

IOWA UTILITIES BOARD

<p>IN RE:</p> <p>REVIEW OF NONUTILITY SERVICES — RECORDKEEPING AND COST ALLOCATIONS RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 33]</p>	<p>DOCKET NO. RMU-2023-0033</p>
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ORDER APPROVING REGULATORY ANALYSIS

On January 10, 2023, Gov. Kim Reynolds issued Executive Order Number 10 (Executive Order), which placed a moratorium on agency rulemaking 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 rulemaking 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 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.

Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules. Each review includes a technical conference for the Board to discuss a draft Regulatory Analysis with interested persons. For chapter 33, this technical conference was held on September 6, 2023. No commenting stakeholder requested changes to the draft Regulatory Analysis.

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The Board has reviewed the oral and written comments received and will approve the final Regulatory Analysis, attached to this order as Attachment A, which the Board will publish on the Board's website.

Additionally, as part of the final Regulatory Analysis, the Board is suggesting revisions to chapter 33 based on comments received during the stakeholder comment process. The revised chapter 33 is included as part of the final Regulatory Analysis. Consequently, the Board will seek authority to commence a formal rulemaking in the above-captioned docket by submitting the Request to Initiate Rulemaking, attached to this order as Attachment B, as required by the Red Tape Review Process. See <https://dom.iowa.gov/red-tape-review> (last accessed on October 5, 2023) (setting forth Executive Order 10 forms and processes).

IT IS THEREFORE ORDERED:

The final Regulatory Analysis for 199 Iowa Administrative Code chapter 33 is approved.

UTILITIES BOARD

Erik M. Helland Date: 2023.10.11
15:57:40 -05'00'

Joshua Byrnes Date: 2023.10.11
13:48:32 -05'00'

ATTEST:

Keetah A Horras Date: 2023.10.11
16:19:40 -05'00'

Sarah Martz Date: 2023.10.11
11:37:11 -05'00'

Dated at Des Moines, Iowa, this 11th day of October, 2023.

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TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board **Rule #**199 IAC Chapter 33

Iowa Code Section Authorizing Rule Iowa Code section 476.79

State or Federal Law(s) Implemented by the Rule Iowa Code section 476.78

Public Hearing

A public hearing at which persons presented their views orally or in writing was held as follows:

Date/Time: 09/06/2023 9:00 a.m.

Location: Board Hearing Room, 1375 E. Court Ave., Des Moines, Iowa

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

Contact Name

IT Support

Address

Iowa Utilities Board

Email and/or phone number

Phone: 515.725.7300 Email: ITsupport@iub.iowa.gov

Purpose and summary of proposed rule:

The purpose of Chapter 33 is to inform rate-regulated utilities and other interested persons of the records required and standards and methods for cost allocations when nonutility services are offered by rate-regulated utilities. The proposed chapter updates the rules within Chapter 33 pursuant to Executive Order 10.

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 services will bear the costs of this proposed chapter.

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

Customers of rate-regulated utilities and other interested persons will benefit from the proposed chapter.

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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. An interested person may be impacted if the person chooses to hire an attorney. 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 allocation of costs when a rate-regulated utility has a nonutility service.

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 everyday 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 costs are allocated accurately where there is a monopoly rate-regulated utility involved. For administering the chapter, 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 chapter.

6. Alternative methods considered by the agency

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

Inaction was considered by the Board.

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

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

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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?

There is not a substantial impact on small business.

Text of Proposed Rule:

CHAPTER 33
NONUTILITY SERVICES—RECORDKEEPING
AND COST ALLOCATIONS

199—33.1(476) **Applicability.** This chapter applies to all rate-regulated public utilities.

199—33.2(476) **Definitions.** All terms used in this chapter are defined in Iowa Code section 476.72 unless further defined in this chapter.

“*Exception time reporting*” means when an employee works predominantly in either utility or nonutility operations and only reports time worked in the less predominant area.

“*Filing threshold*” means that the summation of an electric or gas utility’s revenues recorded in FERC accounts 415 and 417 equals 3 percent of a utility’s operating revenues recorded in FERC account 400, or the summation of a water utility’s revenues from nonutility service equals 3 percent of the utility’s operating revenues. The revenues in these accounts will be as recorded in the annual FERC Form 1 for electric and combination utilities, FERC Form 2 for gas utilities, and similar National Association of Regulatory Utility Commissioners (NARUC) accounts for water, sanitary sewage, or storm water drainage service utilities.

“*Fully distributed cost*” means a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of utility and nonutility services.

“*Incidental activities*” means activities that are so closely related to the provision of utility services and limited in scale that it is impracticable to identify separately the costs of such activities.

“*Net book value*” means the original purchase price net of depreciation.

“*Nonproductive work time*” means time for which an employee is paid but which is not specifically attributable either to utility or to nonutility operations.

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“Positive time reporting” means when productive work time is accounted for and allocated to utility operations or nonutility operations.

“Study time reporting” means when periodic studies are done to determine the amount of productive work time being spent on utility versus nonutility operations.

“Utility operating revenues” means the dollar amounts recorded in FERC account 400, or similar NARUC account, for water, sanitary sewage, or storm water drainage service utilities.

199—33.3(476) **Availability of records.**

33.3(1) *Separate records.* A rate-regulated public utility receiving revenues for providing nonutility service shall keep and render to the board separate records on the nonutility service.

33.3(2) *Records to be maintained.* The records maintained for each nonutility service and made available for inspection include the following: documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; a description of methods used to allocate revenues, expenses, and investments between utility and nonutility operations, including supporting detail; and copies of all filings required by other state and federal agencies.

199—33.4(476) **Costing methodology.** Costs shall be allocated between utility and nonutility operations using fully distributed cost consistent with this rule.

33.4(1) *Cost causation for utility assets.* Identify for each asset utilized directly or indirectly, in whole or in part, in the provision of nonutility services:

- a. The type of asset;
- b. The use of the asset;
- c. The proportional utilization of the asset between utility operations and nonutility operations; and
- d. The characteristics of the asset that allow proper allocation.

33.4(2) *Cost causation for utility expenses.* Identify for each expense account wherein any expense related, directly or indirectly, to the provision of nonutility services is recorded:

- a. The function causing the expense to be incurred;
- b. The procedure used in performing the function;
- c. The proportional utilization of the function between utility operations and nonutility operations; and
- d. The characteristics of the cost that allow proper allocation.

33.4(3) *Time reporting.* Use positive time reporting whenever possible; when it is not possible, exception time reporting or study time reporting may be used. Allocate nonproductive work time between utility and nonutility operations in proportion to the allocation of productive work time.

199—33.5(476) **Cost allocation manuals.** Every rate-regulated public utility equaling or exceeding the filing threshold in any calendar year shall file with the board a cost allocation manual on or before September 1 of the following year; however, a letter may be filed if the utility has not changed its cost allocation manual since the last filing. In the event the utility has made only minor changes to its manual to reflect new accounts or new affiliates or has modified language, the utility may file only the pages affected together with a cover letter explaining the pages being filed.

33.5(1) *Contents of manuals.* Each cost allocation manual shall contain the following information:

- a. *Nonutility services.* A list, the location, and description of all nonutility services.
- b. *Incidental activities.* A summary of incidental activities conducted by the utility.
- c. *Resource identification.* An identification of the assets and expenses involved directly or indirectly, in whole or in part, in the provision of nonutility services as identified in subrules 33.4(1)

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and 33.4(2).

d. *Allocation methodology.* A description of the cost allocation methodology, including an overview, explanation, and justification of the details provided in response to paragraphs 33.5(1)“e” through “h” below.

e. *Allocation rationale.* A statement identifying, for each asset and expense account and subaccount identified in compliance with subrules 33.4(1) and 33.4(2), the basis for allocating costs in the account or subaccount to utility and nonutility operations, including any allocation factor used by the utility for this purpose.

f. *Accounts and records.* A description of each account and record used by the utility for financial recordkeeping for nonutility services, including all subaccounts.

g. *Allocation factors.* A paragraph containing, for each allocation factor identified in compliance with paragraph 33.5(1)“e,” an explanation of how the allocation factor is calculated, a description of each study and analysis used in developing the allocation factor, and the frequency with which each allocation factor is recalculated.

h. *Time reporting methods.* A paragraph indicating the type of time reporting (positive, exception, or study) used for each reporting organization (e.g., executive, residential sales, and external affairs) and providing a description of how the identified type of time reporting is performed in that reporting organization.

i. *Training.* A description of the training programs used by the utility to implement and maintain its cost allocation process.

j. *Update process.* A description of the procedures used by the utility to:

- (1) Determine when an update is needed;
- (2) Develop the update; and
- (3) Provide the update to the board.

33.5(2) *Annual filing and acceptance of manuals.* The following procedure is used for the annual filing and acceptance of manuals.

a. *Notice.* At the time of the initial filing and whenever a manual is updated, each utility mails or delivers a written notice to consumer advocate, local trade associations, and customers who have notified the utility in writing of their interest in the cost allocation manual. The notice will state that an objection may be filed with the board within 60 days of the filing of the manual with the board. The utility shall promptly provide copies of the manual upon request.

b. *Docketing.* If the board finds that reasonable grounds exist to investigate the manual, the board will docket the filing for investigation. At the time of docketing, the board will set a procedural schedule that includes a date for an oral presentation and an opportunity to file comments. If the board finds that there is no reason to investigate, the board issues an order stating the reasons for the board’s decision within 90 days of the date of filing.

c. *Acceptance of manuals.* The board may accept, reject, or modify a utility’s manual. However, any board decision is for accounting purposes only and is not binding in any other proceeding.

33.5(3) *Updating of manuals.* All affected sections and pages of a utility’s manual are updated and filed with the board within 60 days of any of the following conditions:

- a. A new nonutility business is commenced or acquired, or an existing nonutility business is eliminated or divested;
- b. An affiliate relationship changes;
- c. Operations affecting nonutility businesses change sufficiently to warrant a new allocation method; or
- d. Accounting practices change.

33.5(4) *Reporting requirements—accounting tables.* Companies filing cost allocation manuals shall include in their annual reports tables showing for each account identified in compliance with subrules 33.4(1) and 33.4(2) the following: (a) the account total; (b) the amount allocated to nonutility

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services; (c) the amount allocated to utility services; and (d) the value of the allocation factors used to allocate costs to utility and nonutility services. Such tables are to be accompanied by a signed statement by an officer of the utility and an independent auditor certifying that, for the year covered by the report, the utility has complied with its cost allocation manual and that the data reported fairly reflect the actual operations of the utility.

199—33.6(476) Standards for costing service transfers within a regulated subsidiary or utility.

33.6(1) *Nonutility service provided to regulated subsidiary or utility.* The utility or its regulated subsidiary shall pay for a nonutility service provided to it by an affiliate at the price actually charged to nonaffiliates. If no such price is available, the service is priced at the lower of fully distributed cost, the price actually charged to affiliates, or the market price for comparable services.

33.6(2) *Service provided by the utility to nonutility operations.* A utility that provides utility service to a nonutility affiliate charges such affiliate the tariffed price or, if a tariffed price is not available, charges the fully distributed cost of the service.

199—33.7(476) Standards for costing asset transfers within a regulated subsidiary or utility.

33.7(1) If an asset that is a direct cost of nonutility operations becomes a cost of utility operations, the asset shall be transferred or allocated to utility operations at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

33.7(2) If an asset that is a direct cost of utility operations becomes a cost of nonutility operations, the asset shall be transferred or allocated to the nonutility operations at the greater of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

These rules are intended to implement Iowa Code sections 476.72 through 476.83.

**Executive Order 10 – Red Tape Review
Request to Initiate New Rulemaking**

Agency Name Iowa Utilities Board

Rule Number(s) 199 Iowa Administrative Code Chapter 33

Agency Point of Contact (POC) Maison Blead

Agency POC Phone 515-380-9587 Email maison.bleam@iub.iowa.gov

This new rulemaking action was directed by the Administrative Rules Coordinator.

If the new rulemaking action was not directed by the ARC:

This new rulemaking action is narrowly-tailored to achieve the following objective(s):

Reduce or remove a regulatory burden, including reducing restrictive terms.

Remove obsolete, outdated, inconsistent, incompatible, redundant, or unnecessary regulations, including instances where rule language is duplicative of statutory language.

Comply with a new statutory requirement, court order, or federal mandate where no waiver is permitted.

Provide bill# or statutory citation or attach copy of court order.

Prevent a substantiated and well-documented threat to public health, peace, or safety.

Attach substantiated and well-documented evidence of threat to public health, peace, or safety.

Reduce state spending

Attach fiscal estimate

Repeal a rule chapter as specified in Executive Order 10

Re-promulgate a rule chapter as specified in Executive Order 10

A copy of the final regulatory analysis required under Executive Order 10 is attached.

Date of the public hearing on the regulatory analysis 09 / 06 / 2023

ARC Preclearance

Date / /