

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>IOWA ASSOCIATION OF MUNICIPAL UTILITIES, Petitioner, v. IOWA UTILITIES BOARD, Respondent.</p>	<p>CASE NO. _____ PETITION FOR JUDICIAL REVIEW</p>
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Petitioner Iowa Association of Municipal Utilities (“IAMU”), pursuant to Iowa Code § 17A.19, submits the following Petition for Judicial Review:

PARTIES

1. IAMU is a trade association representing city-owned utility systems including 540 water utilities, 135 electric utilities, 51 gas utilities, and 25 telecommunications utilities.
2. Iowa Utilities Board (“IUB”) is a state agency responsible for regulating certain public utilities providing electric, natural gas, water, and telecommunications service in the state of Iowa.

JURISDICTION

3. This Court has jurisdiction over this Petition pursuant to Iowa Code § 17A.19(1), which provides for judicial review of final agency action.

VENUE

4. Venue is proper in Polk County District Court pursuant to Iowa Code section 17A.19(2).

FACTUAL BACKGROUND

5. On July 1, 2020, IUB issued an order commencing a rulemaking proceeding, Docket No. RMU-2020-0027, to establish rules for electric cooperatives and municipal electric utilities in 199 Iowa Administrative Code chapter 27.

6. Docket No. RMU-202-0027 was an offshoot from a prior rulemaking proceeding, Docket No. RMU-2019-0020, which had proposed certain amendments to 199 Iowa Administrative Code chapter 20. Based on discussions and comments during that proceeding, IUB determined that creating a separate chapter specific to municipal electric utilities and electric cooperatives would be more efficient and cleaner than including such rules in chapter 20. Accordingly, IUB opened Docket No. RMU-2020-0027.

7. IAMU was a party to both rulemaking proceedings and provided comments relating to the proposed rules in both proceedings.

8. On August 3, 2021, IUB issued an order in RMU-2020-0027 adopting new rules in 199 Iowa Administrative Code chapter 27.

9. The new chapter 27 includes a statement that “These rules are intended to implement Iowa Code sections 476.1A, 476.1B and 476.2.”

10. The new chapter 27 was published in the Iowa Administrative Bulletin on August 25, 2021, in Volume XLIV, Number 4.

11. One of the new rules adopted by IUB requires municipal electric utilities to provide advanced notice to their customers prior to any rate increase. Specifically, rule 27.1(8) provides as follows:

27.1(8) Notice of rate increases. Electric cooperatives and municipal electric utilities shall provide notice of rate increases to all affected customers at least 30 days in advance of the rate increase taking effect. The notice may be sent by U.S. Mail or electronically.

Iowa Admin. Code r. 199-27.1(8) (476).

12. IUB's purported authority for this new rule is Iowa Code section 476.6(2).

13. Another rule adopted in the new chapter 27 prohibits municipal electric utilities from charging interest or late payment charges when customers are paying pursuant to a pre-disconnection payment plan. Rule 27.3(2)(c)(1)(1) provides, in pertinent part, as follows:

1. For customers who received a disconnection notice in conformance with these rules, the electric cooperative or municipal electric utility shall offer an agreement with at least 12 even monthly payments. The utility shall inform customers they may pay off the delinquency early without incurring any prepayment penalties. *A customer shall not be charged interest, or a late payment charge, on a payment agreement where the customer is making payments consistent with the terms of the payment agreement,* and the customer will not be required to pay a portion of the delinquent amount to enter into a payment agreement.

Iowa Admin. Code r. 199-27.3(2)(c)(1)(1) (476) (emphasis added).

14. IUB's purported authority for this rule is Iowa Code section 476.20(5)(a).

15. These new rules went into effect on September 29, 2021.

COUNT I – JUDICIAL REVIEW OF FINAL AGENCY ACTION

10. IAMU incorporates by reference all preceding paragraphs.

11. IUB's August 3, 2021 order adopting the new chapter 27 rules constituted final agency action.

12. Pursuant to Iowa Code section 17A.19(1), any person aggrieved or adversely affected by final agency action may seek judicial review thereof.

13. Because this matter involves agency action other than a decision in a contested case, the petition may be filed at any time the petitioner is aggrieved or adversely affected by the action.

Iowa Code § 17A.19(3).

14. All municipal electric utilities are currently aggrieved and adversely affected by rule 27.1(8) because it imposes a rate notice requirement which is beyond IUB's authority over municipal utilities and is inconsistent with other laws dictating when and how municipal utility rates become effective.

15. All municipal electric utilities are currently aggrieved and adversely affected by rule 27.3(2)(c)(1)(1) because it constitutes a rate regulation which is beyond IUB's authority over municipal utilities and interferes with municipal utilities' exclusive rate-making power.

16. As a trade association representing municipal electric utilities, IAMU has standing to challenge the legality of rule 27.1(8) and rule 27.3(2)(c)(1)(1) on behalf of its aggrieved members. *Iowa-Illinois Gas & Elec. Co. v. Iowa State Com. Comm'n*, 347 N.W.2d 423, 426 (Iowa 1984).

Rule 27.1(8)

17. Rule 27.1(8) requires municipal electric utilities to provide notice of rate increases to all affected customers at least 30 days in advance of the rate increase taking effect.

18. Pursuant to Iowa Code section 476.1B(1), "a municipally owned utility furnishing gas or electricity is not subject to regulation by the board" except for certain enumerated items or "[u]nless otherwise specifically provided by statute." Iowa Code § 476.1B(1).

19. The enumerated items over which IUB has jurisdiction with respect to municipal utilities do not include rates or notices related to rates. Iowa Code § 476.1B(1).

20. Accordingly, IUB only has authority to regulate municipal utilities' rates or notices related to rates if such regulatory authority is "otherwise specifically provided by statute." Iowa Code § 476.1B(1).

21. Section 476.6(2)—the purported basis for IUB’s authority to adopt rule 27.1(8)—provides as follows:

All public utilities, except those exempted from rate regulation by section 476.1 ... shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 ... shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase.

Iowa Code § 476.6(2).

22. The second clause of this provision does not apply to municipal electric utilities because they are not “exempted from rate regulation by section 476.1.” Rather, municipal electric utilities are exempted from rate regulation by Iowa Code section 476.1B.

23. The reference to all “public utilities” in the first clause does not apply to municipal electric utilities because municipal electric utilities are not subject to regulation outside of the categories of section 476.1B “unless otherwise specifically provided by statute.” Iowa Code § 476.1B(1).

24. Iowa Code section 476.6(2) does not “specifically” provide that it applies to municipal electric utilities. In fact, section 476.6 is a rate regulation statute and the rate increase notification provision has already been specifically implemented in Iowa Administrative Code chapter 26, a chapter that is not applicable to municipal electric utilities. *See* Iowa Admin. Code r. 199-26.1(2).

25. The mere reference to all “public utilities” in Iowa Code section 476.6(2) is not an instance where jurisdiction over municipal utilities is “specifically provided by statute.”

26. Rather, “public utilities” is a generic term that is used throughout chapter 476. When the legislature has intended for the term “public utilities” to include municipal utilities, it

has expressly stated as such. *See, e.g.,* Iowa Code § 476.20(3)(a) (providing that “[t]he board shall establish rules which shall be uniform with respect to *all public utilities* furnishing gas or electricity relating to disconnection of service. *This subsection applies both to regulated utilities and to municipally owned utilities....*”) (emphasis added); Iowa Code § 476.27(1)(f) (defining “public utility” for purposes of this section as a “public utility as defined in section 476.1, except that, for purposes of this section, ‘public utility’ also includes all ... *municipally owned facilities....*”) (emphasis added).

27. Accordingly, by its terms, section 476.6(2) does not apply to municipal electric utilities.

28. Moreover, Iowa Code section 2B.5A imposes statutory publication requirements for the Iowa Administrative Bulletin and the Iowa Administrative Code and includes a requirement that each rulemaking document must include “a reference to the statute which the rules are intended to implement.” Iowa Code § 2B.5A(2).

29. The new chapter 27 states that it is intended to implement Iowa Code sections 476.1A, 476.1B, and 476.2. There is no statement that the rules are intended to implement section 476.6.

30. Additionally, IUB’s rule 27.1(8) conflicts with other statutory provisions that specifically dictate the manner in which municipal utility rates are established and adjusted, and the manner in which notice thereof is provided to the public. These statutory provisions were explained to IUB in comments filed by IAMU in Docket No. RMU-2019-0020 on March 30, 2020, and April 13, 2020, but IUB failed to consider these provisions and implemented rule 27.1(8) despite them.

31. Iowa Code section 384.84 requires the governing body of a municipal utility to “establish, impose, adjust, and provide for the collection of rates and charges” sufficient to pay the operating and maintenance expense of the utility, the principal and interest as it becomes due of any revenue bonds that have been issued, and to maintain a reasonable reserve for the payment of principal and interest. Iowa Code § 384.84(1).

32. A municipal utility’s rates “must be established by ordinance of the council” or, in the case of a board-governed municipal utility, “by resolution of the trustees, published in the same manner as an ordinance.” Iowa Code § 384.84(1).

33. Rates set by ordinance are effective upon publication, while rates set by resolution are effective immediately upon signing. Iowa Code § 380.6(1)(a)-(b).

34. Notice of rates is provided through the adoption of rates in open meetings, and through the required publication of ordinances and rate resolutions. *See* Iowa Code chapter 21; Iowa Code §§ 380.7(3) and 384.84(1).

35. IUB’s rule 27.1(8) purports to impose an additional notice requirement and a 30-day waiting period before a municipal electric utility’s rates become effective. This is directly contrary to the above statutory provisions which provide that a municipal utility’s rates are effective upon publication in the case of an ordinance or effective upon signing in the case of a resolution. This is also directly contrary to the above statutory provisions which provide for public notice of adopted rates through publication of rate ordinances and rate resolutions.

36. By imposing a mandatory 30-day waiting period, the rule also interferes with a municipal electric utility’s statutory obligation to “establish” and “adjust” rates when and as necessary to meet its operating and maintenance expense and debt service payments for revenue bonds. Iowa Code § 384.84(1).

37. Pursuant to Iowa Code section 384.93, the procedures for a municipal utility to establish and adjust rates, the effective date of such rates, and the manner of public notice thereof, all as set forth in chapter 384, “control and govern in the event of any conflict ... with the provisions of any other law.” Iowa Code § 384.93.

38. These provisions of the city code are to be construed broadly. Iowa Code § 362.8. In contrast, IUB’s authority over municipal utilities must be read narrowly in light of cities’ home rule authority.

39. Pursuant to Iowa Code sections 364.1 and 364.2, and article III, section 38A of the Iowa Constitution, a city may exercise any power and perform any function it deems appropriate so long as such action is not irreconcilable with state law. Iowa Code §§ 364.1, 364.2; Iowa Const. art. III, § 38A.

40. A municipal utility’s actions in establishing and adjusting rates pursuant to the procedures and timing requirements of section 384.84(1) are acts consistent—not irreconcilable—with state law. Accordingly, such acts are within the municipal home rule authority and IUB may not infringe on such authority.

41. Because IUB’s rule 27.1(8) conflicts with the procedures in chapter 384 and infringes on municipal utilities’ home rule authority, the rule is void and unenforceable as to municipal electric utilities.

42. For these reasons, rule 27.1(8) is beyond the authority delegated to IUB in section 476.1B; is based on illogical reasoning and an erroneous, irrational, illogical or wholly unjustifiable interpretation of the term “public utility” in Iowa Code section 476.6(2); is the result of IUB’s failure to consider objectively relevant and important matters relating to the propriety of the rule; and is otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code

§ 17A.19(10)(b), (c), (i), (j), (l). Accordingly, rule 27.1(8) should be declared to be void and unenforceable as to municipal electric utilities¹.

Rule 27.3(2)(c)(1)(1)

43. Rule 27.3(2)(c)(1)(1) prohibits municipal electric utilities from assessing interest or a late payment charge when a customer is paying pursuant to a pre-disconnection payment plan.

44. Iowa Code section 476.1B does not grant IUB authority over municipal electric utilities with respect to rates, interest, or late charges.

45. Instead, the rates and charges of municipal utilities are governed by Iowa Code section 384.84.

46. Section 384.84(1) authorizes the governing body of a city utility to “establish, impose, adjust, and provide for the collection of rates and charges....” Iowa Code § 384.84(1).

47. Late charges and interest are included within this rate-making power. *State ex rel. Turner v. City of Altoona*, 274 N.W.2d 366, 367-68 (Iowa 1979).

48. A municipal utility’s rate-making power under section 384.84 is exclusive and its decisions control in case of conflict with any other laws. *Id.* at 368 (citing Iowa Code § 384.93).

49. By prohibiting municipal utilities from assessing interest or late charges while a customer is in a payment plan, rule 27.3(2)(c)(1)(1) interferes with municipal electric utilities’ exclusive rate-making power and is therefore void.

50. The purported statutory authority for rule 27.3(2)(c)(1)(1) is Iowa Code section 476.20(5)(a).

51. However, chapter 27 does not list section 476.20(5)(a) as one of the statutes it is intended to implement. *See* Iowa Code § 2B.5A(2).

¹ Rule 27.1(8) also applies to electric cooperatives. However, this Petition only challenges the rule as applied to municipal electric utilities.

52. Moreover, section 476.20(5)(a) merely makes municipal utilities “subject to the board’s rules in regards to payment plans made prior to the disconnection of services.” Iowa Code § 476.20(5)(a). The statute says nothing about municipal utilities being subject to substantive rate regulation by IUB.

53. Interpreting section 476.20(5)(a) broadly to authorize IUB to prohibit municipal utilities from assessing interest or late charges would infringe on the municipalities’ home rule authority. *See* Iowa Code §§ 364.1, 364.2; Iowa Const. art. III, § 38A. Iowa Code section 384.84(1) expressly authorizes municipal utilities to establish and impose rates and charges. Nothing in the Iowa Code prohibits them from imposing such charges during a payment plan. Accordingly, municipal utilities have home rule authority to do so, and IUB’s new rule infringes on that authority.

54. Finally, even if section 476.20(5)(a) did purport to give IUB authority to substantively regulate municipal utilities’ rates, such provision would be precluded by operation of Iowa Code section 384.93. Section 384.93 states that the provisions of Iowa Code chapter 384 “control and govern in the event of any conflict ... with the provisions of any other law.” Iowa Code § 384.93. Section 384.84(1) expressly authorizes municipal utilities to impose rates and charges. A statute which purportedly prohibits municipal utilities from doing so would be inconsistent with section 384.84(1) and, hence, section 384.84(1) would “control and govern.” Iowa Code § 384.93.

55. For these reasons, rule 27.3(2)(c)(1)(1) is beyond the authority delegated to IUB in section 476.1B; is based on illogical reasoning and an erroneous, irrational, illogical, or wholly unjustifiable interpretation of “rules in regards to payment plans” in Iowa Code section 476.20(5)(a); is the result of IUB’s failure to consider objectively relevant and important matters

relating to the propriety of the rule; and is otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code § 17A.19(10)(b), (c), (i), (j), (l). Accordingly, rule 27.3(2)(c)(1)(1) should be declared to be void and unenforceable as to municipal electric utilities².

WHEREFORE, Petitioner Iowa Association of Municipal Utilities respectfully requests that the Court declare IUB's new rule 27.1(8) and rule 27.3(2)(c)(1)(1), codified as Iowa Admin. Code r. 199-27.1(8) and r. 199-27.3(2)(c)(1)(1) (476), to be void and unenforceable as to municipal electric utilities, and grant such other and further relief as the Court deems just and proper.

/s/ Jason M. Craig

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ASSOCIATION OF MUNICIPAL UTILITIES

² Rule 27.3(2)(c)(1)(1) also applies to electric cooperatives. However, this Petition only challenges the rule as applied to municipal electric utilities.