

IOWA UTILITIES BOARD

IN RE:

EXECUTIVE ORDER 10 — 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 APPROVING REGULATORY ANALYSIS

On January 10, 2023, Gov. Kim Reynolds issued Executive Order Number 10 (Executive Order), which put 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 31, this technical conference was held on October 19, 2023. In written comments, the Office of Consumer Advocate, a division of the Iowa Department of Justice, stated it agrees with the Board's proposed regulatory analysis and included

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additional benefits of the chapter. These additional benefits were added to the final Regulatory Analysis. The Board has reviewed the additional 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 31 based on comments received during the stakeholder comment process. The revised chapter 31 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 November 2, 2023) (setting forth Executive Order 10 forms and processes).

IT IS THEREFORE ORDERED:

The final Regulatory Analysis for 199 Iowa Administrative Code chapter 31 is approved.

UTILITIES BOARD

Erik M. Helland Date: 2023.12.19
16:17:03 -06'00'

Joshua Byrnes Date: 2023.12.19
23:11:44 -06'00'

ATTEST:

Keetah A Horras Date: 2023.12.20
10:15:11 -06'00'

Sarah Martz Date: 2023.12.20
09:52:46 -06'00'

Dated at Des Moines, Iowa, this 20th day of December, 2023.

Final Regulatory Analysis

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board **Rule #** 199 IAC 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 presented their views orally or in writing was 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 submitted written comments concerning the regulatory analysis. Written comments in response to the regulatory analysis were 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 proposed 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. These filings allow interested persons to verify whether a rate-regulated utility is charging and paying reasonable prices when compared to affiliate and non-affiliate companies.

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 affiliates will be affected by the proposed chapter and will bear the costs of the proposed chapter.

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

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Customers or rate-regulated utilities with affiliates will benefit from the proposed chapter. Chapter 31 will help protect these ratepayers from excessive rates resulting from a utility overpricing goods or services bought from or underpricing goods or services sold to an unregulated affiliate.

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:

Implementing this chapter is part of the everyday work of the Board, so there is no additional impact to the Board, economic or otherwise. Rate-regulated utilities 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 proposed 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 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 significant benefit in ensuring that rate-regulated utilities are not favoring or overpaying an affiliate to the detriment of others. There are minimal costs involved in administering this proposed chapter. 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 proposed 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:

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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

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:

ITEM 1. Rescind 199—Chapter 31 and adopt the following new chapter in lieu thereof:

CHAPTER 31

ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS, AND SERVICE AND ASSET TRANSFER COSTING STANDARDS

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 a public utility shall maintain records that are separate from the records of the public utility.

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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. 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 shall 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. Verified 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) through 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 this rule, only new contracts, arrangements, or other similar transactions and modifications or amendments to existing contracts, 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) Verified copies. For purposes of this chapter, a copy is verified if it is accompanied by an affidavit signed by a corporate officer with personal knowledge of the veracity of the copy. Only one affidavit signed by a corporate officer with personal knowledge of the veracity of the copy need be included in an individual filing in order to verify all contracts, arrangements, or other similar transactions included in the filing.

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 that the

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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 services 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 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 nonregulated affiliates valued at less than \$2 million.

31.7(1) *Asset of a nonregulated affiliate transferred to a regulated affiliate.* The asset transfer is to be 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.

ATTACHMENT B

Executive Order 10 – Red Tape Review

Request to Initiate New Rulemaking

Agency Name Iowa Utilities Board

Rule Number(s) 199 IAC Chapter 31

Agency Point of Contact (POC) Maison Bleam

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 10 / 19 / 2023

ARC Preclearance

Date / /