

IOWA UTILITIES BOARD

IN RE:

EXECUTIVE ORDER 10 — REVIEW OF
DECLARATORY ORDERS RULES [199
IOWA ADMINISTRATIVE CODE
CHAPTER 4]

DOCKET NO. RMU-2023-0004

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 lowans, 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 4, this technical conference was held on September 21, 2023, and was attended by the Office of the Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company; Iowa American Water;

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Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills); MidAmerican Energy Company (MidAmerican); ITC Midwest LLC (ITC Midwest); Iowa Association of Electric Cooperatives; and CenturyLink. The Board also received written filings from OCA, Black Hills, ITC Midwest, and MidAmerican.

Excluding the “Text of Proposed Rule” portion of the form, no commenting stakeholder requested changes to the draft Regulatory Analysis. Therefore, the Board will approve the draft Regulatory Analysis as the final version, attached to this order as Attachment A. The Board will also publish the final Regulatory Analysis on its website as required under the Executive Order.

Additionally, as part of the draft Regulatory Analysis, the Board proposed to rescind and re-promulgate a revised version of chapter 4. Commenting stakeholders have provided analysis and suggestions on the proposed rule. The Board has taken such comments under advisement and has proposed a revised version of chapter 4. 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 December 11, 2023) (setting forth Executive Order 10 forms and processes).

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IT IS THEREFORE ORDERED:

The final regulatory analysis for 199 Iowa Administrative Code chapter 4, attached to this Order as Attachment A, is approved.

UTILITIES BOARD

Erik M. Helland Date: 2023.12.22
09:42:18 -06'00'

ATTEST:

Keetah A Horras Date: 2023.12.22
11:43:40 -06'00'

Sarah Martz Date: 2023.12.22
09:39:31 -06'00'

Dated at Des Moines, Iowa, this 22nd day of December, 2023.

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TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board **Rule #** 199 IAC chapter 4

Iowa Code Section Authorizing Rule Iowa Code chapters 17A.3(1)“b,” 17A.9, 476.2

State or Federal Law(s) Implemented by the Rule Iowa Code chapter 17A.9

Public Hearing

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

Date/Time: September 21, 2023 at 9 a.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

ITSupport@iub.iowa.gov

Purpose and summary of proposed rule:

Chapter 4 is intended to inform members of the public of their right to file a petition for declaratory order under Iowa Code § 17A.9 and to describe the Utilities Board’s declaratory order practice as required by § 17A.3(1)“b.”

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:

Chapter 4 imposes no direct costs on the public. However, the chapter may impose a cost to persons who wish to retain an attorney or consultant to file a petition for declaratory order with the Board.

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

Iowans, especially pro se Iowans, who wish to request Board rule on a declaratory order will benefit from the proposed rulemaking.

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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:

The Board provides rules for a number of different types of agency actions. Chapter 4 provides the filing information for declaratory orders, which most members of the public may not be familiar with in general. Because this is part of the everyday work to the Board, there is no additional impact to the Board, economic or otherwise. Thus, the impact would be to interested persons if they choose to hire an attorney or consultant to help with filing a petition for declaratory order. There are no costs to see the public information filed in the Board's electronic filing system; however, there may be a time-cost component for new users.

- Qualitative description of impact:

Chapter 4 has a level of qualitative impact because it assists Iowans who may wish to appear before the Utilities Board or may wish to request the Board grant a petition for declaratory order. The chapter ensures that the public has the information necessary to be able to adequately bring forth a petition for declaratory order.

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 normal 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

Because chapter 4 imposes no costs on the public, outside of retaining counsel or a consultant, and no costs on the agency (or any other agency) and because the public benefits from the information contained within the chapter, the benefits of providing the information outweighs the costs.

5. Determination if less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule

Because chapter 4 imposes no costs, outside of those mentioned above, the agency does not believe there is a less costly or intrusive method.

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:

Chapter 4 provides valuable information to the public at large, especially to those who may not be familiar with the process of filing a petition under chapter 4 with the Board.

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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?

The agency does not believe Chapter 4 has an adverse impact on small business.

Text of Proposed Rule:

UTILITIES DIVISION [199]

DRAFT Notice of Intended Action

The following rule-making action is proposed:

ITEM 1. Rescind 199—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4 DECLARATORY ORDERS

199—4.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. The petition shall conform with this chapter and with Iowa Code § 17A.9. A petition shall be dated and signed by the petitioner, include the petitioner's appropriate contact information, and include all of the following information (a sample form of a petition for a declaratory order is available on the board's website at iub.iowa.gov):

- a. The question or questions that petitioner wishes the board to determine, stated clearly and concisely;
- b. A clear and concise statement of all relevant facts on which the ruling is requested,

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including the petitioner's interest in the issue;

c. A citation to and the relevant language of the statutes, rules, policies, decisions, or orders that are applicable or whose applicability is in question and any other relevant law;

d. The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;

e. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity;

f. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the questions presented in the petition; and

g. A statement indicating whether the petitioner requests a meeting as provided for by rule 199—4.5(17A).

199—4.2(17A) Intervention. A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to the "Intervention" rule contained in 199—chapter 7 within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A petition for intervention in a proceeding on a petition for declaratory order shall be dated, be signed by the prospective intervenor with that person's appropriate contact information, include the information set forth in the "Intervention" rule contained in 199—chapter 7, and include all of the following:

1. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

2. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any government entity;

3. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by or interested in the questions presented in the petition; and

4. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

199—4.3(17A) Briefs. The petitioner or any intervenor may file a brief in support of that party's position, and the board may order additional briefing.

199—4.4(17A) Service and filing of petitions. At the same time a petition for a declaratory order is filed, the petitioner shall serve the petition, in accordance with the "Service of documents" subrule in 199—chapter 7 and the "Electronic service" rule in 199—Chapter

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14, upon any person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law. The petitioner is to file with the board a list of all persons served.

199—4.5(17A) Informal meeting. Upon request by petitioner, the board will schedule an informal meeting between the petitioner, all intervenors, and the board, a member of the board, or a designated member of the staff of the board to discuss the questions identified in the petition. The board may solicit comments from any person on the questions raised.

199—4.6(17A) Refusal to issue order.

4.6(1) Grounds. The board will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

- a. The petitioner requests that the board determine whether a statute is unconstitutional on its face.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c. The board does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
- i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

4.6(2) Content and effect of refusal.

- a. The board's refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.
- b. Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.

199—4.7(17A) Effect of a declaratory order.

4.7(1) The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order is binding on the board, on the petitioner, on any intervenors who consent

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to be bound, and on any persons who would be necessary parties, who are served pursuant to rule 199—4.4(17A), and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.
4.7(2) A declaratory order is effective upon the date of issuance.

These rules are intended to implement Iowa Code sections 17A.3(1)“b,” 17A.9 and 476.2.

