

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>IOWA ASSOCIATION OF MUNICIPAL UTILITIES,</p> <p>Petitioner,</p> <p>vs.</p> <p>IOWA UTILITIES BOARD,</p> <p>Respondent,</p> <p>and</p> <p>OFFICE OF THE CONSUMER ADVOCATE, and IOWA ASSOCIATION OF ELECTRIC COOPERATIVES</p> <p>Intervenors.</p>	<p>CASE NO. CVCV062999</p> <p>RESPONDENT’S <u>AMENDED</u> ANSWER AND AFFIRMATIVE DEFENSES</p>
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COMES NOW Respondent Iowa Utilities Board (IUB), by and through its undersigned counsel, and for its Amended Answer and Affirmative Defenses, respectfully states as follows:

PARTIES

1. Respondent admits that the Iowa Association of Municipal Utilities (IAMU) is a trade association representing city-owned utility systems and denies the remaining allegations contained in Paragraph 1 for lack of information.
2. Respondent admits the allegations contained in Paragraph 2 and notes IUB is also responsible for regulating public utilities providing sanitary sewer and storm water drainage.

JURISDICTION

3. Respondent admits the allegations contained in Paragraph 3.

VENUE

4. Respondent admits the allegations contained in Paragraph 4.

FACTUAL BACKGROUND

5. The allegations contained in Paragraph 5 not admitted herein are denied. Respondent admits that on July 1, 2020, the IUB issued an order that opened Docket No. RMU-2020-0027 and scheduled a stakeholder workshop to discuss whether the IUB should commence a rule making proceeding to establish rules for electric cooperatives and municipal electric utilities in 199 Iowa Administrative Code chapter 27.

6. The allegations contained in Paragraph 6 not admitted herein are denied. Respondent admits that Docket No. RMU-2020-0027 is 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, in part, on discussions and comments filed by IAMU, the Board opened Docket No. RMU-2020-0027 to consider whether to adopt a new administrative rules chapter specific to municipal electric utilities and electric cooperatives.

7. Respondent admits the allegations contained in Paragraph 7.

8. Respondent admits the allegations contained in Paragraph 8.

9. The allegations contained in Paragraph 9 not admitted herein are denied. Respondent admits that the Iowa Administrative Code chapter 199—27 implementation sentence provides that “[t]hese rules are intended to implement Iowa Code sections 476.1A, 476.1B, and 476.2.”

10. The allegations contained in Paragraph 10 not admitted herein are denied. Respondent admits that the August 25, 2021 Iowa Administrative Bulletin published IUB’s “Adopted and Filed” for new chapter 27 as ARC 5865C.

11. Respondent admits the allegations contained in Paragraph 11.

12. The allegations contained in Paragraph 12 not admitted herein are denied. Respondent

admits the statutory basis for subrule 199—27.1(8) includes Iowa Code section 476.6(2).

13. Respondent admits the allegations contained in Paragraph 13.

14. Respondent denies the allegations contained in Paragraph 14. The statutory basis for subnumbered paragraph 199—27.3(2)(c)(1)(1) includes Iowa Code section 476.20(3)(a).

15. Respondent admits the allegations contained in Paragraph 15.

COUNT I – JUDICIAL REVIEW OF FINAL AGENCY ACTION

Second ¶ 10.¹ Respondent re-alleges and incorporates by reference preceding Paragraphs 1 through 15 of this Answer as if set forth herein.

Second ¶ 11. The allegations contained in Second Paragraph 11 not admitted herein are denied. Respondent admits that IUB adopted the current version of chapter 27 through its August 3, 2021 order and further admits that “adoption” is the final agency step in rule making.

Second ¶ 12. The allegations contained in Second Paragraph 12 calls for a legal conclusion for which no response is required. In the event a response is required, Respondent admits that Iowa Code section 17A.19(1) provides that a “person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review” under Iowa Code chapter 17A.

Second ¶ 13. Respondent admits the allegations contained in Second Paragraph 13.

~~**Second ¶ 14.** Respondent denies the allegations contained in Second Paragraph 14 and further states that even if municipal electric utilities are aggrieved or adversely affected by subrule 27.1(8), such municipal electric utilities are not petitioners in this Petition for Judicial Review.~~

Respondent denies the allegations contained in Second Paragraph 14 but admits that rule 27.1(8)

applies to municipal electric utilities.

1. The paragraph numbering in this Answer mirrors the paragraph numbering in the Petition, including the mis-numbering following Paragraph 15.

~~Second ¶ 15. Respondent denies the allegations contained in Second Paragraph 15 and further states that even if municipal electric utilities are aggrieved or adversely affected by subnumbered paragraph 199—27.3(2)(c)(1)(1), such municipal electric utilities are not petitioners in this Petition for Judicial Review.~~ Respondent denies the allegations contained in Second Paragraph 15 but admits that rule 27.3(2)(c)(1)(1) applies to municipal electric utilities.

16. Respondent ~~denies~~ admits the allegations contained in Paragraph 16.

Rule 27.1(8)

17. Respondent admits the allegations contained in Paragraph 17.

18. Respondent admits the allegations contained in Paragraph 18.

19. Respondent admits the allegations contained in Paragraph 19.

20. The allegations contained in Paragraph 20 not admitted herein are denied. Respondent admits that as relating to the subrule 27.1(8) rule making, the “otherwise specifically provided by statute” portion of Iowa Code section 476.1B(1) applies.

21. The allegations contained in Paragraph 21 not admitted herein are denied. Respondent admits that Paragraph 21 block quotes a portion of Iowa Code section 476.6(2).

22. Respondent denies the allegations contained in Paragraph 22.

23. Respondent denies the allegations contained in Paragraph 23.

24. Respondent denies the allegations contained in Paragraph 24.

25. Respondent denies the allegations contained in Paragraph 25.

26. Paragraph 26 contains Petitioner’s legal contentions to which no responsive pleading is required. In the event a response is required, Respondent denies the allegations contained in Paragraph 26.

27. Respondent denies the allegations contained in Paragraph 27.

28. Respondent denies the allegations contained in Paragraph 28.
29. The allegations contained in Paragraph 29 not admitted herein are denied. Respondent admits that the Iowa Administrative Code chapter 199—27 implementation sentence provides that “[t]hese rules are intended to implement Iowa Code sections 476.1A, 476.1B, and 476.2.”
30. Respondent denies the allegations contained in Paragraph 30.
31. The allegations contained in Paragraph 31 not admitted herein are denied. Respondent admits that Paragraph 31, in part, quotes from Iowa Code section 384.84(1).
32. The allegations contained in Paragraph 32 not admitted herein are denied. Respondent admits that Paragraph 32, in part, quotes from Iowa Code section 384.84(1).
33. The allegations contained in Paragraph 33 not admitted herein are denied. Respondent admits that Iowa Code section 380.6 provides that “[m]easures passed by the council become effective in one of the” ways identified in the statute.
34. The allegations contained in Paragraph 34 not admitted herein are denied. Respondent admits municipal utility rate-making may implicate Iowa Code chapter 21 and sections 380.7(3) and 384.84(1).
35. The allegations contained in Paragraph 35 not admitted herein are denied. Respondent admits that subrule 27.1(8) provides: “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.”
36. Respondent denies the allegations contained in Paragraph 36.
37. The allegations contained in Paragraph 37 not admitted herein are denied. Respondent admits that Paragraph 37 quotes a portion of Iowa Code section 384.93.
38. Respondent denies the allegations contained in Paragraph 38.

39. Respondent denies the allegations contained in Paragraph 39 as the provisions of Iowa Code sections 364.1 and 364.2 and article III, section 38A of the Iowa Constitution speak for themselves.

40. Respondent denies the allegations contained in Paragraph 40.

41. Respondent denies the allegations contained in Paragraph 41.

42. Respondent denies the allegations contained in Paragraph 42.

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

43. Respondent admits the allegations contained in Paragraph 43.

44. Respondent denies the allegations contained in Paragraph 44.

45. Respondent denies the allegations contained in Paragraph 45.

46. The allegations contained in Paragraph 46 not admitted herein are denied. Respondent admits that in part, Iowa Code section 384.84(1) concerns the establishment, imposition, adjustment, and provision for the collection of rates and charges.

47. Respondent denies the allegations contained in Paragraph 47.

48. Respondent denies the allegations contained in Paragraph 48.

49. Respondent denies the allegations contained in Paragraph 49.

50. Respondent denies the allegations contained in Paragraph 50.

51. Respondent denies the allegations contained in Paragraph 51 as the chapter 27 implementation sentence speaks for itself and the statutory basis for subnumbered paragraph 199—27.3(2)(c)(1)(1) includes Iowa Code section 476.20(3)(a).

52. Respondent denies the allegations contained in Paragraph 52.

53. Respondent denies the allegations contained in Paragraph 53.

54. Respondent denies the allegations contained in Paragraph 54.

55. Respondent denies the allegations contained in Paragraph 55.

WHEREFORE, Respondent Iowa Utilities Board respectfully requests this Court deny the relief requested by Petitioner, affirm the final agency decision, and assess costs of this action against Petitioner.

~~AFFIRMATIVE DEFENSES~~

~~56. Petitioner lacks standing.~~

~~57. Petitioner has not been aggrieved or adversely affected by the agency action made subject of this case so as to obtain judicial review under Iowa Code section 17A.19(1).~~

Respectfully submitted,

/s/ Jon Tack

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**ATTORNEYS FOR RESPONDENT IOWA
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