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August 7, 2014

Keith Luchtel, Executive Director
Iowa Public Information Board
Wallace Building, Third Floor
502 E. 9th Street
Des Moines, Iowa 50319

Re: Draft Proposals for Legislative Changes

Dear Mr. Luchtel:

The Iowa Utilities Board thanks the Iowa Public Information Board for the opportunity to comment on the IPIB's draft proposals for legislative changes to the open meetings statute, Iowa Code chapter 21. The IUB is firmly committed to openness and transparency in government; the agency has made all official, public records in its docketed proceedings available at no charge on its web site and streams its public hearings and meetings to the internet live in the interest of maximizing openness. The IUB applauds the proposal to apply the open meetings statute to a broader range of advisory committees; however, the IUB is concerned that the proposed language could be interpreted to apply to regular, workaday meetings of the agency's internal staff, which would severely hamper the agency's ability to complete its statutory duties in a timely manner without increasing transparency in any useful way.

Under existing law, advisory committees are covered by the open meetings act only if they are created by the Governor, the General Assembly, or an executive order of a political subdivision for the purpose of developing and making recommendations on public policy issues. Thus, a negotiating committee formed by any other governmental entity is not subject to the open meetings requirement. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349 (Iowa 2005). The proposed amendment to Iowa Code § 21.2 would extend the open meetings act to advisory boards created by essentially any governmental body. The IUB is concerned that if enacted, this language might be applied to informal teams of staff members that the IUB designates to work on various matters pending before the agency.

Specifically, when a relatively complex matter like a public utility rate case is filed with the IUB, the agency creates an internal team of staff members with differing skill sets (accountants, engineers, analysts, lawyers, and so on) to work together to analyze the evidence in the record and advise and support the three Board members. Typically, that support takes the form of memoranda prior to the public hearing and prior to any

public decision meeting. Prior to the hearing, the staff team may recommend questions for the Board members to ask of the various witnesses; prior to the decision meeting, the staff team will offer recommendations regarding the decisions to be made. The staff memoranda are made part of the public record once they are final, that is, after the associated written order of the Board, representing the Board's final decision, has been issued.

The process of preparing a single memorandum presenting the analysis and recommendations of the team frequently requires meetings of some or all of the team members to discuss issues and consider alternative recommendations. The nature of the open workplace is such that these meetings may take the form of casual, unscheduled conversations at one team member's desk, or scheduled gatherings in a conference room, or any number of variations on those themes.

It seems unlikely that the IPIB intends to include everyday working meetings and discussions among internal agency staff members in the proposed legislation, yet that is a possible interpretation of the first proposal. If the proposal is enacted and interpreted to include internal agency staff meetings, the practical impact would be significant and adverse. Team members would no longer be able to make use of efficient, casual, impromptu discussions about work; any such conversation would have to be scheduled, with at least 24 hours' public notice given, resulting in inevitable delay in completing the agency's statutory duties.

This would be particularly problematic in cases where the team consists of only two staff members. In such cases, the assigned employees would be unable to have any discussion at all about the the work they have been assigned without giving the required notice. Many such cases have to be processed within statutory time limits as short at 30 days; if the two staff members need to discuss the relevant issues, options, and recommendations multiple times, many days will be lost to giving notice of each of these discussions.

Moreover, there would be no offsetting public benefit from extending the statute to teams made up entirely of agency employees. In many cases, staff would be discussing the analysis and recommendations to be made to allow the IUB to make a decision in a contested case. As such, the staff team would likely go into closed session, as would be permitted by Iowa Code § 21.5(1)(f), in order to have the "candid and uninhibited discussion which produces the give-and-take that is the hallmark of effective collective decisionmaking." *Kholeif v. Bd. Of Med. Exam'rs*, 497 N.W.2d 804, 806-7 (Iowa 1993). Because the staff team lacks authority to take any final action on the decision, there would be no final action to be taken in open session. As a result, in those cases the public would only see the team gather and vote to go into closed session, with no further public action.

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Adding the following exception to the definition of “governmental body” would clarify that the legislation is not intended to make the Open Meetings Act applicable to internal agency workgroups:

A team consisting only of employees of a single governmental body, formed by that body for the purpose of advising that governmental body regarding a particular matter within the scope of that body’s policy-making duties, shall not be considered a governmental body that is subject to the requirements of this chapter.

Again, the IUB appreciates this opportunity to comment on the IPIB’s legislative proposals.

If there are any questions concerning these comments, please feel free to contact the undersigned.

Sincerely,

/s/

David Lynch
General Counsel
Iowa Utilities Board