

IOWA UTILITIES BOARD

IN RE: REVIEW OF ASSESSMENTS RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 17]	DOCKET NO. RMU-2023-0017
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ORDER COMMENCING RULEMAKING

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. Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules.

According to the Executive Order rulemaking process, an agency may not commence a formal rulemaking without first approving a Final Regulatory Analysis and receiving preclearance through a Request to Initiate Rulemaking. See <https://dom.iowa.gov/red-tape-review> (last accessed on March 28, 2024) (setting forth the Executive Order 10 Rulemaking Process). In an order previously issued in the above-captioned docket, the Board approved a Final Regulatory Analysis for chapter 17 and indicated it was submitting a Request to Initiate Rulemaking. Since issuance of that order, the Board has received preclearance to commence this chapter 17 rulemaking. The Board is proposing to rescind chapter 17 and re-promulgate chapter 17 with a revised version of the chapter. The proposed chapter is shown in the Notice of Intended Action (NOIA) attached to this order as Attachment A and incorporated in this order by reference. The

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official version of the NOIA will be published in the Iowa Administrative Bulletin (IAB) and may contain additional nonsubstantive editorial changes. The deadline for filing written comments will be included in the NOIA published in the IAB. Additionally, per the Executive Order, the Board will hold two public hearings, on dates as listed in the NOIA published in the IAB.

IT IS THEREFORE ORDERED:

1. The Notice of Intended Action attached to this order has been submitted to the Administrative Rules Code Editor for review and publication in the Iowa Administrative Bulletin and may contain editorial changes that are not shown in the attached Notice of Intended Action.

2. The Notice of Intended Action published in the Iowa Administrative Bulletin will identify the public hearing dates and the comment deadline.

UTILITIES BOARD

Erik M. Helland 2024.04.11
13:45:03 -05'00'

Joshua Byrnes Date: 2024.04.11
13:59:19 -05'00'

ATTEST:

Keetah A Horras Date: 2024.04.11
14:51:17 -05'00'

Sarah Martz Date: 2024.04.11
10:20:11 -05'00'

Dated at Des Moines, Iowa, this 11th day of April, 2024.

ITEM 1. Rescind 199—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17
ASSESSMENTS

199—17.1(475A,476,546) Purpose. The purpose of this chapter is to describe the method the board uses to assess expenses incurred by the board and the consumer advocate on utilities and other parties pursuant to Iowa Code sections 476.10 and 476.95B and chapter 477C.

199—17.2(475A,476) Definitions.

17.2(1) The following definitions apply to the rules in this chapter:

“Direct assessment” means the charge to a person bringing a proceeding or matter before the board or to persons participating in proceedings or matters before the board and includes expenses incurred by the board attributable to the board’s duties related to such proceeding or matter.

“Expenses of the board” includes expenses of the entire agency.

“Gross operating revenues from intrastate operations” includes all revenues from Iowa intrastate utility operations during the last calendar year, except:

1. Uncollectible revenues,
2. Amounts included in the accounts for interdepartmental sales and rents, and
3. Gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members’ gross operating revenues, or provided that such member is an association whose members are subject to assessment by the board based upon the members’ gross operating revenues.

“Individual” means a human being as distinguished from legal entities.

“Industry direct assessment” means the charge to the utilities in a specific industry for expenses associated with regulation of that specific industry that are not directly assessed. An industry direct assessment includes a direct assessment in a specific industry for which no person is directly assessed under rule 199—17.4(476). The industries assessed are as follows:

1. Electric utilities are assessed for expenses associated with electric service, including expenses associated with the board’s participation in or consideration of regional and federal issues.
2. Natural gas utilities are assessed for expenses associated with natural gas service, including expenses associated with the board’s participation in or consideration of regional and federal issues.
3. Water utilities are assessed for expenses associated with water service, including expenses associated with the board’s participation in or consideration of regional and federal issues.
4. Sanitary sewer utilities are assessed for expenses associated with sanitary sewer services.
5. Storm water drainage utilities are assessed for expenses associated with storm water drainage services.
6. Telecommunications companies, including all companies providing local exchange service and interexchange service in Iowa whether by landline or voice over Internet protocol, are assessed for expenses associated with telecommunications service, including expenses associated with the board’s participation in or consideration of regional and federal issues.

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“*Overhead expenses*” means all operating costs of the board not directly attributable to a proceeding or matter, or a specific industry, that are included in direct and industry direct assessments.

“*Person*” includes individuals and legal entities as defined in Iowa Code section 4.1(20), except the definition does not include the consumer advocate.

“*Remainder assessment*” means the charge to all persons providing service over which the board has jurisdiction for the total expenses incurred during each fiscal year in the performance of the board’s duties under law after deducting the direct assessments, industry direct assessments, and other revenues.

17.2(2) Industry direct assessments and remainder assessments for gas and electric utilities exempted from rate regulation by the board and for providers of telecommunications service that register with the board pursuant to Iowa Code section 476.95A that are exempted from rate regulation under Iowa Code chapter 476 are computed at one-half of the rate used in computing industry direct assessments and remainder assessments for other persons.

199—17.3(476) Expenses to be included in direct assessments. Direct assessments include the following expenses:

17.3(1) Salaries of board employees and related costs borne by the state.

17.3(2) Travel expenses incurred in an investigation or in rendering services by the board or by others employed by the board. Travel expenses include costs of transportation, lodging, meals, and other normal expenses attributable to traveling.

17.3(3) Costs of consultants, contractors, facilities, and equipment if directly related to a proceeding or matter.

17.3(4) Overhead expenses of the board.

199—17.4(476) Direct assessments under Iowa Code section 476.10.

17.4(1) The following persons will not be directly assessed for participating in a board proceeding or matter unless the board issues an order finding that the person may be directly assessed for that participation:

a. An individual who files a complaint against a public utility, so long as the individual’s participation in the proceeding is in good faith.

b. An individual who files a protest or inquiry or intervenes in a proceeding involving a rate change by a public utility, so long as the individual’s participation in the proceeding is in good faith.

c. Any person filing written or oral comments in a rulemaking proceeding.

d. An intervenor in a board proceeding. However, the board may decide to directly assess a person who intervenes if the board determines that the person’s intervention or participation is not in good faith, the board determines the intervention significantly expands the scope of the proceeding without contribution to the public interest, or the board determines there are unusual circumstances warranting assessment.

17.4(2) In deciding whether to directly assess a person and, if so, the amount to be directly assessed, the board may consider the factors contained in Iowa Code section 476.10 and other factors deemed appropriate by the board in that particular case.

199—17.5(476) Reporting of operating revenues. On or before April 1 of each year, every public utility shall file with the board a report that includes the utility’s gross operating revenues from Iowa intrastate

operations during the preceding calendar year. Such revenues are to be reported on the accrual basis or the cash basis consistent with the report filed with the board.

199—17.6(475A,476) Compilation and billing of assessment.

17.6(1) The board determines its own expenses to be billed and adds the certified expenses incurred by the consumer advocate. The board does not review the expenses certified to it by the consumer advocate.

17.6(2) Unless otherwise ordered by the board, bills must be paid within 30 days of receipt unless an objection is filed in writing pursuant to Iowa Code section 476.10. In the event an objection is filed under rule 199—17.9(475A,476), the portion of the bill not contested is to be paid within 30 days of receipt.

17.6(3) A person participating in a board proceeding or matter may file a request in that proceeding or matter for the board to determine how the expenses of that proceeding or matter will be assessed.

199—17.7(476) Assessments under Iowa Code section 476.95B. In making assessments under Iowa Code section 476.95B, the board will allocate costs and expenses to all parties and participants, but such allocation will not necessarily be an equal allocation. The allocation will be made on a case-by-case basis and may be based on Iowa revenues, grouping of parties and participants on the basis of similarity of positions, and other factors deemed appropriate by the board in that particular case. The allocation will be included in the board's final order in the docket, unless otherwise ordered by the board.

199—17.8(477C) Assessments of expenses for dual party relay service program and equipment distribution program.

17.8(1) Iowa Code section 477C.7 governs the payment of assessments by wireless carriers and wireline local exchange carriers to fund the dual party relay service program and equipment distribution program. Those carriers shall pay assessments in the amount of three cents per month for each telecommunications service phone number. "Telecommunications service phone number" means a revenue-producing telephone number.

17.8(2) Wireless carriers and wireline local exchange carriers shall file the number of telecommunications service phone numbers with the board. The number of telecommunications service phone numbers may be filed as confidential and may be withheld from public inspection pursuant to the procedures in 199—Chapter 1.

17.8(3) The board may audit the payment of Iowa Code section 477C.7 assessments for any purpose the board deems necessary, including, but not limited to, examining whether wireless carriers and wireline local exchange carriers providing telecommunications services in Iowa are paying assessments in appropriate amounts.

199—17.9(475A,476) Objection procedures.

17.9(1) A person subject to an assessment shall either pay the amount assessed or file an objection to the assessment as set forth in this rule within 30 days of the date the board provides notice of the amount due to the person.

17.9(2) A properly filed objection is in writing; sets forth the specific grounds upon which the person claims the assessment is excessive, unreasonable, erroneous, unlawful, or invalid; and identifies whether the person objects to the assessment of expenses certified by the board, to the assessment of expenses certified by the consumer advocate, or both. If the person wishes to orally present argument to the board, the request for oral argument should be included in the objection. Absent a request for oral argument, the

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board will consider the objection based solely on the submission of written evidence and argument. The person may include with the objection such evidence or information the person believes relevant to support the person's claim.

17.9(3) The consumer advocate or the board may informally resolve an objection. In the event an objection is informally resolved, the fact that a resolution has occurred will be filed in the docket.

17.9(4) If the objection concerns the assessment of expenses certified by the consumer advocate, within 30 days from the date of the objection, the consumer advocate may file responsive argument, evidence, and other information with the board. In the event the person filing an objection has not requested oral argument, the consumer advocate may request oral argument.

17.9(5) If oral argument is requested or if the objecting person or the consumer advocate requests additional opportunity to submit written argument and evidence, the board will issue a scheduling order. At the time and place for oral argument, the objecting person and the consumer advocate, if applicable, will be afforded the opportunity to present argument to the board.

17.9(6) Following the final submission of written material or oral argument, the board will issue an order in accordance with its findings. In the event the board affirms the assessment, in whole or in part, the person shall pay the amount identified in the board's order within 30 days from the date of the order unless otherwise ordered by the board.

17.9(7) The objection procedures set forth in this rule do not apply to challenges to a direct assessment made in a final board order, including those issued under subrule 17.6(3). The judicial review procedures in Iowa Code chapter 17 and the rehearing provisions in Iowa Code section 476.12 are the exclusive methods for challenging a direct assessment determination made in a final board order.

17.9(8) Board expenses incurred in an objection proceeding will be included in industry direct assessments.

199—17.10(476,477C) Refunds. If a person makes a payment in excess of the assessed amount, the board may issue a refund to the person for the excess amount or credit the excess amount toward the person's next assessment. For overpayments of less than \$50, absent exigent circumstances, the board will not issue a refund and will hold the excess amount as a credit toward the person's next assessment through the fiscal year in which the overpayment occurred. If a credit remains at the end of the fiscal year in which the overpayment occurred, the board will issue a refund for any excess amount remaining.

These rules are intended to implement Iowa Code chapters 17A, 475A, 476, 478, 479, 479A, 479B, and 546.