

IOWA UTILITIES BOARD

IN RE:

EXECUTIVE ORDER 10 — REVIEW OF
CROSSING OF RAILROAD RIGHTS-OF-
WAY RULES [199 IOWA
ADMINISTRATIVE CODE CHAPTER 42]

DOCKET NO. RMU-2023-0042

ORDER APPROVING REGULATORY ANALYSIS

BACKGROUND

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 42, the technical conference was held on April 24, 2024, and was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; the Iowa Communications Alliance (ICA); the Iowa Association of Electric Cooperatives

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(IAEC); Interstate Power and Light Company (IPL); MidAmerican Energy Company (MidAmerican); and the Iowa Farm Bureau Federation (Farm Bureau). The Board also received written comments from OCA, IAEC, ICA, and MidAmerican.

Pursuant to the Executive Order, before commencing a formal rulemaking, an agency must first approve a Final Regulatory Analysis, which includes a copy of the chapter to be re-promulgated, and receive preclearance through a Request to Initiate Rulemaking. While several stakeholders requested changes to the proposed new version of chapter 42, no commenting stakeholder requested changes to the Draft Regulatory Analysis. Therefore, the Board will approve the body of the Draft Regulatory Analysis, attached to this order as Attachment A, as the final version, without change. The Board will also publish the Final Regulatory Analysis on its website as the Executive Order requires.

With respect to the text of chapter 42 to be re-promulgated, the Board has considered the oral and written comments received. The Board's analysis of the comments is outlined in the discussion below.

COMMENTS REGARDING CHAPTER 42

A. Subrule 42.3(1)

Subrule 42.3(1) concerns the notification and exhibits a utility must send to a railroad before constructing across a railroad right-of-way. IAEC suggests this subrule be revised to require railroads to keep the Board apprised of the address where utilities are to send initial notifications.

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Utility notifications and exhibits sent under Iowa Code § 476.27 appear to be the type of legal notices that would be appropriately sent to a railroad's registered agent. See Iowa Code § 490.504 ("A corporation's registered agent is the corporation's agent for service of process, *notice*, or *demand required or permitted by law* to be served on the corporation.") (emphasis added). Corporations doing business in Iowa are already required to file "[t]he street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office" with the Iowa Secretary of State. Iowa Code § 490.1503(d); *see also* Iowa Code § 490.501 (requiring domestic and foreign corporations to continuously maintain a registered agent and office within Iowa).

The Board does not find it appropriate to impose a requirement on railroads that is duplicative of existing Iowa business law. Accordingly, the Board will not at this time obligate railroads to file with the Board an address where initial notifications may be mailed. However, the Board invites further stakeholder input on this issue and will consider any comments provided during the public hearings portion of this proceeding.

B. Subrule 42.3(5)

Subrule 42.3(5) concerns the notice a utility must send to a railroad before performing maintenance on utility facilities located within a railroad's right-of-way and associated flagging costs. Proposed subrule 42.3(5) provides, "The public utility shall reimburse the railroad for actual flagging expenses within 30 days of receipt of a bill for flagging services." IAEC suggests subrule 42.3(5) may be improved by revising "actual flagging expenses" to "actual reasonable flagging expenses."

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The requirement that utilities pay a railroad's flagging expenses arises from Iowa Code § 476.27(2)(b), which provides, "The public utility shall also reimburse the railroad for any actual flagging expenses associated with a crossing in addition to the standard crossing fee." The language of proposed subrule 42.3(5) comes directly from § 476.27(2)(b), which, critically, does not contain the word "reasonable."

The Board finds it preferable to mirror the language set forth by the legislature in this circumstance. Accordingly, the Board will not at this time revise subrule 42.3(5) to include the word "reasonable."

The Board invites further stakeholder input on this issue and will consider any comments provided during the public hearings portion of this proceeding.

C. Subrule 42.7(1)

Subrule 42.7(1) states that "pipelines crossing railroads shall be constructed in accordance with Part 5, 'pipelines,' of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering—2001." This reference to the AREMA Manual is 22 years out of date. The Board will update this reference.

D. Rule 42.18

Proposed rule 42.18 provides that complaints or petitions for relief may be filed with the Board. OCA suggests rule 42.18 be revised to clarify that complaints or petitions for relief must be filed through the Board's electronic filing system (EFS). OCA explains that filing in EFS best ensures public accountability and transparency, and it ensures OCA receives timely notice of any such filings.

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For the reasons described by OCA, the Board finds it advantageous to ensure all complaints or petitions for relief brought under this chapter are filed in EFS. New subrule 42.18(4) will be created, which will require parties to file in EFS.

E. Other Miscellaneous Comments

OCA and MidAmerican suggest other miscellaneous and minor revisions that will be addressed summarily.

Subrule 42.18(4) references subrule 7.4(10)“c,” which OCA states is already an outdated reference. The reference will be changed to 199—rule 7.4.

Subparagraph 42.6(3)(a) states, “The minimum depth below the base of the rail shall be 4.5 feet except for fiberoptic cables, which shall be 5.0 feet.” MidAmerican recommends changing “4.5 feet” to “four and one-half feet” and “5.0 feet” to “five feet.” In numeric form, the numbers convey the level of precision to which engineering standards must be followed. That conveyance would be lost if the revision suggested by MidAmerican were adopted. Accordingly, subparagraph 42.6(3)(a) will stay as proposed.

Subrule 42.18(3) outlines information to be included in written complaints and petitions for relief. MidAmerican recommends minor changes that provide clarity and consistency throughout the subrule. MidAmerican’s recommended changes to subrule 42.18(3) will be adopted.

CONCLUSION

All proposed changes are reflected in the version of chapter 42 included with the Final Regulatory Analysis attached to this order as Attachment A. The Board will seek

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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 May 13, 2024) (setting forth Executive Order 10 forms and processes).

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The Final Regulatory Analysis for 199 Iowa Administrative Code chapter 42, attached to this order as Attachment A, is approved.

UTILITIES BOARD

Erik M. Helland 2024.05.22
10:46:14 -05'00'

Joshua Byrnes Date: 2024.05.22
13:11:52 -05'00'

ATTEST:

Sadi Reimann Digitally signed by Sadi Reimann
Date: 2024.05.22 13:43:04 -05'00'

Sarah Martz Date: 2024.05.22
11:48:43 -05'00'

Dated at Des Moines, Iowa, this 22nd day of May, 2024.

Final Regulatory Analysis

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board Rule # 199 IAC chapter 42

Iowa Code Section Authorizing Rule 17A.3, 476.1, 476.1A, 476.1B, and 476.27

State or Federal Law(s) Implemented by the Rule 476.1, 476.1A, 476.1B, and 476.27

Public Hearing

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

Date/Time: April 24, 2024 at 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 Department. Comments were directed to:

Contact Name

IT Support

Address

Iowa Utilities Board

Email and/or phone number

ITsupport@iub.iowa.gov

Purpose and summary of proposed rule:

The purpose of this chapter is to execute Iowa Code section 476.27 by providing backstop terms and conditions for crossing railroad rights-of-way by public utilities.

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:

Proposed Chapter 42 imposes no direct costs on the public, railroad companies, or utility companies and does not prevent a railroad company and utility from negotiating other terms and conditions applicable to a crossing or agreeing to a different dispute resolution mechanism.

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

Railroad companies and utilities that are unable to agree to terms for crossing benefit by having a dispute resolution process available.

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:

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Utilities pay railroads a one-time standard crossing fee of \$750 for placing facilities within a railroad’s right-of-way.

- Qualitative description of impact:

This chapter allows utilities to construct critical infrastructure across railroad rights-of-way by providing backstop terms and conditions.

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 the 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

Because Iowa Code section 476.27 compels the Board to adopt rules prescribing the terms and conditions for railroad crossings by utilities, the cost of inaction would be the Board’s inability to carry out its obligations under the law. There are no benefits to inaction.

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

Because Chapter 42 imposes no direct costs, the agency does not believe that 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:

Because Iowa Code section 476.27 compels the Board to adopt rules prescribing the terms and conditions for railroad crossings by utilities, there are no alternative methods available for the Board to seriously consider.

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

Because Iowa Code section 476.27 compels the Board to adopt rules prescribing the terms and conditions for railroad crossings by utilities, there are no alternative methods available for the Board to reject.

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:

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- 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.
- 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 believe Chapter 42 will have an adverse impact on small business.

Text of Proposed Rule:

ITEM 1. Rescind 199—Chapter 42 and adopt the following new chapter in lieu thereof

CHAPTER 42
CROSSING OF RAILROAD RIGHTS-OF-WAY

199—42.1(476) Definitions. The following words and terms, when used in these rules, have the meanings set forth in Iowa Code section 476.27: “board,” “crossing,” “direct expenses,” “electric transmission owner,” “facility,” “public utility,” “railroad” or “railroad corporation,” “railroad right-of-way,” and “special circumstances.” In addition, as used in this chapter, the following definitions apply:

“*AREMA Manual*” means the American Railway Engineering and Maintenance-of-Way Association Manual for Railway Engineering (2023), which is a source of generally accepted engineering practices for the railway industry.

“*CFR*” means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of May 20, 2024, unless a separate effective date is identified in a specific rule.

“*Complainant*” means a person who complains to the board by written complaint regarding any of the issues identified in Iowa Code section 476.27(2) or these rules.

“*Petitioner*” means a person who files a written petition with the board seeking a determination of special circumstances pursuant to Iowa Code section 476.27(4).

“*Respondent*” means a person against whom a complaint or petition is filed.

“*Small utility*” means a public utility and all affiliates of the public utility that collectively serve fewer than 20,000 customers. For purposes of this definition, a customer means the party responsible for payment of the utility services. When the specification exhibit is filed with the railroad, the small utility will certify on the specification exhibit that it meets the definition of a small utility as contained in this rule. The specification exhibit will also state that at such time that the small utility no longer meets the small utility definition, that it will have an affirmative duty to notify the railroad.

199—42.2(476) Applicability and purpose. These rules provide terms and conditions for the crossing of railroad rights-of-way by public utilities. However, these rules shall not prevent a railroad and public utility from negotiating other terms and conditions applicable to a crossing or agreeing to a different dispute resolution mechanism than that provided for in Iowa Code section 476.27 and these rules. These rules do not apply to longitudinal occupancy of railroad right-of-way but only to the crossing of railroad right-of-way.

Final Regulatory Analysis**199—42.3(476) General notice and specification exhibit requirements and payment of fee.**

42.3(1) Notice and exhibit. Any time a public utility intends to construct a crossing across railroad right-of-way, the utility shall submit to the railroad a notification of intent to construct, along with a specification exhibit that shows the location of the crossing and the railroad's property, tracks, and wires that the public utility's facilities will cross. The notice and exhibit shall be submitted to the railroad by certified mail, return receipt requested. The one-time standard crossing fee of \$750, unless otherwise agreed to by the railroad and public utility, shall accompany the notice and exhibit. The public utility shall use its best efforts to submit the specification exhibit on a form provided or approved by the railroad. The specification exhibit constitutes the public utility's warranty that the public utility facilities that are the subject of the exhibit will be constructed and installed as shown on the exhibit. Railroad Crossing Specification Exhibit forms are available on the board's website, iub.iowa.gov.

42.3(2) Exhibit—overhead wireline crossings. For overhead wireline crossings, the specification exhibit shall contain, at a minimum, the location of the poles supporting the crossing span and adjoining spans on each side of the crossing span on the proposed facilities; the number, kind, and size of wires; and the clearance between the facilities and any existing railroad tracks, wires, or fiber-optic lines.

42.3(3) Exhibit—underground crossings. For underground crossings, the specification exhibit shall contain, at a minimum, the number, kind, and size of wires, pipes, and conduit and casing to be used; the commodity conveyed; and the depth to which the public utility facilities will be placed below the base of the rail track and at other locations on the right-of-way. Multiple wires to be contained within a single conduit may be combined on a single exhibit and notice of intent to construct. Both cased and uncased natural gas pipeline crossings shall be provided for on the specification exhibit form or forms.

42.3(4) Authorization to commence construction. After 35 days from the mailing of the notice, specification exhibit, and fee, the public utility, absent a claim of special circumstances or objection from the railroad that the information contained in the specification exhibit is inadequate or incomplete, shall be deemed to have authorization to commence construction of the facilities that are the subject of the specification exhibit. In the event the public utility does not commence construction within 120 days from the mailing of the notice or any changes to the specification exhibit, whichever is later, the notice shall expire and the fee may be retained by the railroad. If the public utility subsequently desires to proceed with construction of the facilities subject to the notice, the public utility must again comply with the notice, specification exhibit, and fee requirements of these rules.

42.3(5) Crossing notice and payment of flagging costs. In addition to any other required notice, a public utility, except for emergency repair or maintenance, shall provide the railroad written notice at least ten days prior to commencing any construction, maintenance, or repair of facilities within the railroad's right-of-way. Such notice is to enable the railroad to make any appropriate flagging arrangements. The public utility shall reimburse the railroad for actual flagging expenses within 30 days of receipt of a bill for flagging services.

42.3(6) Securing damages—special circumstances. Pending a board resolution of a claim of special circumstances raised in a petition filed by the railroad pursuant to Iowa Code section 476.27(4) and subrule 42.18(2), a public utility may, upon compliance with these rules and securing the payment of an amount sufficient for the removal of any facilities constructed by the public utility in a manner approved by the board, proceed with construction unless the board intervenes to prevent construction pursuant to Iowa Code section 476.27(6).

42.3(7) Inductive interference study. If the railroad reasonably determines through its initial review of the specification exhibit and engineering analysis that a proposed public utility facility has a material possibility of posing an induction problem with railroad property, the public utility, if it wishes to proceed with the facility, shall cause a formal inductive interference study to be performed by a qualified engineer approved by the railroad. The public utility shall make and pay for any modifications to the proposed facility, or to the railroad's property, that are necessary to ensure safe and reliable operations of the railroad's property that are recommended by the qualified engineer. No public utility facility that has undergone an inductive interference study pursuant to this subrule shall be energized until the railroad has had an opportunity to conduct any appropriate tests to ensure that, after the facility is energized, there will not be any interference with the

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operation of the railroad's property. Any appropriate tests shall be conducted by the railroad within 30 days after receipt of a notice from the public utility that the facility is ready to be energized.

199—42.4(476) Emergency notice and repairs.

42.4(1) Notice. In the event a public utility or railroad needs to perform emergency or nonroutine maintenance or repair within a railroad right-of-way and the maintenance or repair may affect the operations of the other entity, immediate notification of the maintenance or repair being performed shall be given.

42.4(2) Notification plan filing. Each railroad and public utility with a facility crossing railroad right-of-way shall establish, and file with the board, a mechanism or plan for receiving emergency notifications 24 hours per day, seven days per week.

42.4(3) Scope of emergency work and reimbursement of expenses. Unless permission from the affected railroad or public utility has been received, the railroad and public utility may only perform maintenance or repair work of their own respective property. If the emergency maintenance or repair performed by the railroad or public utility causes reasonable expenses to be incurred by the other entity, those reasonable expenses shall be reimbursed.

199—42.5(476) Relocation of public utility facilities.

42.5(1) Standard for relocation. The railroad may require that the public utility, at the public utility's expense, relocate facilities on railroad right-of-way whenever such relocation is necessary to accommodate railroad operations. The decision that relocation is required is made solely by the railroad, although the railroad may not act arbitrarily or unreasonably. The public utility shall not have to pay a standard crossing fee for such relocations.

42.5(2) Completion of relocation. In the event relocation of facilities is required, the relocation shall be to a location mutually agreed upon by the railroad and utility, within the railroad right-of-way. The relocation shall be completed within a reasonable period of time.

42.5(3) Statement of reasons. Upon the request of the public utility, the railroad shall provide within 15 days a statement or other supporting documentation indicating the operational reasons for requiring relocation of facilities.

199—42.6(476) Engineering standards for electric and communications lines. These engineering standards apply to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in rule 199—42.18(17A,476), depending on the facts and circumstances associated with the particular crossing.

42.6(1) General.

a. Except as provided for in this chapter, electric and communications lines crossing railroads shall be constructed in accordance with 199—Chapter 25, the Iowa electrical safety code.

b. Crossings should be made as near as possible at an angle of 90 degrees to the railroad tracks, but in no event shall any crossing be at less than a 60-degree angle to the railroad track.

c. Aboveground facilities at road or pedestrian crossings shall be located or constructed in a manner that minimizes interference with lines of sight for observing oncoming trains.

42.6(2) Additional requirements for overhead crossings.

a. In determining the line height needed to meet the clearance requirements of the Iowa electrical safety code, the height of a rail car shall be assumed to be 23 feet.

b. Electric and communications lines shall be installed with at least four feet of clearance above overhead railroad signal and communications lines.

c. The perpendicular distance of poles from the centerline of the tracks shall not be less than the largest of the following:

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(1) Unguyed poles shall be located a minimum distance equal to the height of the pole above the ground line plus ten feet. If guys are installed, they shall be placed in a manner that would prevent the pole from leaning or falling in the direction of the tracks.

(2) Fifty feet near straight tracks, except for industry track where ten feet is permitted. If the pole is located adjacent to curved track, the clearance shall be increased by 1.5 inches per degree of track curvature.

(3) Towers for electric lines capable of operating at 34,500 volts or more shall not be located on railroad right-of-way.

d. Poles shall be located a minimum distance from overhead railroad signal or communications lines equal to the height of the pole above ground line, or poles must be guyed at a right angle away from such lines.

e. Crossings shall not be installed under or within 500 feet of a railroad bridge, or 300 feet from the centerline of a culvert or switch area.

42.6(3) Additional requirements for underground crossings.

a. The minimum depth below the base of the rail shall be 4.5 feet except for fiber-optic cables, which shall be 5.0 feet.

b. The minimum depth at other locations on the right-of-way shall be:

(1) Five feet for fiber-optic cables;

(2) Four feet for conductors operating at more than 750 volts; and

(3) Three feet for all other lines.

c. Crossings shall not be installed within 50 feet of the end of a railroad bridge, the centerline of a culvert, or a switch area.

d. Casings must extend at least 30 feet from the centerline of the nearest track, measured at a right angle, except that casings for electrical conductors operating at more than 750 volts shall extend the full width of the right-of-way. At burial depths of less than 15 feet below the track, the casing material shall be steel or rigid metal conduit. At depths of 15 feet or more, polyvinyl chloride (PVC) casing pipe may be used.

e. Except for the track and ballast area, warning tape shall be installed one foot below ground level over conductors operating at more than 750 volts, except that tape is not required for lines installed using horizontal directional drilling.

f. Bored crossings shall not be installed using water jetting or other methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted. Pits for boring or drilling crossings shall be beyond the limits of the railroad embankment.

g. Unless otherwise authorized by the railroad, a railroad representative must be present during installation of buried crossings if there are underground railroad signal lines in the vicinity of the crossing.

199—42.7(476) Engineering standards for pipelines. These engineering standards apply to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in rule 199—42.18(17A,476), depending on the facts and circumstances associated with the particular crossing.

42.7(1) General.

a. Except as provided for in this chapter, pipelines crossing railroads shall be constructed in accordance with Chapter 1, Part 5, "Utilities" of the AREMA Manual.

b. For pipelines subject to 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," or 49 CFR Part 195, "Transportation of Hazardous Liquids by Pipeline," the appropriate federal standard shall control for pipeline marker signs, valves, corrosion control, welding and weld testing, and pressure testing. The design stress level in such pipelines shall not exceed that permitted by the appropriate federal standard.

c. Polyethylene (PE) pipe may be used as carrier pipe for natural gas pipelines. PE and PVC pipe may be used as carrier pipe for water and wastewater. Such pipe shall be manufactured of materials approved for its intended use by an appropriate standards organization.

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d. Slip jointed carrier pipe may be used only for encased water or wastewater pipelines, and the ends of such casings shall be oriented such that drainage from any internal leakage will not endanger the railroad embankment.

e. Casings of material other than steel may be used with railroad company approval.

f. Cathodic protection test boxes located on railroad right-of-way shall be attached to casing vents or installed flush with the ground surface.

42.7(2) Installation methods.

a. Pipe shall be installed using boring, drilling, or jacking methods. Open cut crossings are permitted only with the specific authorization of the railroad company.

b. Pits for boring or jacking shall not disturb the railroad embankment and shall be located at least 30 feet from the track centerline where practical. Pits shall be of the minimum size necessary.

c. Bored crossings shall not be installed using water jetting or other drilling methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted.

d. Pipe or casing shall be installed with at least one foot of separation from any other pipe or wire in the right-of-way.

e. When boring for pipe greater than 20 inches in diameter is proposed, and the pipe would be installed less than ten feet below the base of the rail, if the railroad has knowledge of soil conditions in the vicinity that could lead to deterioration of track support if the soil is disturbed, the railroad company may require that a geotechnical study be performed by the public utility to determine whether the proposed crossing site is undesirable or requires special construction methods or monitoring.

f. For unusually large pipeline crossings that do not involve special circumstances, or for crossings where geotechnical study has identified potentially destabilizing soil conditions, the railroad company may require that a railroad representative be present during installation and may also require the presence of a survey crew to monitor the tracks for any change in alignment.

199—42.8(476) Liability. Each railroad and public utility shall maintain and repair its respective property within the railroad right-of-way, and the railroad and public utility shall bear responsibility for each person's own acts and omissions, except the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

199—42.9(476) Insurance.

42.9(1) Unless otherwise agreed upon by the railroad and public utility, the public utility shall maintain, or cause to be maintained, the following minimum insurance coverage with respect to each railroad crossing:

a. General public liability insurance with limits of not less than \$500,000 for injury or death of a single person, or not less than \$1 million for any one accident, and not less than \$250,000 per accident for property damage. The exclusion or limitations for railroads shall be removed.

b. Comprehensive automobile liability insurance with limits of not less than \$500,000 for injury or death of a single person, or not less than \$1 million for any one accident, and not less than \$250,000 for property damage.

c. Excess liability coverage with limits of not less than \$5 million, except that the required limits shall be \$1 million for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines.

d. Railroad protective liability insurance with a combined single limit of \$4 million per occurrence and \$6 million aggregate, except that the required limits shall be a combined single limit of \$2 million per occurrence and \$4 million aggregate for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines. Such coverage shall be required only during the period of construction, repair, or replacement of the facilities and may be provided by a blanket railroad protective liability insurance policy provided that the coverage, including the coverage limits, applies separately to each individual crossing on each individual railroad.

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42.9(2) The coverage in paragraphs 42.9(1) “a” through “d” must be by blanket insurance policies covering other property or risks, or self-insurance. In the event the public utility desires to self-insure, it must maintain a minimum long-term rating of A- and net assets of not less than \$100 million, unless the railroad agrees to different amounts. If the public utility’s long-term rating is lowered below an A- rating, the public utility will provide commercial insurance as required in this rule and will notify the railroad that its long-term rating was lowered below A-.

42.9(3) The coverage in paragraphs 42.9(1) “a” through “d” must be in place prior to the commencement by the public utility of any work within the railroad’s right-of-way in order to secure payment for any damages for which the public utility bears responsibility.

42.9(4) Before commencing construction of any facility, the public utility must provide to the railroad proof that the public utility has procured the insurance coverage as required in this rule.

199—42.10(476) Removal of equipment. Upon completion of any facility, the public utility shall remove, or cause to be removed, all tools, equipment, or other property used in the construction and, if railroad property was moved or disturbed, restore that property to the same condition it was in prior to being moved or disturbed.

199—42.11(476) Assignment. The public utility may assign or otherwise transfer any rights to cross railroad right-of-way to any financially responsible entity controlled by, controlling, or under common control with the public utility or to any entity into or with which the public utility is merged or consolidated or that acquires ownership or control of all or substantially all of the transmission assets of the public utility. Notice of the assignment or transfer shall be given to the railroad within 30 days. No other transfer or assignment may take place without the written permission of the railroad, which permission shall not be unreasonably withheld.

199—42.12(476) Prohibition against mechanic’s liens. The public utility shall not create, permit, or suffer any mechanic’s lien or other lien of any kind or any nature to be created or enforced against the railroad’s property for any work performed by the public utility in connection with its facilities that are located in the railroad’s right-of-way. The railroad shall not create, permit, or suffer any mechanic’s lien or other lien of any kind or any nature to be created or enforced against the public utility’s property located in the railroad’s right-of-way for any work performed by the railroad in connection with the railroad’s facilities.

199—42.13(476) Taxes. The public utility shall promptly pay or discharge all taxes and charges levied upon its facilities located in the railroad’s right-of-way. Where any such tax or charge may not be separately made or assessed to the public utility, but is included in the taxes or charges assessed to the railroad, the public utility shall pay to the railroad an equitable portion of such taxes determined by the value of the public utility’s facilities located on railroad right-of-way as compared with the entire value of the railroad property.

199—42.14(476) Protection of signal systems. Prior to penetrating the surface of any railroad right-of-way, the public utility shall contact the railroad to determine whether any of the railroad’s signal systems are located in the area. If signal systems are located in the area, the public utility, at its expense, shall arrange for a cable locator and make arrangements for relocation or other protection of the signal system. The public utility shall also contact Iowa One Call for locating other underground facilities and shall comply with all other applicable statutes, regulations, and rules pertaining to such underground facilities.

199—42.15(476) Safety regulations. The public utility shall ensure compliance with all applicable local, state, and federal safety rules and regulations during the time any work is being performed on a facility within the railroad’s right-of-way. Any personal injury arising during work being performed on a facility shall be promptly reported by the public utility to the railroad.

Final Regulatory Analysis

199—42.16(476) Recording. The public utility, at its own expense, may record a memorandum of its rights pursuant to Iowa Code section 476.27 and these rules. A legal description of the crossing that has been approved by both the railroad and public utility shall be attached to the memorandum. Upon termination of the public utility's rights, the public utility shall file an appropriate document to evidence such termination.

199—42.17(17A,476) Complaints and petitions for relief—general information. These rules are promulgated under Iowa Code chapter 17A and section 476.27 as guides for procedures when railroads or public utilities file with the board complaints regarding crossings pursuant to Iowa Code section 476.27(2)“a”(9) or petitions for relief pursuant to Iowa Code section 476.27(4). The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Any procedural rules in 199—Chapter 7 that are in conflict with these rules do not apply to contested cases under this chapter.

199—42.18(17A,476) Complaints and petitions for relief.

42.18(1) Complaints. A railroad or public utility that has a complaint regarding any of the issues identified in Iowa Code section 476.27(2) that cannot be resolved without intervention by the board may file a complaint with the board.

42.18(2) Petitions for relief. A railroad or public utility that believes special circumstances exist for a particular crossing pursuant to Iowa Code section 476.27(4) may file a petition for relief with the board if the railroad and the public utility have been unable to resolve their differences without intervention by the board.

42.18(3) Information to be filed. The written complaint or petition should include the following information:

- a. The name, address, telephone number, and contact person for the complainant or petitioner and the complainant's or petitioner's attorney, if any;
- b. The basis for the board's jurisdiction over the matter;
- c. A statement of the complainant's or petitioner's position and a detailed discussion of the facts that support the complainant's or petitioner's position, including a description of the issues involved, why special circumstances exist for the particular crossing, the resolution or relief requested, and the facts supporting the resolution or relief requested;
- d. The particular provisions of the statutes and rules involved;
- e. A description of the attempts made to informally resolve the issues involved in the complaint or petition;
- f. All documentation relied on to support the facts alleged in the complaint or petition and the requested resolution or relief; and
- g. The name, address, telephone number, contact person and attorney, if any, for the other railroad or public utility involved and a statement that the complaint or petition was served on the other railroad or public utility involved and the consumer advocate, the method of service, and the date served.

42.18(4) Electronic filing required. Complaints and petitions for relief shall be filed in the board's electronic filing system as described in 199—chapter 14.

42.18(5) Expedited timeline. The board recognizes that the parties will ordinarily require a swift decision. Therefore, the shortened time limits applicable to expedited proceedings described in 199—rule 7.4 shall apply to contested cases brought under this chapter.

These rules are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.27.

ATTACHMENT B

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

Agency Name Iowa Utilities Board

Rule Number(s) 199 Iowa Administrative Code chapter 42

Agency Point of Contact (POC) Maison Blead

Agency POC Phone 515-725-7345 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 04/24/2024

ARC Preclearance

Date ____/____/____