

## IOWA UTILITIES BOARD

IN RE:

EXECUTIVE ORDER 10 — REVIEW OF  
DECLARATORY ORDERS RULES [199  
IOWA ADMINISTRATIVE CODE  
CHAPTER 4]

DOCKET NO. RMU-2023-0004

### **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 a 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 July 18, 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 4, which contains

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the Board's Declaratory Orders rules. Attached to this order as Attachment A is the Board's retrospective analysis (Red Tape Review Rule Report) of chapter 4, which the Board will direct staff to 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 4, which the Board will direct staff to submit in 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 4 that the Board is evaluating whether to re-promulgate. The draft regulatory analysis attached to this order as Attachment B will be submitted to the Administrative Rules Code Editor for review and publication in the Iowa Administrative Bulletin and may contain changes from the version attached to this order.

Most of the current proposed changes to chapter 4 centers on the removal of unnecessary language and the removal of restrictive language. The proposed version of chapter 4 attached to this order would result in the reduction of approximately 265 words and the elimination of four restrictive terms.

The Board is also scheduling a technical conference for September 21, 2023. The technical conference will be staff run 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 4 to be re-promulgated. Additionally, the Board will accept written comments concerning the regulatory analysis and the proposed re-promulgated version of chapter 4 through September 21, 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-2023-0004 is opened for purposes of conducting a comprehensive review of 199 Iowa Administrative Code chapter 4 pursuant to Executive Order Number 10.
2. A technical conference is set for 9 a.m. September 21, 2023, in the Utilities Board hearing room, located at 1375 E. Court Ave., Des Moines, Iowa. 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 4 shall be filed by September 21, 2023.

**UTILITIES BOARD**

Erik M. Helland Date: 2023.07.28  
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ATTEST:

Keetah Horras 2023.07.28  
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Dated at Des Moines, Iowa, this 28th day of July, 2023.

## Red Tape Review Rule Report (Due: September 1, 2025)

<b>Department Name:</b>	Iowa Utilities Board	<b>Date:</b>	July 18, 2023	<b>Total Rule Count:</b>	7 rules in Chapter 4
<b>IAC #:</b>	199	<b>Chapter/ SubChapter/ Rule(s):</b>	199 IAC chapter 4	<b>Iowa Code Section Authorizing Rule:</b>	Iowa Code §§ 17A.2(1)“b” and 17A.9 and 476.2
<b>Contact Name:</b>	Matt Oetker	<b>Email:</b>	<a href="mailto:matt.oetker@iub.iowa.gov">matt.oetker@iub.iowa.gov</a>	<b>Phone:</b>	515-725-7349

**PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE**

**What is the intended benefit of the rule?**

The intended benefit of Chapter 4 is to inform the public of their right to file a petition for declaratory order under Iowa Code § 17A.9 and to describe the Utilities Board’s declaratory order practice as required by § 17A.3(1)“b.”

By providing this information to the public, it provides information to those who may not come before the Board often and gives detailed information as to what to expect when a petition for declaratory order is filed.

**Is the benefit being achieved? Please provide evidence.**

The agency believes chapter 4 benefits the public by describing how a person may file a petition for declaratory order with the Board and describing the process for declaratory order proceedings. Further, chapter 4 constitutes the agency’s compliance with Iowa Code § 17A.3(1)“b,” which requires all agencies, including the Utilities Board, to adopt rules of practice for all formal and informal proceedings, and § 17A.9 gives the public the right to petition the Utilities Board for a declaratory order.

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

Because chapter 4 informs the public how they may request a declaratory order from the Board, the public may incur a cost if an attorney is hired. If the public only wishes to review the rules, no direct costs would be incurred. Non-monetary costs of time-valuation would be incurred and indirect costs of accessing the internet, having a computer, phone, or tablet available would also be an indirect cost of accessing the rule electronically. If someone only wishes to search the Board’s electronic filing system without the assistance of an attorney or consultant, there would likewise be no costs as a public search does not have any costs, other than time, associated with it.

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

Chapter 4 does not impose any additional costs to the agency beyond the salary of the employees who review the filings associated with any chapter 4 dockets.

**Do the costs justify the benefits achieved? Please explain.**

Because chapter 4 imposes no costs on the public, unless outside counsel or consultants are retained, and there are no costs on the agency (or any other agency) and because the public do benefit from the availability of knowing how to file and proceed to request a declaratory order, the benefits outweigh the costs.

**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.**

Chapter 4 informs the public of the availability of information needed, which may assist lowans in Board proceedings when requesting declaratory orders, making the process more efficient and streamlined for those wishing to request a declaratory order.

**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. The agency intends to remove previously rescinded rules and revise language in rules 4.1, 4.3, 4.4, 4.6, 4.9, and 4.12 to remove restrictive language.

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

- 4.5 - previously rescinded.
- 4.8 - previously rescinded.

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

CHAPTER 4  
DECLARATORY ORDERS

**199—4.1(17A) Petition for declaratory order.** Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. Except as otherwise expressly provided in this chapter, the rules of procedure applicable to a petition for a declaratory order are those set forth in 199—Chapter 7, the provisions for electronic filing are those set forth in 199—Chapter 14, and additional provisions applicable to a petition for declaratory order are established by Iowa Code section 17A.9.

**4.1(1)** A petition is deemed filed when it is received by the board.

**4.1(2)** A complete petition will be dated, signed by the petitioner, including the petitioner’s appropriate contact information, and include the following information (a sample form of a petition for a declaratory order is available at the board’s website, [iub.iowa.gov](http://iub.iowa.gov)):

- a. The question or questions that petitioner wishes the board to determine, stated clearly and concisely;
- b. A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner's interest in the issue;
- c. A citation to and the relevant language of the statutes, rules, policies, decisions, or orders that are applicable or whose applicability is in question and any other relevant law;
- d. The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;
- e. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;
- f. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition; and
- g. A statement whether the petitioner requests a meeting as provided for by rule 199—4.5(17A).

**199—4.2(17A) Intervention.** A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to rule 199—7.13(17A,476) within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A complete petition for intervention in a proceeding on a petition for declaratory order will be dated, signed by the prospective intervenor with that person's appropriate contact information, include the information set forth in rule 199—7.13(17A,476), and include the following:

1. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;
2. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity;
3. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition; and
4. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

**199—4.3(17A) Briefs.** The petitioner or any intervenor may file a brief in support of that party's position. The board may request that the petitioner, intervenor, or any other person submit a brief concerning the questions raised.

**199—4.4(17A) Service and filing of petitions and other documents.** In a proceeding on a request for a declaratory order, except as otherwise provided by law, a party may file with the board a petition for declaratory order, petition for intervention, brief, or any other document in the manner provided in rule 199—14.16(17A,476) and at the same time serve it, in compliance with the requirements of 199—subrule 7.4(6) and rule 199—14.16(17A,476), upon each of the parties of record to the proceeding and on any person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law and file with the board a list of all persons served.

**199—4.5(17A) Informal meeting.** Upon request by petitioner, the board will schedule an informal meeting between the petitioner, all intervenors, and the board, a member of the board, or a designated member of the staff of the board to discuss the questions identified in the petition. The board may solicit comments from any person on the questions raised.

**199—4.6(17A) Refusal to issue order.**

**4.6(1) Grounds.** The board will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. The petitioner requests the board to determine whether a statute is unconstitutional on its face.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

**ATTACHMENT A**

- 3. The board does not have jurisdiction over the questions presented in the petition.
- 4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- 5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- 6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- 7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- 8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
- 9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

**4.6(2) Content and effect of refusal.** The board’s refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.

Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.

**199—4.7(17A) Effect of a declaratory order.** The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order is binding on the board, on the petitioner, on any intervenors who consent to be bound, and on any persons who would be necessary parties, who are served pursuant to subrule 4.4, and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.

A declaratory order is effective upon the date of issuance.

These rules are intended to implement Iowa Code sections 17A.9 and 476.1.

**\*For rules being re-promulgated with changes, you may attach a document with suggested changes.**

**METRICS**

Total number of rules repealed:	2
Proposed word count reduction after repeal and/or re-promulgation	265
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	4

**ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?**

No.

**ATTACHMENT B**

**Draft Regulatory Analysis**

***TEXT BOXES WILL EXPAND AS YOU TYPE***

**Agency Name** Iowa Utilities Board **Rule #** 199 IAC chapter 4  
**Iowa Code Section Authorizing Rule** Iowa Code §§ 17A.2(1)“b”, 17A.9, 476.2  
**State or Federal Law(s) Implemented by the Rule** Iowa Code § 17A.9

**Public Hearing**

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

Date/Time: September 21, 2021 at 9 a.m.

Location: Iowa 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

Matt Oetker

Address

1375 E. Court Avenue, Des Moines, Iowa 50319

Email and/or phone number

matt.oetker@iub.iowa.gov

**Purpose and summary of proposed rule:**

To inform the public of their right to file a petition for declaratory order under Iowa Code § 17A.9 and to describe the Utilities Board’s declaratory order practice as required by § 17A.3(1)“b.”

**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:

Chapter 4 may impose a cost to persons who wish to retain an attorney or consultant to file a petition for declaratory order with the Board.

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



**ATTACHMENT B**

**Draft Regulatory Analysis**

Iowans, especially pro se Iowans, who wish to request Board rule on a declaratory order.

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:

The agency provides rules for a number of different types of agency actions. Chapter 4 provides the filing information for declaratory orders, which most members of the public may not be familiar with in general. As this is part of the everyday work to the Board, there is no additional impact to the Board, economic or otherwise. Thus, the impact would be to interested persons if they choose to hire an attorney or consultant to help with filing a petition for declaratory order. There are no costs to see the public information filed in the Board's electronic filing system; however, there may be a time-cost component for new users.

- Qualitative description of impact:

Chapter 4 has some level of qualitative impact because it assists Iowans who may wish to appear before the Utilities Board or may wish to request the Board grant a petition for declaratory order. The chapter ensures that the public has the information necessary to be able to adequately bring forth a petition for declaratory order.

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

Because Chapter 4 imposes no costs on the public, outside of retaining counsel or a consultant, and no costs on the agency (or any other agency) and because the public do benefit from the information contained within the chapter, the benefits of providing the information outweighs the costs.

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

Because Chapter 4 imposes no costs, outside of those mentioned above, the agency does not believe there is a less costly or intrusive method.

6. Alternative methods considered by the agency

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

**ATTACHMENT B**

**Draft Regulatory Analysis**

Inaction was considered by the Board.

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

Providing the information is valuable, especially to the public who may not be familiar with the process of filing a petition under Chapter 4 with the Board.

**Small Business Impact**

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?

The agency does not believe Chapter 4 has an adverse impact on small business.

**Text of Proposed Rule:**

CHAPTER 4  
DECLARATORY ORDERS

**199—4.1(17A) Petition for declaratory order.** Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. Except as otherwise expressly provided in this chapter, the rules of procedure applicable to a petition for a declaratory order are those set forth in 199—Chapter 7, the provisions for electronic filing are those set forth in 199—Chapter 14, and additional provisions applicable to a petition for declaratory order are established by Iowa Code section 17A.9.

**4.1(1)** A petition is deemed filed when it is received by the board.

**4.1(2)** A complete petition will be dated, signed by the petitioner, including the petitioner's appropriate contact information, and include the following information (a sample form of a petition for a declaratory order is available at the board's website, [iub.iowa.gov](http://iub.iowa.gov)):

*a.* The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

*b.* A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner's interest in the issue;

**ATTACHMENT B**

**Draft Regulatory Analysis**

- c. A citation to and the relevant language of the statutes, rules, policies, decisions, or orders that are applicable or whose applicability is in question and any other relevant law;
- d. The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;
- e. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;
- f. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition; and
- g. A statement whether the petitioner requests a meeting as provided for by rule 199—4.5(17A).

**199—4.2(17A) Intervention.** A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to rule 199—7.13(17A,476) within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A complete petition for intervention in a proceeding on a petition for declaratory order will be dated, signed by the prospective intervenor with that person's appropriate contact information, include the information set forth in rule 199—7.13(17A,476), and include the following:

1. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;
2. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity;
3. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition; and
4. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

**199—4.3(17A) Briefs.** The petitioner or any intervenor may file a brief in support of that party's position. The board may request that the petitioner, intervenor, or any other person submit a brief concerning the questions raised.

**199—4.4(17A) Service and filing of petitions and other documents.** In a proceeding on a request for a declaratory order, except as otherwise provided by law, a party may file with the board a petition for declaratory order, petition for intervention, brief, or any other document in the manner provided in rule 199—14.16(17A,476) and at the same time serve it, in compliance with the requirements of 199—subrule 7.4(6) and rule 199—14.16(17A,476), upon each of the parties of record to the proceeding and on any person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law and file with the board a list of all persons served.

**199—4.5(17A) Informal meeting.** Upon request by petitioner, the board will schedule an informal meeting between the petitioner, all intervenors, and the board, a member of the board, or a designated member of the staff of the board to discuss the questions identified in the petition. The board may solicit comments from any person on the questions raised.

**199—4.6(17A) Refusal to issue order.**

**4.6(1) Grounds.** The board will not issue a declaratory order that would substantially prejudice the rights

**ATTACHMENT B**

**Draft Regulatory Analysis**

of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. The petitioner requests the board to determine whether a statute is unconstitutional on its face.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

**4.6(2) Content and effect of refusal.** The board's refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.

Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.

**199—4.7(17A) Effect of a declaratory order.** The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order is binding on the board, on the petitioner, on any intervenors who consent to be bound, and on any persons who would be necessary parties, who are served pursuant to subrule 4.4, and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.

A declaratory order is effective upon the date of issuance.

These rules are intended to implement Iowa Code sections 17A.9 and 476.1.

CHAPTER 4  
DECLARATORY ORDERS

**199—4.1(17A) Petition for declaratory order.** Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. Except as otherwise expressly provided in this chapter, the rules of procedure applicable to a petition for a declaratory order are those set forth in 199—Chapter 7, the provisions for electronic filing are those set forth in 199—Chapter 14, and additional provisions applicable to a petition for declaratory order are established by Iowa Code section 17A.9.

**4.1(1)** A petition is deemed filed when it is received by the board.

**4.1(2)** A complete petition will be dated, signed by the petitioner, including the petitioner's appropriate contact information, and include the following information (a sample form of a petition for a declaratory order is available at the board's website, [iub.iowa.gov](http://iub.iowa.gov)):

*a.* The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

*b.* A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner's interest in the issue;

*c.* A citation to and the relevant language of the statutes, rules, policies, decisions, or orders that are applicable or whose applicability is in question and any other relevant law;

*d.* The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;

*e.* A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;

*f.* The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition; and

*g.* A statement whether the petitioner requests a meeting as provided for by rule 199—4.5(17A).

**199—4.2(17A) Intervention.** A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to rule 199—7.13(17A,476) within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A complete petition for intervention in a proceeding on a petition for declaratory order will be dated, signed by the prospective intervenor with that person's appropriate contact information, include the information set forth in rule 199—7.13(17A,476), and include the following:

1. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

2. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity;

3. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition; and

4. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

**199—4.3(17A) Briefs.** The petitioner or any intervenor may file a brief in support of that party's position. The board may request that the petitioner, intervenor, or any other person submit a brief

**ATTACHMENT C**

concerning the questions raised.

**199—4.4(17A) Service and filing of petitions and other documents.** In a proceeding on a request for a declaratory order, except as otherwise provided by law, a party may file with the board a petition for declaratory order, petition for intervention, brief, or any other document in the manner provided in rule 199—14.16(17A,476) and at the same time serve it, in compliance with the requirements of 199—subrule 7.4(6) and rule 199—14.16(17A,476), upon each of the parties of record to the proceeding and on any person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law and file with the board a list of all persons served.

**199—4.5(17A) Informal meeting.** Upon request by petitioner, the board will schedule an informal meeting between the petitioner, all intervenors, and the board, a member of the board, or a designated member of the staff of the board to discuss the questions identified in the petition. The board may solicit comments from any person on the questions raised.

**199—4.6(17A) Refusal to issue order.**

**4.6(1) Grounds.** The board will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. The petitioner requests the board to determine whether a statute is unconstitutional on its face.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

**4.6(2) Content and effect of refusal.** The board’s refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.

Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.

**199—4.7(17A) Effect of a declaratory order.** The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order is binding on the board, on the petitioner, on any intervenors who consent to be bound, and on any persons who would be necessary parties, who are served pursuant to subrule 4.4, and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.

A declaratory order is effective upon the date of issuance.

These rules are intended to implement Iowa Code sections 17A.9 and 476.1.