

## IOWA UTILITIES BOARD

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| <p>IN RE:</p> <p>REVIEW OF NONUTILITY SERVICE RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 34]</p> | <p>DOCKET NO. RMU-2023-0034</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 34, this technical conference was held on September 6, 2023. No commenting stakeholder requested changes to the draft Regulatory Analysis.

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.

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Additionally, as part of the final Regulatory Analysis, the Board is suggesting revisions to chapter 34 based on comments received during the stakeholder comment process. The revised chapter 34 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 34 is approved.

**UTILITIES BOARD**

Erik M. Helland Date: 2023.10.11  
16:00:01 -05'00'

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Joshua Byrnes Date: 2023.10.11  
13:51:45 -05'00'

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ATTEST:

Keetah A Horras Date: 2023.10.11  
16:23:15 -05'00'

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Sarah Martz Date: 2023.10.11  
11:38:21 -05'00'

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

Final Regulatory Analysis

**TEXT BOXES WILL EXPAND AS YOU TYPE**

**Agency Name** Iowa Utilities Board **Rule #** 199 IAC chapter 34

**Iowa Code Section Authorizing Rule** Iowa Code section 476.79

**State or Federal Law(s) Implemented by the Rule** Iowa Code sections 476.78, 476.80, and 476.81

**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 East Court Avenue, 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 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. The Board is proposing to rescind Chapter 34 pursuant to Executive Order 10 and readopt the chapter, the text of which is shown below.

## Final Regulatory Analysis

### 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 that undertake systematic marketing and competitors will bear the costs.

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

Competitors of rate-regulated utilities that offer the same nonutility service and other interested persons will benefit from the proposed rulemaking.

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 review of Chapter 34 is part of the everyday work of 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 Chapter 34 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 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 furthering competition 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.



## Final Regulatory Analysis

### 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, anticompetitive market.

### 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?

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:

ITEM 1. Rescind 199—Chapter 34 and adopt the following **new** chapter in lieu thereof:

#### 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 shall allow competitors access to certain services.

**199—34.2(476) Definitions.**

*“Systematic marketing effort, other than on an incidental or casual basis,”* means the board determines, recurring, and active 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.

## Final Regulatory Analysis

*“Engaged primarily in providing the same competitive nonutility services in the area”* means 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 with and considered similar by the public to the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

**199—34.3(476) Charges permitted.** A person meeting the requirements of rule 199—34.2(476) is permitted to use, to the same extent utilized by the public utility for its nonutility service in connection with nonutility services, 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 the cost or expense 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—34.4(476) Procedures for utilization of billing and collection system.**

**34.4(1)** When a person meeting the requirements of rule 199—34.2(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.

**34.4(2)** Where a customer makes a partial payment and owes both a public utility and a person(s) meeting the requirements of rule 199—34.2(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 system 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.

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

Agency Name Iowa Utilities Board

Rule Number(s) 199 Iowa Administrative Code Chapter 34

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      /      /