

IOWA UTILITIES BOARD

IN RE: REVIEW OF REORGANIZATION RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 32]	DOCKET NO. RMU-2023-0032
--	--------------------------

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 32, this technical conference was held on January 23, 2024. A secondary technical conference was scheduled to be held on February 14, 2024, in the event an interested party requested a technical conference; however, no interested party requested the secondary technical conference and therefore no technical conference

DOCKET NO. RMU-2023-0032
PAGE 2

was held. 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.

Additionally, as part of the final Regulatory Analysis, the Board is suggesting revisions to chapter 32 based on comments received during the stakeholder comment process. The revised chapter 32 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 January 30, 2024) (setting forth Executive Order 10 forms and processes).

IT IS THEREFORE ORDERED:

The final regulatory analysis for 199 Iowa Administrative Code chapter 32 is approved.

UTILITIES BOARD

Erik M. Helland 2024.02.21
10:48:33 -06'00'

Joshua Byrnes Date: 2024.02.21
13:52:20 -06'00'

ATTEST:

Keetah A Horras Date: 2024.02.21
15:29:48 -06'00'

Sarah Martz Date: 2024.02.20
15:48:58 -06'00'

Dated at Des Moines, Iowa, this 21st day of February, 2024.

Final Regulatory Analysis

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board **Rule #** 199 IAC Chapter 32

Iowa Code Section Authorizing Rule 476.76, 476.77

State or Federal Law(s) Implemented by the Rule Iowa Code §§ 388.2A(2)“a”(1), 476.76, 476.77F

Public Hearing

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

Date/Time: 1/23/2024 09:00 a.m.

If requested: 2/14/2024 10:00 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 were received by the Board 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 this chapter is to ensure there is a methodology to the reorganization of a public utility. This chapter provides further clarification for interested persons as to what is expected to be filed when a reorganization occurs.

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 32 imposes no direct costs on the public. Persons wanting to partake in the reorganization may incur costs associated with the Board’s oversight and any attorney fees, but these costs are not impacted by chapter 32.

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

Those wishing to participate in public utility reorganization will benefit.

Final Regulatory Analysis

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:

There may be some costs to persons wanting to partake in public utility reorganization.

- Qualitative description of impact:

This chapter ensures that the public has accurate and detailed information needed by the Board to be able to review public utility reorganizations.

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

The agency believes that the benefits of providing information on the reorganization process of a public utility outweigh any costs that chapter 32 may indirectly impose. Inaction is not advised because it would result in inadequacy in application and petitions for reorganization.

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

Because chapter 32 imposes no direct costs, the agency does not believe there is a less costly or less 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:

Inaction is not advisable since there is value in informing the public about the Board's process in regulating the reorganization of public utilities.

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.

Final Regulatory Analysis

- 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 32 will have an adverse impact on small business.

Text of Proposed Rule:

CHAPTER 32 REORGANIZATION

199—32.1(476) Applicability and definition of terms.

32.1(1) This chapter applies to any person who intends to acquire, sell, lease, or otherwise dispose directly or indirectly of the whole or any substantial part of a public utility's assets; or purchase, acquire, sell, or otherwise dispose of the controlling capital stock of any public utility, either directly or indirectly. For utilities with more than one regulated line of business, the utility revenue limit shall be calculated using the revenue of the specific line of utility business involved in the transaction, not the combined utility revenues.

32.1(2) This chapter does not apply to transfers or removals of a public utility's assets that are made specifically pursuant to a board deregulation order, as long as those transfers or removals occur within 12 months of the board's approval of an accounting separation plan, or to transactions where board approval is otherwise required in a contested case proceeding.

199—32.2(476) Substantial part of a public utility's assets.

32.2(1) No public utility shall acquire or lease assets, directly or indirectly, with a value in excess of 3 percent of the utility's Iowa jurisdictional utility revenue during the immediately preceding calendar year or \$5 million, whichever is greater, without prior approval from the board pursuant to Iowa Code section 476.77. For purposes of this subrule and subrule 32.2(2), "value" means the greater of market value or book value.

32.2(2) No public utility shall sell or otherwise dispose of assets, directly or indirectly, with a value in excess of 3 percent of the utility's Iowa jurisdictional utility revenue during the immediately preceding calendar year or \$5 million, whichever is greater, without prior approval from the board pursuant to Iowa Code section 476.77. However, for utilities for which the 3 percent limit is greater than \$5 million, if the assets being sold or otherwise disposed of are used in the generation or delivery of utility services to Iowa consumers, an application or a waiver is required if the assets have a value in excess of \$10 million.

32.2(3) Board approval of the following types of transactions is not necessary: fuel purchases, energy and capacity purchases and sales, gas purchases, sale of accounts receivables, sale of bonds, claim and litigation payments, tax payments and credit transfers, regulatory fees and assessments, insurance premiums, payroll, stock dividends, financings, routine financial transactions, operation and maintenance expense, construction expense, or similar transactions that occur in the ordinary course of business. Any transaction involving more than 10 percent of a public utility's gross utility assets less depreciation, or any transaction outside the ordinary course of business, is not exempt under this subrule.

199—32.3(476) Proposal for reorganization—filing requirements. Any person who intends to accomplish a reorganization shall file supporting testimony and evidence with its proposal for reorganization, including but not be limited to the following information:

Final Regulatory Analysis

32.3(1) General information.

- a.* A statement of the purposes of the reorganization and a description of the events that led to the reorganization.
- b.* An analysis of the alternatives to the proposed reorganization that were considered and their impact on rates and services, if any.

32.3(2) Reorganization details.

- a.* Written accounting policies and procedures for the subsequent operation, including the type of system of accounts to be used.
- b.* The situs of the books and records of the public utility after reorganization and their availability to the board.
- c.* A description of the proposed accounting to be utilized in any transfer of assets necessary to accomplish reorganization.
- d.* The proposed method for:
 - (1) Accounting for and allocating officers' time between the public utility and any affiliates, and
 - (2) Compliance with the board's rules on affiliate transactions and relationships.
- e.* Copies of all contracts that directly relate to the reorganization and a summary of any unwritten contracts or arrangements verified by an officer of the operating company.
- f.* Before and after organizational charts for the affected public utility and affiliates, including staffing changes.
- g.* A statement of any proposed physical removal of assets from the board's jurisdiction to another jurisdiction or removal or transfer of assets from a regulated to a nonregulated environment.

32.3(3) Financial details.

- a.* An analysis of whether the affected public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure and corporate financial integrity, is impaired.
- b.* A description of the financing components of the proposed reorganization.
- c.* Information concerning the funding provided to any new entity.
- d.* Current and proposed reorganization balance sheets and capital structures.
- e.* Stockholder annual reports for two years preceding the year of filing for all affected companies.
- f.* Stockholder quarterly reports for the two quarters just prior to the date of the filing and any subsequent reports as they become available during the proceeding, for all affected companies.
- g.* The major credit rating agencies' reports for two years preceding the filing date of the merger and updates as they become available during the proceeding, for all affected companies.
- h.* Any proxy statement to the stockholders regarding the proposed reorganization. If such is not available at time of filing, a preliminary statement will be filed followed by the final statement when available.

32.3(4) Impact of reorganization.

- a.* A cost-benefit analysis that describes the projected benefits and costs of reorganizing, including

Final Regulatory Analysis

identification of source data. The benefits and costs should be quantified in terms of present value.

b. An analysis of the projected financial impact of the proposed reorganization on the ratepayers of the affected public utilities for the first five years after reorganization.

c. An analysis of the effect on the public interest. “Public interest” means the interest of the public at large, separate and distinct from the interest of the public utility’s ratepayers. The analysis should include a discussion of the reorganization’s impact on the economy of the state and the communities where the utility is located.

If more than one public utility is involved in a reorganization, an analysis shall be submitted for all public utilities involved.

32.3(5) Effect on service and reliability.

a. A report on quality of service and reliability levels of utility services for each of the five years prior to the year of filing, for all affected companies.

b. A detailed statement on how the proposed reorganized entity will maintain or enhance service and reliability, including any investment or operational plans that are available.

32.3(6) If any information required by these subrules is not applicable to the type of reorganization being proposed, the applicant shall state the reason(s) why the particular information is not applicable to the proposal.

199—32.4(476) Insufficient filing. The board may reject within 30 days any proposal for reorganization that does not contain sufficient information for the board to evaluate the proposal for reorganization. The board shall fully describe any deficiencies in a reorganization plan that is rejected.

199—32.5(476) Procedural matters. Because of statutory time limitations set forth in Iowa Code section 476.77(2), an expedited procedural schedule shall be utilized for proposals for reorganization. The board may order additional specific procedures as needed for the expedited hearing process.

32.5(1) Within 40 days after a proposal for reorganization and supporting testimony is filed, the consumer advocate and any intervenors may file any written testimony and exhibits. This will allow the board an opportunity to consider the testimony and exhibits prior to the 50-day deadline for issuing a notice of hearing.

32.5(2) Responses to data requests shall be made within five days from the date of service.

32.5(3) When a hearing on the proposed reorganization is scheduled, the applicant, consumer advocate, and any intervenors file a joint statement of the issues at least ten days prior to the date of hearing.

199—32.6(388) Approval of appraiser for municipal utilities. The procedures for requesting board approval of an appraiser are as follows:

32.6(1) Making a request. To request board approval of an appraiser to appraise a city utility, the governing body of the city utility shall file a request in the board’s electronic filing system. The request shall contain the following information:

a. The name of the city and of the utility;

b. The type of utility service provided by the utility;

c. The total number of customers served by the utility and the number of customers served by class, if applicable;

d. A general description of the assets owned by the utility; and

Final Regulatory Analysis

e. The name and contact information for the city or utility.

32.6(2) Consideration of request. When a request for approval of an appraiser is received by the board, board staff reviews the request and provides the board with a recommendation or a list of appraisers for the board to consider approving. The board may delegate approval authority to the board chair.

32.6(3) Notice of approved appraiser. Within 30 calendar days following the city's or city utility's filing to request board approval of an appraiser, the board shall notify the city and governing body of the city utility of an approved appraiser. If the city and governing body of the city utility are unable to agree to terms with an approved appraiser, the city and governing body of the city utility may file a letter with the board requesting approval of another appraiser and identifying the reasons they are requesting the board to approve another appraiser.

These rules are intended to implement Iowa Code sections 388.2A(2) "a"(1), 476.76, and 476.77.

