

IOWA UTILITIES BOARD

IN RE: REVIEW OF NONUTILITY SERVICE RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 34]	DOCKET NO. RMU-2023-0034
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ORDER OPENING DOCKET AND SETTING TECHNICAL CONFERENCE AND COMMENT DEADLINE

On January 10, 2023, Gov. Kim Reynolds issued Executive Order Number 10 (Executive Order), which put a moratorium on agency rule making and directed agencies, including the Iowa Utilities Board (Board), to engage in a comprehensive evaluation of existing rules. The goals of the Executive Order include increasing public input in the rule-making process, eliminating rules that do not provide substantial benefits to Iowans, reducing the page and word count of the Iowa Administrative Code, and reducing restrictive rule language. As part of the comprehensive review, agencies are required to repeal each rules chapter and evaluate whether the chapter, or a portion of the chapter, should be re-promulgated. To assist agencies in performing their comprehensive reviews, the Iowa Department of Management developed and published forms and processes. (See <https://dom.iowa.gov/resource/red-tape-rulemaking-processes/executive-order-10-rulemaking-processes> (last accessed on June 14, 2023).)

Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules, and the Board will open the above-captioned docket for purposes of conducting a comprehensive review of chapter 34, which contains the Board's Nonutility Service rules. Attached to this order as Attachment A is

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the Board's retrospective analysis (Red Tape Review Rule Report) of chapter 34, which Board staff will publish on the Board's website as required by section III.B of the Executive Order. Attached to this order as Attachment B is the Board's draft regulatory analysis of chapter 34, which Board staff will submit to the legislative Rules Management System for publication in the Iowa Administrative Bulletin. Finally, attached to this order as Attachment C is a draft version of chapter 34 that the Board is evaluating whether to re-promulgate.

Most of the current proposed changes to chapter 34 center on the removal of unnecessary and restrictive language. The proposed version of chapter 34 attached to this order would result in the reduction of 75 words and the elimination of eight restrictive terms.

The Board will also schedule a technical conference for September 6, 2023. The technical conference will be led by Board staff and participation may occur in person or by webinar. The purpose of the technical conference is to receive comments regarding the draft regulatory analysis and the proposed version of chapter 34 to be re-promulgated. Additionally, the Board will accept written comments concerning the regulatory analysis and the proposed re-promulgated version of chapter 34 through September 6, 2023. The Board will use the oral and written comments received to prepare a final version of the regulatory analysis, which will be uploaded in this docket and published on the Board's website.

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IT IS THEREFORE ORDERED:

1. Docket No. RMU-2023-0034 is opened for the purpose of conducting a comprehensive review of 199 Iowa Administrative Code chapter 34 pursuant to Executive Order Number 10.

2. A technical conference is set for 9 a.m. September 6, 2023, in the Utilities Board hearing room, located at 1375 East Court Avenue, Des Moines, Iowa, to be held concurrently with the technical conference for chapter 33 rules. Interested persons may appear in person or by webinar. Information for attending by webinar can be found on the Utilities Board's website on the Hearing and Meeting Calendar page.

3. Comments regarding the draft regulatory analysis or the proposed re-promulgated version of chapter 34 shall be filed by 3:30 p.m. September 6, 2023.

UTILITIES BOARD

Erik M. Helland 2023.07.06
10:57:59 -05'00'

Joshua Byrnes Date: 2023.07.06
08:46:33 -05'00'

ATTEST:

Keetah Horras 2023.07.06
16:03:29 -05'00'

Sarah Martz Date: 2023.07.06
13:29:05 -05'00'

Dated at Des Moines, Iowa, this 6th day of July, 2023.

Red Tape Review Rule Report (Due: September 1, 2023)

Department Name:	Iowa Utilities Board	Date:	June 26, 2023	Total Rule Count:	7
IAC #:	199	Chapter/ SubChapter/ Rule(s):	34	Iowa Code Section Authorizing Rule:	476.79, 476.80
Contact Name:	Kerri Russ	Rule #:	chapter 34	Phone:	515-725-7331

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

The intended benefit of chapter 34 is to ensure competitors are allowed access to certain services when a rate-regulated utility engages in systematic marketing efforts for a nonutility service.

Is the benefit being achieved? Please provide evidence.

Unknown.

What are the costs incurred by the public to comply with the rule?

The costs incurred by the public will be if any interested persons hire a lawyer or if an interested person is a competitor who wants to gain access to eligible services.

What are the costs to the agency or any other agency to implement/enforce the rule?

There are no additional costs to the agency beyond the everyday costs of the agency.

Do the costs justify the benefits achieved? Please explain.

Yes. When a docket is created, staff is assigned and will provide an analysis and guidance to the Board as necessary.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

Certain criteria has to be met for the rules to be relevant. If the rate-regulated utility is not participating in a nonutility service, or does not conduct systematic marketing efforts, other than on an incidental or casual basis, then there would be no need for the rate-regulated utility or any other persons to comply with the rules.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

Yes.

RULES PROPOSED FOR REPEAL (list rule number[s]):

Rescind 34.2 because nonutility service is defined in Iowa Code section 476.72.

Rescind 34.7 because chapter 6 already contemplates that complaints will follow that chapter.
Revise remaining rules to remove restrictive language and renumber.

***RULES PROPOSED FOR RE-PROMULGATION* (list rule number[s] or include text if available):**

CHAPTER 34
NONUTILITY SERVICE

199—34.1(476) Statement of purpose. A public utility that engages in a systematic marketing effort, other than on an incidental or casual basis, to promote the availability of a nonutility service from the public utility will allow competitors access to certain services.

199—34.2(476) Definition—systematic marketing effort. In determining whether activity constitutes a “*systematic marketing effort, other than on an incidental or casual basis,*” the board will consider whether the effort is regular or irregular, recurring or nonrecurring, active or passive in nature and whether the effort is done on a comprehensive basis. Factors to be considered include, but are not limited to, the types and number of media used; the frequency, extent, and duration of the marketing effort; the amount of marketing expenses incurred; and whether the public utility appeared to intend to increase significantly its market share.

199—34.3(476) Engaged primarily in providing the same competitive nonutility services in the area—defined. “*A person is engaged primarily in providing the same competitive nonutility services in the area*” when the person on an ongoing basis sells or leases equipment or products or offers services, accounting for at least 60 percent of the person’s gross business revenue, which are functionally interchangeable and considered similar by the public with the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

199—34.4(476) Charges permitted. A person meeting the requirements of rule 199—34.4(476) is permitted to use, to the same extent utilized by the public utility for its nonutility service in connection with nonutility services as defined in rule 199—34.2(476), the customer lists, billing and collection system, and mailing system of the public utility company engaged in a systematic marketing effort, other than on an incidental or casual basis. The person will be charged for the cost or expense incurred by the public utility in providing access to its systems and its lists, and will not be greater than the charge, fee, or cost imposed upon or allocated to the provision of nonutility service by the utility for the similar use of the systems.

199—34.5(476) Procedures for utilization of billing and collection system.

34.5(1) When a person meeting the requirements of rule 199—34.4(476) uses the billing and collection system of a public utility, the public utility shall promptly remit to that person all funds collected by the public utility on behalf of the person.

34.5(2) Where a customer makes a partial payment and owes both a public utility and a person(s) meeting the requirements of rule 199—34.4(476) for services or goods provided, the payment received is allocated first to the regulated utility bill plus tax, unless otherwise allocated by the customer. Any balance remaining after payment of the utility bill plus tax is allocated between the public utility for any unpaid nonutility services and any other person(s) utilizing the utility’s billing system according to the ratio of the amount billed by each unless otherwise allocated by the customer. A public utility shall not disconnect a customer’s utility service for nonpayment of a bill for nonutility services.

A person shall not use a public utility’s billing and collection systems to bill and receive payments only from customers who are habitually delinquent or who have failed or refused to make payment to the person.

These rules are intended to implement Iowa Code sections 476.78, 476.80, and 476.81.

***For rules being re-promulgated with changes, please attach a document with suggested changes, if available.**

METRICS

Total number of rules repealed:	2
Proposed word count reduction after repeal and/or re-promulgation	75
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	8

ARE THERE ANY RULES YOU WOULD RECOMMEND BE CODIFIED IN STATUTE?

The Board proposes to revise definitions in Iowa Code section 476.72, except for public utility.

Regulatory Analysis

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board **Rule #** Chapter 34

Iowa Code Section Authorizing Rule Iowa Code section 476.79

State or Federal Law(s) Implemented by the Rule Iowa Code section 476.80

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

Date/Time: September/6/2023 9 a.m.

Location: Utilities Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa 50319

Any interested person may submit written comments concerning this regulatory analysis. Written comments in response to this regulatory analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Contact Name

Kerri Russ

Address

1375 East Court Avenue, Des Moines, Iowa 50319

Email and/or phone number

kerri.russ@iub.iowa.gov/515-725-7331

Purpose and summary of proposed rule:

The purpose of chapter 34 is to ensure competitors are allowed access to certain services when a rate-regulated utility engages in systematic marketing efforts for a nonutility service.

Analysis of Impact of Proposed Rule

1. Persons affected by the proposed rule

- Classes of persons that will bear the costs of the proposed rule:

Rate-regulated utilities with nonutility service and undertake systematic marketing and competitors.

- Classes of persons that will benefit from the proposed rule:

Competitors of rate-regulated utilities who offer same nonutility service; other interested persons

Regulatory Analysis

2. Impact of the proposed rule, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred

- Quantitative description of impact:

This is part of the everyday work to the Board so there is no additional economic impact to the Board. An interested person may be impacted if the person chooses to hire an attorney or if a competitor chooses to invoke the rule and pay the rate-regulated utility directly, in which case the rate-regulated utility may incur some costs. There are no costs to see the public information filed in the Board's electronic filing system.

- Qualitative description of impact:

This chapter ensures fair competition and access to information if legal requirements are met and reasonable compensation is paid.

3. Costs to the state

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional costs to any agency other than the normal every day costs of operation of the Board.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rule to the costs and benefits of inaction

There is a huge benefit in furthering competition where there is a monopoly rate-regulated utility involved. For administering the rule, there are minimal costs involved. Inaction would likely be detrimental because there would be no market or regulatory factors.

5. Determination if less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule

The Board does not believe there are any less costly methods of addressing the purpose of this rule.

6. Alternative methods considered by the agency

- Description of any alternative methods that were seriously considered by the agency:

Inaction.

- Reasons why they were rejected in favor of the proposed rule:

Inaction is not feasible due to the monopoly, anti-competitive market.

Small Business Impact

ATTACHMENT B

Regulatory Analysis

If the rule will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

- Establish less stringent compliance or reporting requirements in the rule for small business.
- Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
- Consolidate or simplify the rule's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rule for small business.
- Exempt small business from any or all requirements of the rule.

If legal and feasible, how does the rule use a method discussed above to reduce the substantial impact on small business?

Unless a small business is a competitor that meets the legal requirements, there is not a substantial impact on small business.

Text of Proposed Rule:

Regulatory AnalysisCHAPTER 34
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Regulatory Analysis

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ATTACHMENT C

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