

## IOWA UTILITIES BOARD

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| IN RE:<br><br>REVIEW OF NONUTILITY SERVICE<br>RULES [199 IOWA ADMINISTRATIVE<br>CODE CHAPTER 34] | DOCKET NO. RMU-2023-0034 |
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### ORDER ADOPTING AMENDMENTS

On July 7, 2023, the Utilities Board (Board) issued an order commencing a rulemaking in which it proposed to re-promulgate 199 Iowa Administrative Code chapter 34. On November 15, 2023, the Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin (IAB) as ARC 7112C.

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, provided comments on the NOIA.

On December 5, 2023, the Board held the first of two public hearings at which interested persons were allowed to present oral comments or respond to Board questions regarding filed comments. OCA, Interstate Power and Light Company (IPL), and Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills), attended and presented comments. On January 23, 2024, the Board held the second public hearing, attended by OCA, IPL, ITC Midwest LLC, Black Hills, and Iowa-American Water Company.

The Board has reviewed the written comments filed by interested persons and the oral comments provided at the public hearings. Oral and written comments support

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the proposed amendments set forth in the NOIA. OCA's comments suggest some grammatical changes.

The Board is adopting chapter 34 as shown in the Adopted and Filed chapter attached to this order and incorporated herein by reference. The changes included in the Adopted and Filed chapter are nonsubstantive grammatical edits. The Adopted and Filed chapter will be published in the IAB and will be the official version of the chapter 34 rulemaking action. The published Adopted and Filed chapter may contain minor editorial changes.

**IT IS THEREFORE ORDERED:**

1. Re-promulgated 199 Iowa Administrative Code chapter 34, as shown in the attached Adopted and Filed chapter, is adopted by the Utilities Board.
2. The Adopted and Filed chapter attached to this order shall be submitted to the Administrative Code Editor for review and publication in the Iowa Administrative Bulletin and may contain minor editorial changes.

**UTILITIES BOARD**

Erik M. Helland 2024.02.15  
11:25:32 -06'00'

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ATTEST:

Jackie Date: 2024.02.15  
Yearington 15:23:10 -06'00'

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Sarah Martz Date: 2024.02.15  
12:40:56 -06'00'

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Dated at Des Moines, Iowa, this 15th day of February, 2024.

**ATTACHMENT A**

The following rulemaking action is proposed:

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.**

*“Engaged primarily in providing the same competitive nonutility services in the area”* means that a 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, that 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.

*“Systematic marketing effort, other than on an incidental or casual basis”* means an effort determined by the board to be recurring, active in nature, and 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 significantly increase its market share.

**199—34.3(476) Charges permitted.** A person meeting the definition of “engaged primarily in providing the same competitive nonutility services in the area” in rule 199—34.2(476) may 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 shall 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 definition of “engaged primarily in providing the same competitive nonutility services in the area” in 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 definition of “engaged primarily in providing the same competitive nonutility services in the area” in 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.