

IOWA UTILITIES BOARD

IN RE:

REVIEW OF ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS, AND ASSET AND SERVICE TRANSFERS RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 31]

DOCKET NO. RMU-2023-0031

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 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/red-tape-review> (last accessed on Aug. 21, 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 NO. RMU-2023-0031

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docket for purposes of conducting a comprehensive review of chapter 31, which contains the Board's Access to Affiliate Records, Requirements for Annual Filings, and Asset and Service Transfers rules. Attached to this order as Attachment A is the Board's retrospective analysis (Red Tape Review Rule Report) of chapter 31, which the Board 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 31, which the Board will submit in the legislative Rules Management System for publication in the Iowa Administrative Bulletin. 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. Finally, attached to this order as Attachment C is a draft version of chapter 31 that the Board is evaluating whether to re-promulgate. Most of the current proposed changes to chapter 31 center on the removal of unnecessary and restrictive language.

The Board is also scheduling a technical conference for October 19, 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 31 to be re-promulgated. Additionally, the Board will accept written comments concerning the draft regulatory analysis and the proposed re-promulgated version of chapter 31 through October 19, 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-2023-0031 is opened for the purpose of conducting a comprehensive review of 199 Iowa Administrative Code chapter 31 pursuant to Executive Order Number 10.

2. A technical conference is set for 2 p.m. October 19, 2023, in the Utilities Board hearing room, located at 1375 East Court Avenue, 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 webpage.

3. Comments regarding the draft regulatory analysis or the proposed re-promulgated version of chapter 31 shall be filed by October 19, 2023.

UTILITIES BOARD

Erik M. Helland 2023.08.23
21:10:54 -05'00'

Joshua Byrnes Date: 2023.08.23
21:48:58 -05'00'

ATTEST:

Kerrilyn Russ 2023.08.24
08:28:29 -05'00'

Dated at Des Moines, Iowa, this 24th day of August, 2023.

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

Department Name:	Iowa Utilities Board	Date:	8/21/2023	Total Rule Count:	9
IAC #:	199	Chapter/ SubChapter/ Rule(s):	Chapter 31	Iowa Code Section Authorizing Rule:	476.73
Contact Name:	IT Support	Email#:	ITsupport@iub.iowa.gov	Phone:	515-725-7300

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

The intended benefit of chapter 31 is to identify the records and filings that need to be filed with the Board when a rate-regulated public utility has affiliates. This chapter provides a vehicle for rate-regulated public utilities to inform the Board and the public as to what/how many/how much business is done with affiliates and ensures that companies are not receiving an unfair advantage due to the affiliate relationship.

Is the benefit being achieved? Please provide evidence.

Yes, rate-regulated utilities file updated affiliate lists and annual reports with the Board.

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

There are no costs to the public to comply with the chapter outside of rates paid to the rate-regulated utility.

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 salaries of the employees who review compliance with the chapter.

Do the costs justify the benefits achieved? Please explain.

Yes, there are minimal costs associated with implementing and enforcing the rules; however, there are significant benefits to ensure rate-regulated utilities are treating affiliates and non-affiliates similarly.

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.

No. Some states may not require updates when there are new or changes to existing affiliate relationships; however, it is important the Board is able to have up-to-date information and waiting for an annual filing or a rate case is not always practical.

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

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Yes. Rules 31.1 - remove restrictive language

31.2 - remove restrictive language
 31.3 - remove restrictive language
 31.5 - remove restrictive language
 31.6 - remove restrictive language
 31.7 - remove restrictive language
 31.8 - remove restrictive language

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

31.4 - previously rescinded
 31.9 - remove unnecessary and redundant language

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

CHAPTER 31
 ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS,
 AND ASSET AND SERVICE TRANSFERS

199—31.1(476) Applicability and definition of terms. This chapter applies to all rate-regulated gas, electric, water, sanitary sewage, or storm water drainage service public utilities. All terms used in this chapter are defined in Iowa Code section 476.72 unless further defined in this chapter.

“Fully distributed cost” is a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of regulated and nonregulated affiliate operations.

“Net book value” means the original purchase price minus depreciation.

199—31.2(476) Availability of records.

31.2(1) Separate records. All affiliates of the public utility shall maintain records which are separate from the records of the public utility.

31.2(2) Records to be maintained. The records maintained by each affiliate and made available for inspection through the public utility include, but are not limited to: ledgers; balance sheets; income statements, both consolidated and consolidating; documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; supporting documents and models for all forecasts of affiliates used by the public utility; all contracts, including summaries of unwritten contracts or agreements; a description of methods used to allocate revenues, expenses, and investments among affiliates or jurisdictions, including supporting detail; and copies of all filings required by other state and federal agencies.

31.2(3) Method of inspection. The records of each affiliate are to be made available to the board at the principal place of business of the public utility. Upon receipt of a formal request in writing from the board for information, the public utility shall produce the requested information within seven days. Upon a showing of good cause, the board may approve additional time for response.

199—31.3(476) Annual filing.

31.3(1) On or before June 30 of each year, all public utilities are to file with the board the following information:

a. An executive summary of each contract, arrangement, or other similar transaction between the public utility and an affiliate. The executive summary includes: the start and end date of the contract, the providing affiliate, the receiving affiliate, the total estimated dollar value, the dollar amount reported for the calendar year, and a description of the service or goods covered.

b. Copies of contracts, arrangements, or other similar transactions between the public utility and an affiliate are to be provided to the board upon request. This includes all contracts, arrangements, or other similar transactions as required by Iowa Code sections 476.74(1) to 476.74(4).

31.3(2) Contracts, arrangements, or other similar transactions with an affiliate where the consideration is not in excess of \$250,000 or 5 percent of the capital equity of the utility, whichever is smaller, are exempt from this filing requirement. In lieu of the filing requirement, the public utility shall file on or before June 30 of each year a report of the total amount of each contract, arrangement, or other similar transactions with affiliates qualifying under this exemption. Each affiliate is to be identified separately.

31.3(3) After an initial filing under rule 199—31.3(476), only new contracts or arrangements or other similar transactions and modifications or amendments to existing contracts or arrangements, or other similar transactions need to be reported on an annual basis. If there have been no new contracts, arrangements, or other similar transactions, the public utility may file a statement to that effect.

31.3(4) If a new affiliate is created, if an existing affiliate is dissolved or merged, if a contractual arrangement or other similar transactional relationship between the public utility and an affiliate is created, or if a contractual arrangement or other similar transactional relationship is terminated between the public utility and an affiliate, the public utility shall notify the board in writing within 60 days of the date of the event. This subrule does not apply if a proposal for reorganization pursuant to 199—Chapter 32 is to be filed with the board or the affiliate does not conduct business with the public utility.

199—31.4(476) Confidential treatment.

When a public utility files contracts, arrangements, or other similar transactions with the board, all such contracts or arrangements for which confidential treatment is sought are to be clearly marked and are subject to 199—Chapter 1.

199—31.5(476) Comparable information. For the purpose of satisfying the filing requirements of this chapter, the public utility may request approval to file alternative but comparable information which the public utility files with other state or federal regulatory agencies. If the proposal is approved by the board, the public utility may file the information as a partial substitute for, or in lieu of, the information stipulated in rule 199—31.3(476), and the board may provide that the public utility continue to file the approved alternative information in future filings. The public utility is to file the same information, whether it is the alternative information filed with other agencies, or the information stipulated in rule 199—31.3(476), for at least five consecutive years. Proposals to file alternative information may be filed by the public utility on or before December 1 of the year preceding the year for which approval is sought.

199—31.6(476) Standards for costing service transfers between regulated operations and nonregulated affiliates.

31.6(1) *Nonregulated affiliate provides service to a regulated affiliate.* The service shall be priced to the regulated affiliate's operations at the price charged to nonaffiliates. If no such price is available, the service may be priced at the lower of fully distributed cost, the lowest price actually charged to other affiliates, or a market price of comparable services. If a market price of comparable services is not reasonably determinable, the service may be priced at the lower of fully distributed cost or the lowest price actually charged to other affiliates. Under no circumstances is the service to be priced to a regulated affiliate's operations at a higher cost than what the regulated affiliate actually paid the unregulated affiliate for the service.

31.6(2) *Service is provided by the utility to a nonregulated affiliate.* Utility service shall be provided at the tariffed price. If it is not a tariffed service, the service is to be recorded at fully distributed cost.

199—31.7(476) Standards for costing asset transfers between regulated operations and non-regulated affiliates valued at less than \$2 million.

31.7(1) *Asset of a nonregulated affiliate transferred to a regulated affiliate.* The asset transfer is recorded at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets. Under no circumstances is the asset to be recorded at a cost higher than what the regulated affiliate actually paid for the asset.

31.7(2) *Asset of a regulated affiliate transferred to a nonregulated affiliate.* The asset transfer to the nonregulated affiliate is to be recorded at the greater of net book value, a price actually charged to other affiliates or nonaffiliates, or the market price of comparable assets.

These rules are intended to implement Iowa Code sections 476.73 and 476.74.

****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	161
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	23

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

Not at this time.

Draft Regulatory Analysis

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board **Rule #** Chapter 31

Iowa Code Section Authorizing Rule Iowa Code sections 476.73 and 476.74

State or Federal Law(s) Implemented by the Rule Iowa Code sections 476.73 and 476.74

Public Hearing

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

Date/Time: 10/19/2023 2 p.m.

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

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

IT Support

Address

Iowa Utilities Board

Email and/or phone number

515.725.7300 ITsupport@iub.iowa.gov

Purpose and summary of proposed rule:

The purpose of chapter 31 is to identify the records and filings that need to be filed with the Board when a rate-regulated public utility has affiliates.

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 utility with affiliates will be affected by the proposed chapter.

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

Customers of rate-regulated utilities with affiliates will benefit from the proposed chapter.

Draft 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 of the Board so there is no additional impact to the Board, economic or otherwise. The rate-regulated utility may have costs due to the filing requirements. There are no costs to see the public information filed in the Board's electronic filing system, but there may be a time-value cost to review the information filed.

- Qualitative description of impact:

This chapter helps ensure that rate-regulated utilities are not favoring affiliates or overpaying affiliates to the detriment of ratepayers.

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 ensuring the rate-regulated utility is not favoring or overpaying an affiliate to the detriment of others. For administering the chapter there is minimal costs involved. Inaction would likely be detrimental and potentially raise the cost of rate cases and other proceedings.

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 chapter.

6. Alternative methods considered by the agency

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

Inaction and reduced filing requirements were considered by the Board.

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

Inaction is not feasible due to the utilities functioning as a monopoly. Reduced filing requirements were rejected due to the Board's and other parties' needs to have timely updates to changes in affiliate status.

Small Business Impact

Draft 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?

The Board does not anticipate a substantial impact on small business.

Text of Proposed Rule:

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Draft Regulatory Analysis

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Draft Regulatory Analysis

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ATTACHMENT C

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31.7(2) *Asset of a regulated affiliate transferred to a nonregulated affiliate.* The asset transfer to the nonregulated affiliate is to be recorded at the greater of net book value, a price actually charged to other affiliates or nonaffiliates, or the market price of comparable assets.

These rules are intended to implement Iowa Code sections 476.73 and 476.74.