

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ELECTRIC VEHICLE CHARGING SERVICE RULE	DOCKET NO. RMU-2020-2020
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ORDER COMMENCING RULE MAKING

BACKGROUND

On September 30, 2019, in Docket No. RMU-2018-0100, the Utilities Board (Board) issued an order adopting the following new rule 20.20:

199—20.20(476) Electric Vehicle Charging Service.

(1) Electric energy sold for the purpose of electric vehicle charging at a commercial or public electric vehicle charging station constitutes neither the furnishing of electricity to the public nor the resale of electric service. If the electricity used for electric vehicle charging is obtained from a rate-regulated public utility, the terms and conditions of the service to the electric vehicle charging station shall be governed by and subject to the utility's filed tariff. A rate-regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.

(2) A person, partnership, business association, or corporation, foreign or domestic, furnishing electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25.

(3) Electric utilities and entities providing commercial or public electric vehicle charging shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including, but not limited to, all taxing requirements, and shall, if necessary, file all appropriate tariffs.

DOCKET NO. RMU-2020-2020
PAGE 2

Adopted rule 20.20 was published in the October 23, 2019 Iowa Administrative Bulletin as ARC 4720C with an effective date of November 27, 2019.

On November 12, 2019, Board staff appeared before the Iowa Administrative Rules Review Committee (ARRC) for purposes of the committee's review of rule 20.20. Pursuant to Iowa Code § 17A.4(6), ARRC objected to rule 20.20, with six members voting in favor of the objection, three members voting against the objection, and one member abstaining. As to the grounds of the objection, ARRC determined:

- Rule 20.20 is unreasonable because the Board failed to consider the legislative policy underlying the state's exclusive service territory law;
- Rule 20.20 is arbitrary and capricious in that it was adopted without regard to the facts presented during the rule making; and
- The Board exceeded its authority in promulgating rule 20.20 because the rule is premised on an erroneous interpretation of the term "public utility" and because the Board lacks the statutory authority to interpret, define, or modify the term "public utility."

DISCUSSION

While disagreeing with ARRC's asserted grounds for its objection, the Board nevertheless appreciates its obligation to review rule 20.20 in light of the objection. As recognized by Professor Arthur Earl Bonfield, the principal architect of the Iowa Administrative Procedures Act, a purpose of an ARRC objection is to provide an agency the opportunity to "correct the rule before facing a judicial challenge." Legislative Services Agency Rulemaking Guide, at p. 37 (found at: <https://www.legis.iowa.gov/docs/publications/LG/14966.pdf>) (last accessed on

DOCKET NO. RMU-2020-2020
PAGE 3

September 15, 2020). The Board initiates this rule making with the intent of adopting an electric vehicle charging services rule that does not contain the defects identified by ARRC.

A primary advantage of existing rule 20.20 is that its scope is narrow and precise in terms of what it does and what it does not do. Existing subrule 20.20(1) provides that an electric vehicle (EV) charging station may provide commercial charging services without being considered an electric utility.

To provide greater clarity while addressing the defects identified by ARRC, the Board prepared new rule 20.20 language that identifies one permissible method of an EV station's acquisition of electric power. In the Board's last EV rule making in Docket No. RMU-2018-0100, all commenters appeared to agree that an entity that acquires its electric power from an incumbent electric utility may provide commercial EV charging services without being considered a public utility. The Board's proposed new rule 20.20 utilizes this universal point of agreement as its centerpiece. Further, the Board proposes to maintain the principles contained in existing subrules 20.20(2) and (3) in a reorganized form.

Therefore, the Board proposes to rescind current rule 20.20 and adopt a new rule 20.20 as shown in the attached "Notice of Intended Action" (NOIA), which is incorporated into this order by reference. The official version of the NOIA will be published in the Iowa Administrative Bulletin and may contain additional nonsubstantive editorial changes.

DOCKET NO. RMU-2020-2020
PAGE 4

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. A rule-making proceeding identified as Docket No. RMU-2020-2020 is commenced for the purpose of receiving comments on the proposed amendments as described in the attached "Notice of Intended Action," which is incorporated in this order by reference.
2. The "Notice of Intended Action" attached to this order shall be submitted to the Administrative Rules Code Editor for review and publication in the Iowa Administrative Bulletin and may contain minor editorial changes that are not shown in the attached "Notice of Intended Action."
3. Comments shall be due 20 days from the date of publication of the "Notice of Intended Action" in the Iowa Administrative Bulletin.

UTILITIES BOARD

Geri Huser Date: 2020.10.14
14:07:29 -05'00'

ATTEST:

Anna Hyatt Date: 2020.10.14
16:43:57 -05'00'

Richard W. Lozier, Date: 2020.10.14
Jr. 16:11:29 -05'00'

Dated at Des Moines, Iowa, this 14th of October, 2020.

The following amendment is proposed:

Item 1. Rescind rule 199—20.20 and adopt the following **new** rule in lieu thereof:

199 – 20.20(476) Electric Vehicle Charging Service.

20.20(1) A commercial or public electric vehicle charging station is not a public utility under Iowa Code section 476.1 if the charging station receives all electric power from the electric utility in whose service area the charging station is located. If an electric vehicle charging station obtains electric power from a source other than the electric utility, the determination of whether the commercial or public electric vehicle charging station is a public utility shall be resolved by the board.

20.20(2) A person, partnership, business association, or corporation, foreign or domestic, furnishing electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25 and, if applicable, with the terms and conditions of the public utility's tariffs or service rules.

20.20(3) A rate-regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.

20.20(4) Electric utilities and entities providing commercial or public electric vehicle charging service shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including but not limited to all taxing requirements, and shall, if necessary, file all appropriate tariffs.