

IOWA UTILITIES BOARD

IN RE:

EXECUTIVE ORDER 10 — REVIEW OF
COMPETITIVE BIDDING PROCESS
RULES [199 IOWA ADMINISTRATIVE
CODE CHAPTER 40]

DOCKET NO. RMU-2023-0040

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 (IAC), 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 40, the technical conference was held on March 26, 2024. There were not any specific comments about the Draft Regulatory Analysis; however, there were numerous comments about the proposed chapter 40, which is incorporated into the Regulatory Analysis.

DOCKET NO. RMU-2023-0040

PAGE 2

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, provided comments that Iowa Code § 476.53(3)(c)(2) was amended in 2018, which eliminated a requirement for the Board to adopt a competitive bidding process by rule. MidAmerican Energy Company (MidAmerican) provided comments in support of OCA. The Environmental Law & Policy Center, Iowa Environmental Council, and Sierra Club (Environmental Commenters) provided comments that were largely in agreement with OCA and MidAmerican in that the competitive bidding could be evidence in advance ratemaking, but does not establish a presumption that the electric public utility complied with the statute. OCA believes that chapter 40 continues to serve a beneficial purpose, but disagrees with the substantive changes proposed in subrules 40.1(2) and 40.2(1).

OCA also noted Iowa Code § 476.53(3)(c)(2) requires the Board to find “[t]he rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply.” OCA pointed out that this requirement is required regardless of whether the public utility utilizes the competitive bidding process laid out in chapter 40, and while it may be assistive in making a determination, there are other factors the Board must consider to make such a determination under § 476.53(3)(c)(2). The Environmental Commenters stated:

[w]hile a competitive bidding process is evidence that the utility considered alternatives—and that evidence should be considered in an advanced ratemaking docket—the statute requires the Board make a specific finding that the utility has both considered other sources of supply and that the selected

DOCKET NO. RMU-2023-0040

PAGE 3

option is reasonable. Such a determination requires evaluating and weighing all of the evidence presented.

Additionally, the Environmental Commenters stated that the Board should not limit its evaluation with a new presumption.

The Board conducts in-depth advance ratemaking proceedings, which includes a utility's need for additional resources and the utility's process for acquiring those resources. Any competitive bidding process, whether in compliance with current chapter 40 or not, can be one factor in an advance ratemaking determination. Current chapter 40 is not required to accomplish the goals that were originally set out when chapter 40 was promulgated. Therefore, this consideration weighs in favor of the Board rescinding chapter 40.

OCA additionally commented that while OCA is not aware of chapter 40 being used, it is possible the rules could be used in the future and it would help protect ratepayers from excessive costs related to preferential treatment or consideration to affiliates. While giving preferential treatment to affiliates is a major concern when it comes to protecting ratepayers from excessive costs, the Board has different avenues to assist with this exact concern. For example, every year public utilities have to file affiliate records in compliance with 199 IAC chapter 31, "Access to Affiliate Records, Requirements for Annual Filings, and Asset and Service Transfers." Additionally, excessive costs can be questioned during a rate case proceeding under Board rules at 199 IAC chapter 26 or an advance ratemaking proceeding at 199 IAC chapter 41. Thus, this consideration weighs in favor of the Board rescinding chapter 40.

The Board will propose, based on the comments received and due to no rate-regulated electric utilities opting to utilize the processes afforded them by chapter 40, to

DOCKET NO. RMU-2023-0040

PAGE 4

rescind chapter 40 as part of the Executive Order review process. As part of the approval process for the Final Regulatory Analysis, the Board will incorporate the proposal to rescind chapter 40. The Board will also publish the Final Regulatory Analysis, which is attached to the order as Attachment A, on its website, iub.iowa.gov, as required under the Executive Order.

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 April 3, 2024) (setting forth Executive Order 10 forms and processes).

IT IS THEREFORE ORDERED:

The Final Regulatory Analysis for 199 Iowa Administrative Code chapter 40 is approved.

UTILITIES BOARD

Erik M. Helland Date: 2024.04.08
13:50:19 -05'00'

Joshua Byrnes Date: 2024.04.08
14:40:42 -05'00'

ATTEST:

Keetah A Horras Date: 2024.04.08
15:32:08 -05'00'

Sarah Martz Date: 2024.04.08
15:20:04 -05'00'

Dated at Des Moines, Iowa, this 8th day of April, 2024.

Final Regulatory Analysis

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board Rule # 199 IAC chapter 40

Iowa Code Section Authorizing Rule Iowa Code section 476.2

State or Federal Law(s) Implemented by the Rule Iowa Code sections 476.1 and 476.53

Public Hearing

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

Date/Time: 3/26/2024 9:00 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 Department. Comments were directed to:

Contact Name

IT Support

Address

Iowa Utilities Board

Email and/or phone number

Email: ITsupport@iub.iowa.gov Phone: 515.725.7300

Purpose and summary of proposed rule:

The purpose of chapter 40 is unclear in that it establishes voluntary minimum requirements for a rate-regulated electric utility engaging in the bidding processes used to purchase supply but the utility is free to engage in alternative bidding methods.

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 engaging in the competitive bidding process will bear the costs of choosing this method of procurement.

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

Unknown.

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:

None.

- Qualitative description of impact:

The current chapter 40 has no qualitative impact because compliance is voluntary and has no regulatory significance. This chapter has not been utilized by rate-regulated electric utilities, which brings into question the necessity of the chapter.

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.

- 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

Based upon oral and written comments, the Board has determined that the costs and benefits of chapter 40 weigh in favor of rescinding chapter 40.

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

The Board has determined the best course of action at this time is rescission, which is the least costly method.

6. Alternative methods considered by the agency

- Description of any alternative methods that were seriously considered by the agency:

The only option considered other than revision was rescission.

- Reasons why they were rejected in favor of the proposed rule:

Rescission was chosen.

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.

Final Regulatory Analysis

- 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 and reserve 199—Chapter 40

**Executive Order 10 – Red Tape Review
Request to Initiate New Rulemaking**

Agency Name Iowa Utilities Board

Rule Number(s) 199 IAC chapter 40

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 3 / 26 / 2024

ARC Preclearance

Date ____ / ____ / ____