9(6). Documents which the filer asserts contain confidential information will not be electronically served by the board's electronic filing system, as provided in 199—subrule 14.16(4).

**199—14.13(17A,476) Signatures.**

**14.13(1)** Filings by registered users. The use of a user ID and password in accordance with the registration procedures specified in rule 14.6(17A,476) constitutes the filer's signature. Filers shall use "/s/" followed by the signer's name to indicate a signature where applicable. All pleadings must also include a signature block containing the signer's name, title, address, E-mail address, and telephone number. All electronic filings are presumed to have been made by the

person whose user ID and password have been used to make the electronic filing.

**14.13(2)** Filings by guest users. The personal information required to submit a filing as a guest user constitutes the filer's signature. Filers shall use "/s/" followed by the signer's name to indicate a signature where applicable. All pleadings must also include a signature block containing the signer's name, title, address, E-mail address, and telephone number.

**14.13(3)** Documents with handwritten signatures. Any document bearing a handwritten signature, such as an affidavit, shall be filed electronically using "/s/" followed by the signer's name to indicate a signature. The filer must retain the original paper version of any such document bearing the original signature and any notarization or verification for a period of two years or until the conclusion of the proceeding or the conclusion of any appeal or related judicial proceeding, whichever is greater, and must promptly file the original if ordered by the board or requested by another party.

**199—14.14(17A,476) Original documents.** When a board rule requires the filing of an original document not prepared by the filer or the party on whose behalf the document is filed, such as an invoice or other document, the filer shall scan the original document and file the scanned document in the electronic filing system or request advance board approval of other arrangements. The filer must retain the original document for a period of two years or until the conclusion of the proceeding or the conclusion of an appeal, whichever is greater.

**199—14.15(17A,476) Transcripts.** Transcripts will be published on the board's Web site when they are available electronically and in a manner consistent with the terms of the contract with the court reporting service.

**199—14.16(17A,476) Electronic service.**

**14.16(1)** Service on parties able to receive electronic service. Unless otherwise provided by board rule or order, whenever a document is filed electronically, a "Notice of Electronic Filing" will be generated and sent to the filer and to representatives of the other parties who are able to receive electronic service and who are on the service list. This notice will constitute valid service of electronically filed documents and board orders on parties accepting electronic service. The notice will include a service list providing names, addresses, and E-mail addresses of the persons who were sent the notice. No additional proof or certificate of service is required in matters in which all parties are able to receive electronic service. It is the responsibility of the filer to review the notice to ensure that all parties have been provided notice. All parties are responsible for ensuring that their E-mail accounts are monitored regularly and that E-mail notices sent to the account are opened in a timely manner.

**14.16(2)** Service on parties for whom electronic service is not available. The service list in each proceeding will be available on the board's Web site. The list will identify the representatives for each party and will also indicate the parties for whom electronic service is not available. Filers must serve a paper copy of any electronically filed document on all persons entitled to service for whom electronic service is not available, unless the parties agree to other

arrangements. 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. A party serving a paper copy of any electronically filed document on a person for whom electronic service is not available shall file a certificate of service stating the manner in which service on such person was accomplished in a form consistent with the requirements of 199—subrule 2.2(16).

**14.16(3)** Service of board-generated documents. Orders issued by the board will be electronically filed. The electronic filing system will electronically transmit notice of posting of orders to all parties on the service list that are able to receive electronic service. This notice will constitute valid service of the order. The board's records and information center will mail paper copies of orders to parties who are not able to receive electronic service and to others as ordered. The records and information center will include a copy of the notice with the paper copy of the document.

**14.16(4)** Exceptions. Electronic service through the board's electronic filing system to parties other than the Consumer Advocate Division of the Department of Justice shall not be used to serve a document which (1) the filer asserts contains confidential material or (2) initiates a proceeding, such as a complaint or application, except for orders opening inquiries, investigations, or rule-making proceedings, or other similar proceedings where the board has an electronic service list on file.

**14.16(5)** Changes to service list. Filers wishing to change information on the service list shall file a notice of change of contact information. Other changes to the service list, such as a withdrawal of appearance or substitution of counsel, must be requested by means of an appropriate filing.

These rules are intended to implement Iowa Code sections 17A.4 and 476.2.

October 31, 2008

/s/ John R. Norris

John R. Norris

Chairman