

IOWA UTILITIES BOARD

<p>IN RE:</p> <p>EXECUTIVE ORDER 10 — REVIEW OF DECLARATORY ORDER RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 4]</p>	<p>DOCKET NO. RMU-2023-0004</p>
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ORDER ADOPTING AMENDMENT

On January 17, 2024, the Utilities Board (Board) issued an order commencing rulemaking with an attached Notice of Intended Action (NOIA) in which the Board proposed to rescind chapter 4 and adopt a new chapter in lieu thereof. On February 7, 2024, the NOIA was published in the Iowa Administrative Bulletin as ARC 7578C.

On February 27, 2024, the Board held the first oral presentation, which was attended by the Office of the Consumer Advocate (OCA), a division of the Iowa Department of Justice, and Interstate Power and Light Company. On March 5, 2024, the Board held the second oral presentation, which was attended by OCA, MidAmerican Energy Company, and Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy. Additionally, OCA filed written comments. All oral and written comments received were supportive of the proposed rulemaking action set forth in the NOIA.

The Board will adopt the rulemaking action as published within the NOIA without change, as shown in the Adopted and Filed attached to this order as Attachment A and incorporated by reference. The Adopted and Filed will be published in the IAB and will be the official version of the chapter 4 rulemaking action.

DOCKET NO. RMU-2023-0004

PAGE 2

IT IS THEREFORE ORDERED:

The Adopted and Filed attached to this order as Attachment A 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 Adopted and Filed.

UTILITIES BOARD

Erik M. Helland 2024.03.13
11:29:50 -05'00'

Joshua Byrnes Date: 2024.03.13
10:39:19 -05'00'

ATTEST:

Jackie Yearington Date: 2024.03.13
13:36:53 -05'00'

Sarah Martz Date: 2024.03.13
10:55:46 -05'00'

Dated at Des Moines, Iowa, this 13th day of March, 2024.

UTILITIES DIVISION [199]

DRAFT Adopted and Filed

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 section 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):

4.1(1) The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

4.1(2) A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner’s interest in the issue;

4.1(3) 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;

4.1(4) 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;

4.1(5) 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;

4.1(6) 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

4.1(7) 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

ATTACHMENT A

the information set forth in the “Intervention” rule contained in 199—Chapter 7, and include all of the following:

4.2(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;

4.2(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;

4.2(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

4.2(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 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 determines 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.

ATTACHMENT A

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 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.