

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVIEW OF LOCATION AND CONSTRUCTION OF ELECTRIC POWER GENERATING FACILITIES RULES [199 IAC CHAPTER 24]	DOCKET NO. RMU-2016-0026
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ORDER COMMENCING RULE MAKING

(Issued October 9, 2017)

The Utilities Board (Board) is conducting a comprehensive review of its administrative rules in accordance with Iowa Code § 17A.7(2). The purpose of the comprehensive review is to identify and eliminate rules that are “outdated, redundant, or inconsistent or incompatible” with statute or other administrative rules. The review of the Board’s “Location and Construction of Electric Power Generating Facilities” rules, 199 IAC chapter 24, has been docketed as Docket No. RMU-2016-0026.

On June 29, 2017, the Board issued an “Order Requesting Stakeholder Comment on Potential Rule Changes.” As part of the order, the Board described proposed changes to chapter 24 of its rules. Attached to that order was a draft “Notice of Intended Action” stating the proposed changes to the rules. The Board also invited comments and proposed revisions to any other parts of the rule and sought comments on whether battery storage facilities with a capacity greater than 25

MW would be subject to the certificate requirements of 476A and chapter 24 of the Board's rules.

The Board received comments from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; MidAmerican Energy Company (MidAmerican); and Interstate Power and Light Company (IPL). None of the parties objected to any of the proposed changes. OCA and IPL indicated that rules relating to battery storage facilities are not appropriate at this time.

IPL suggested further amendments related to wind energy and the repowering of existing wind turbines which MidAmerican supported. OCA did not object to IPL's suggestions, but it noted that IPL did not propose specific language and reserved the right to comment if the Board proposed additional amendments in response. The Board has considered both of IPL's proposals but is not proposing any additional language or revisions at this time. With respect to these issues, the Board believes such situations are sufficiently covered by the Board's existing rules and definitions of "facility" and "significant alteration." However, IPL or any other interested party is invited to propose specific amendments if they wish to pursue these issues further, and the Board will reconsider such issues at that time.

The Board proposes to amend several rules throughout chapter 24. The Board proposes the following revisions to its rules in 199 IAC chapter 24 that express the Board's own goals of eliminating obsolete and unnecessary requirements and

streamlining the rules across chapters. The proposed amendments are identical to those set forth in the Board's order requesting stakeholder comment.

The specific amendments being proposed are set out in the "Notice of Intended Action" attached to this order and incorporated herein by reference. The official version of these amendments will be published in the Iowa Administrative Bulletin and may contain editorial changes that are not shown in the attached "Notice of Intended Action."

SUMMARY OF PROPOSED CHANGES

1. Amend rule 199—24.2(476A)

This proposed amendment would clarify the catch-all language for the definition of "intervenor." It would also clarify part "b" of the definition of "significant alteration" to more clearly state that both conditions must be satisfied to meet the definition.

2. Amend paragraph 24.3(1)(a)

This proposed amendment would amend the language to account for electronic filing.

3. Amend subrule 24.3(2)

This proposed amendment would amend the language to account for electronic filing.

4. Amend rule 199—24.4(476A), introductory paragraph.

This proposed amendment would remove outdated language.

5. Amend paragraph 24.4(1)(j)

This proposed amendment would correct an existing typographical error.

6. Adopt new paragraph 24.4(1)(k)

This proposed adoption of a new paragraph would add a requirement to list parties potentially affected by the use of eminent domain.

7. Amend paragraph 24.4(3)(b)

This proposed amendment would change the word “stress” to “impact” to mirror the other paragraphs in this subrule.

8. Amend subrule 24.5(2)

This proposed amendment would make a non-substantive change to match terminology used elsewhere in the chapter.

9. Amend paragraph 24.6(2)(f)

This proposed amendment would add notice requirements for landowners potentially affected by the use of eminent domain.

10. Adopt new paragraph 24.6(2)(g)

This proposed adoption would contain the catch-all language previously contained in paragraph (f) of this subrule.

11. Amend subrule 24.8(1)

This proposed amendment would clarify that documents should be filed electronically unless otherwise permitted by the Board.

12. Amend paragraph 24.8(2)(a)

This proposed amendment would remove language made outdated by electronic filing.

13. Amend paragraph 24.8(2)(b)

This proposed amendment would remove language made outdated by electronic filing.

14. Amend subrule 24.8(5)

This proposed amendment would add a statutory reference and remove language made outdated by electronic filing.

15. Amend subrule 24.10(4)

This proposed amendment would make a non-substantive change to mirror terminology used elsewhere in the chapter and add a statutory reference.

16. Amend subrule 24.11(1)

This proposed amendment would make a non-substantive change to mirror terminology used elsewhere in the chapter

17. Amend subrule 24.12(2)

This proposed amendment would update and correct a statutory reference.

18. Amend rule 24.15(476A)

This proposed amendment would add a cross-reference to the Board's general waiver rule.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. A rule-making proceeding identified as Docket No. RMU-2016-0026 is commenced for the purpose of receiving comments regarding the proposed amendments in the "Notice of Intended Action" attached hereto and incorporated by reference in this order.

2. The attached "Notice of Intended Action" shall be submitted for publication in the Iowa Administrative Bulletin.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Richard W. Lozier Jr.

Dated at Des Moines, Iowa, this 9th day of October 2017.

UTILITIES DIVISION[199]

Notice of Intended Action

Pursuant to Iowa Code §§ 17A.4, 474.5, 476.2, and 476A.12, the Utilities Board (Board) gives notice that on October 9, 2017, the Board issued an order in Docket No. RMU-2016-0026, In re: Review of Location and Construction of Electric Power Generating Facilities Rules in 199 IAC Chapter 24, “Order Commencing Rule Making” proposing to amend the Board's chapter 24 rules.

The Board is undertaking a comprehensive review of its rules and as part of that review is attempting to make the rules more readable, streamline reporting requirements in the rules, ensure the rules are current, and transition away from providing forms within the rules. The intent of these changes is to promote ease of access for those interacting with the Board.

The specific amendments would update and streamline the filing rules related to generating certificate dockets by updating statutory references, accommodating electronic filing, and removing outdated language. The amendments would also add notice requirements relating to any potential request for the power of eminent domain. The amendments would also clarify existing language and make other editorial changes.

To develop the proposed amendments, the Board sought early input from stakeholders. Stakeholder comments were filed by the Office of Consumer Advocate

(OCA), a division of the Iowa Department of Justice; MidAmerican Energy Company (MidAmerican); and Interstate Power and Light Company (IPL). None of the parties objected to any of the proposed changes. IPL suggested further amendments related to wind energy and the repowering of existing wind turbines which MidAmerican supported. OCA did not object to IPL's suggestions, but it noted that IPL did not propose specific language and reserved the right to comment if the Board proposed additional amendments in response. After consideration of these issues, the Board believes the current rules are sufficient and is not proposing additional amendments in response to IPL's comments.

The order approving this "Notice of Intended Action" can be found on the Board's Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2016-0026.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 14, 2017. The statement should be filed electronically through the Board's EFS. Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. Paper comments may only be filed with approval of the Board.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)(b), an oral presentation may be requested, or the Board on its own motion after reviewing the comments may determine an oral presentation should be scheduled.

Requests for an oral presentation should be filed in EFS by November 14, 2017, in Docket No. RMU-2016-0026.

After analysis and review, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on employment in Iowa.

The amendments are intended to implement Iowa Code chapter 476A.

The following amendments are proposed:

ITEM 1. Amend rule 199—24.2(476A) as follows:

199—24.2(476A) Definitions. As used in this chapter:

“Acid Rain Program” means the sulfur dioxide and nitrogen oxides air pollution control program established pursuant to Title IV of the Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended by Pub. L. 101-549, November 15, 1990.

“Act” means Iowa Code chapter 476A entitled Electric Power Generators.

“Agency” means an agency as defined in Iowa Code section 17A.2(1).

“Allowance” means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide, during or after a specified calendar year.

“Applicant” means the person or persons who make an application for a certificate for a facility or an amendment to a certificate for a facility under the Act. For projects with more than one participant, the applicant may be that person designated by and acting on behalf of the participants.

“Application” means an application for a certificate or an amendment to a certificate submitted to the board pursuant to the Act.

“Board” means the utilities board.

“*Certificate*” means a certificate as defined in Iowa Code section 476A.1.

“*Contested case proceeding*” means the contested case proceeding before the board prescribed by Iowa Code section 476A.4.

“*Facility*” means any electric power generating plant or combination of plants at a single site, owned by any person, with a maximum generator nameplate capacity of 25 megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. This term includes any generation addition that increases the total maximum generator nameplate capacity at one site to 25 megawatts or more, but does not include those transmission lines beyond the generation station’s substation.

“*Interested agency*” means an agency, other than a regulatory agency, which the board in its discretion determines to have a legitimate interest in the disposition of the application.

“*Intervenor*” means a person who received notice under 24.6(2)“b,” “c,” “d,” “e,” or “f” and has filed with the board a written notice of intervention, ~~or, in all other cases, who, upon written petition of intervention is permitted in the proceeding pursuant to 199—~~ subrule 7.2(8). or a person granted permission to intervene by the board after filing a petition pursuant to 199—7.13(17A,476).

“*Participant*” means any person who either jointly or severally owns or operates a proposed facility or significant alteration thereto or who has contracted or intends to contract for a purchase of electricity produced by the subject facility.

“*Party*” means each person or agency named or admitted as a party, including the applicant, intervenors, and consumer advocate.

“*Person*” means individual, corporation, cooperative, government or governmental subdivision or agency, partnership, association or other legal entity.

“*Public utility*” means a public utility as defined in Iowa Code section 476.1.

“*Regulatory agency*” means a state agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the board.

“*Significant alteration*” means:

- a. A change in the generic type of fuel used by the major electric generating facility; or
- b. Any change in the location, construction, maintenance, or operation of equipment at an existing facility that ~~results in a 10 percent increase or more in the maximum generator nameplate capacity of an existing facility if the increase is more than or equal to 25 megawatts.~~ increases the maximum generator nameplate capacity of the facility by at least 10 percent and at least 25 megawatts.

“*Site*” means the land on which the generating unit of the facility, and any cooling facilities, cooling water reservoirs, security exclusion areas, and other necessary components of the facility, are proposed to be located.

“*Site impact area*” means the area within the state of Iowa within a ten-mile radius of the intersection of the transverse centerline axis and longitudinal centerline axis of the generator or all such generators where the proposed facility includes multiple generators.

“Zoning authority” means any city or county zoning authority in whose jurisdictional area a proposed facility site or portion thereof is located.

ITEM 2. Amend paragraph 24.3(1)“a” as follows:

a. The application, associated documents, or other papers filed with the board in a certification proceeding shall be capable of being printed or typewritten and reproduced on sheets of 8½ inches by 11 inches (except for foldouts and special exhibits) ~~in loose leaf or equivalent replaceable sheet form with hard cover.~~

ITEM 3. Amend subrule 24.3(2) as follows:

24.3(2) Manner and place of filing.

a. An applicant shall file the ~~original and 20 copies of its application with the board by presentation or mailing to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.~~ application electronically unless otherwise permitted by the board.

b. ~~Within ten days of receipt of the application the Executive Secretary shall acknowledge in writing receipt of the application, but said acknowledgment shall not constitute acceptance of the application.~~

~~c. Within ten days of the receipt of application, the board shall forward copies thereof to each regulatory agency listed in the application. In addition, that part of the application responding to 24.4(1)“a” through “c” will be forwarded to such~~ The board, through the use of its electronic filing system, shall include on the service list for the application each regulatory agency listed on the application in addition to other agencies as the board deems appropriate including the office of state archaeologist, the division of community action agencies of the department of human rights, and the office of

~~historical preservation of the state historical society of Iowa as interested agencies, and also to the Iowa department of transportation, and the Iowa department of natural resources, if such have not been designated as regulatory agencies.~~

~~c.~~ Any amendments to the application shall be filed in a manner similar to that required of the application.

ITEM 4. Amend rule **24.4(476A)**, introductory paragraph, as follows:

199—24.4(476A) Application for a certificate—contents. Each person or group of persons proposing to construct a facility after January 1, 1977, or a significant alteration to a facility shall file an application for certificate with the board, unless otherwise provided by these rules. The applicant may file a portion of an application and, in conjunction therewith, a request that the board accept such portion of the application pursuant to subrule 24.5(3) and conduct a separate phase of the proceeding with respect to issues presented by such portion of the application to the extent permitted pursuant to 24.5(3) and rule 199—24.9(476A). An application shall substantially comply with the following informational requirements:

ITEM 5. Amend paragraph 24.4(1)“j” as follows:

j. The names and addresses of those owners and lessees of record ~~or~~ of real property identified in 24.6(2)“d” and “e.”

ITEM 6. Adopt new paragraph 24.4(1)“k” as follows:

k. The names and addresses of those owners and lessees of record of real property for whom the applicant seeks the use of eminent domain.

ITEM 7. Amend paragraph 24.4(3)“b” as follows:

b. A forecast of any temporary ~~stress~~ impact placed upon housing, schools or other community facilities as a result of a temporary influx of workers during the construction of the proposed facility.

ITEM 8. Amend subrule 24.5(2) as follows:

24.5(2) Applicant ~~The applicant~~ shall have 30 days from notification of deficiencies to amend or request, for good cause, a reasonable extension of time to amend. In the event the applicant fails to amend within the time allowed or, after amendment, the application or portion thereof filed is not in substantial compliance with the requirements of rule 199—24.4(476A) which pertain thereto, the board may reject the application or such portion thereof. Such rejection shall constitute final agency action, but shall not preclude reapplication.

ITEM 9. Amend paragraph 24.6(2)“f” as follows:

f. ~~Other interested persons as determined by the board.~~ Owners and lessees of real property for which the applicant seeks the power of eminent domain.

ITEM 10. Adopt new paragraph 24.6(2)“g” as follows:

g. Other interested persons as determined by the board.

ITEM 11. Amend subrule 24.8(1) as follows:

24.8(1) General. The proceedings conducted by the board pursuant to this chapter shall be treated in the same manner as a contested case pursuant to the provisions of Iowa Code chapter 17A. Except where contrary to express provisions below, the hearing procedure shall conform to the board’s rules of practice and procedure, 199—Chapter 7, IAC. The proceeding for the issuance of certificate may be consolidated with the contested case proceeding for determination of applicable ratemaking principles

under Iowa Code section 476.53. All filings shall be made electronically unless otherwise permitted by the board.

ITEM 12. Amend paragraph 24.8(2)“a” as follows:

a. *Notice of intervention.* An agency not receiving notice pursuant to 24.6(2)“b” may become a party to the contested case proceeding by filing ~~with the board an original and ten copies of~~ a notice of intervention. Such notice shall contain a statement of the jurisdiction or interest of the particular agency with respect to the proposed facility.

ITEM 13. Amend paragraph 24.8(2)“b” as follows:

b. *Petition to intervene.* Any other person wishing to become a party to the contested case proceeding may request to intervene in the proceeding by petition to intervene filed at least 30 days prior to the date of the scheduled hearing, but not afterward except for good cause shown. Such application shall specify the issues in which petitioner may contest before a regulatory agency or otherwise. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10). ~~The original and ten copies of the petition shall be filed with the board.~~ All other parties to the proceeding shall have the right to resist or respond to the petition to intervene within seven days subsequent to the petitioner’s service thereof.

ITEM 14. Amend subrule 24.8(5) as follows:

24.8(5) Application for rehearing. All applications for rehearing will be made and processed in accordance with Iowa Code section 17A.16(2) and Iowa Code section 476.12. Applications for rehearing after decision made by the board must state the specific grounds upon which the application is based and must specify such findings of fact and conclusions of law and such terms or conditions of any certificate or

amendment to certificate as are claimed to be erroneous, with a brief statement of the grounds of error. An application for rehearing shall substantially comply with the form prescribed in 199—subrule 2.2(13). ~~The original and ten copies of the application shall be filed with the board.~~

ITEM 15. Amend subrule 24.10(4) as follows:

24.10(4) Denial. In the event the applicant fails to amend in a timely fashion, or after amendment or reopening the record, or both, the board is still unable to make an affirmative finding, the board will deny the application. ~~Applicant~~ The applicant may request rehearing on such denial in accordance with Iowa Code section 17A.16(2) and Iowa Code section 476.12.

ITEM 16. Amend subrule 24.11(1) as follows:

24.11(1) In the event no certificate has been issued after 90 days from the commencement of the hearing, the board may permit the applicant to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this section shall have no probative value to the board's decision concerning the actual issuance of a certificate.

ITEM 17. Amend subrule 24.12(2) as follows:

24.12(2) Eminent domain. The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the board approves, prescribes, and finds necessary for the public convenience, use, and necessity, proceeding in the manner of works of internal improvement under Iowa Code chapter 472 6B.

ITEM 18. Amend rule **24.15(476A)** as follows:

199—24.15(476A) Waiver. The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter. In determining whether the public interest would not be adversely affected, the board will consider the following factors:

1. The purpose of the facility.
2. The type of facility.
3. If the facility is for the applicant's own needs.
4. The effect of the facility on existing transmission systems.
5. Any other relevant factors.

In addition to other service requirements, the applicant must serve a copy of the waiver request on all owners of record of real property that adjoins the proposed facility site. A request for a waiver shall also comply with rule 199—1.3(17A,474,476).

September 26, 2017

/s/ Geri D. Huser
Chair