

IOWA UTILITIES BOARD

IN RE: REVIEW OF NONUTILITY SERVICE RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 34]	DOCKET NO. RMU-2023-0034
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ORDER COMMENCING RULEMAKING

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. Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules.

According to the Executive Order rulemaking process, an agency may not commence a formal rulemaking without first approving a final regulatory analysis and receiving preclearance through a Request to Initiate Rulemaking. See <https://dom.iowa.gov/red-tape-review> (last accessed on October 5, 2023) (setting forth the Executive Order 10 Rulemaking Process). In an order previously issued in the above-captioned docket, the Board approved a final regulatory analysis for chapter 34, and as part of the order, indicated it was submitting a Request to Initiate Rulemaking. Since issuance of that order, the Board received preclearance to commence this chapter 34 rulemaking.

The Board is proposing to rescind chapter 34 and re-promulgate chapter 34 with a revised version of the chapter. The proposed chapter is shown in the Notice of

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Intended Action (NOIA) attached to this order as Attachment A and incorporated in this order by reference. The official version of the NOIA will be published in the Iowa Administrative Bulletin (IAB) and may contain additional nonsubstantive editorial changes. The NOIA will be submitted to the Administrative Rules Code Editor and published in the IAB. The date for filing written comments will be 20 days after publication. Additionally, per the Executive Order, the Board will hold two public hearings, the dates for which will be contained in the NOIA published in the IAB.

IT IS THEREFORE ORDERED:

1. The Notice of Intended Action attached to this order will be submitted to the Administrative Rules Code Editor for review and publication in the Iowa Administrative Bulletin and may contain minor editorial changes that are not shown in the attached Notice of Intended Action. The Notice of Intended Action published in the Iowa Administrative Bulletin will identify the public hearing dates.
2. Comments shall be due 20 days from the date of publication of the Notice of Intended Action in the Iowa Administrative Bulletin.

UTILITIES BOARD

Erik M. Helland Date: 2023.10.19
13:13:23 -05'00'

Joshua Byrnes Date: 2023.10.19
09:58:48 -05'00'

ATTEST:

Keetah A Horras Date: 2023.10.19
15:37:31 -05'00'

Sarah Martz Date: 2023.10.19
14:28:50 -05'00'

Dated at Des Moines, Iowa, this 19th day of October, 2023.

ATTACHMENT A

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.

“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.