

ARC 4416C

UTILITIES DIVISION[199]

Notice of Intended Action

**Proposing rule making related to assessments
and providing an opportunity for public comment**

The Utilities Board hereby proposes to amend Chapter 17, “Assessments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 477C and sections 476.10, 476.10A and 476.95B.

Purpose and Summary

The Utilities Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules.

On February 21, 2018, the Board issued an order requesting stakeholder comment on potential rule changes and shared proposed amendments to Chapter 17 with stakeholders and the public. The Board received and reviewed comments from the Office of Consumer Advocate, a division of the Iowa Department of Justice; Quest Corporation d/b/a CenturyLink QC; the Iowa Communications Alliance; Interstate Power and Light Company; MidAmerican Energy Company; the Iowa Association of Electric Cooperatives; and the Iowa Association of Municipal Utilities.

The Board issued an order on April 19, 2019, commencing this rule making. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0025.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

Iowa Utilities Board
Electronic Filing System (EFS) at efs.iowa.gov
Phone: 515.725.7337
Email: efshelpdesk@iub.iowa.gov

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

June 13, 2019
9 to 11 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the oral presentation may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the oral presentation and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 199—17.1(475A,476,546) as follows:

199—17.1(475A,476,546) Purpose. The purpose of this chapter is to describe ~~and implement~~ 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 Supplement section 476.10 and Iowa Code section 476.101(10) sections 476.10, 476.10A, and 476.95B and chapter 477C. ~~Rules in this chapter refer to the Iowa Code sections and rules that govern assessments under Iowa Code chapters 478, 479, 479A, and 479B. As used in this chapter, a reference to expenses of the board includes expenses of the entire utilities division.~~ The consumer advocate shall determine and certify the consumer advocate's direct and remainder assessments to the board pursuant to Iowa Code section 475A.6. In determining whether to directly assess a person, the consumer advocate may consider the factors under rule 199—17.4(476).

ITEM 2. Amend rule 199—17.2(475A,476) as follows:

199—17.2(475A,476) Definitions. The following definitions apply to the rules in this chapter.

17.2(1) A “direct assessment” is the charge to a person bringing a proceeding or matter before the board or to persons participating in proceedings or matters before the board:

~~a. For~~ and includes expenses incurred by the board attributable to the board's duties related to such proceeding or matter; ~~and.~~

~~b. For certified expenses incurred and directly chargeable by the consumer advocate in the performance of its duties related to such proceeding or matter.~~

~~The term “person” includes any legal entity. However, “person” does not include the consumer advocate.~~

17.2(2) An “industry direct assessment” is 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:

a. 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.

b. 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.

c. 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.

d. Sanitary sewer utilities are assessed for expenses associated with sanitary sewer services.

e. Storm water drainage utilities are assessed for expenses associated with storm water drainage services.

f. 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.

~~17.2(2)~~ **17.2(3)** A "remainder assessment" is 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 ~~and the certified expenses of the consumer advocate~~ after deducting the direct assessments, industry direct assessments, and other revenues. ~~The remainder assessment may consist of two parts: expenses that can be identified with a specific type of utility service, and expenses that cannot be so identified.~~

~~17.2(3)~~ **17.2(4)** "Overhead expenses" are all operating costs of the board ~~and the consumer advocate excluding salaries and related benefit costs borne by the state~~ not directly attributable to a proceeding or matter, or a specific industry, which are included in direct and industry direct assessments.

~~17.2(4)~~ **17.2(5)** "Gross operating revenues from intrastate operations" include all revenues from Iowa intrastate utility operations during the last calendar year, except ~~uncollectible~~:

a. Uncollectible revenues, amounts

b. Amounts included in the accounts for interdepartmental sales and rents, and gross

c. 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.

17.2(6) As used in this chapter, a reference to expenses of the board includes expenses of the entire utilities division.

17.2(7) A "person" includes individuals and legal entities as defined in Iowa Code section 4.1(20), except the definition does not include the consumer advocate.

17.2(8) An "individual" is a human being as distinguished from legal entities.

17.2(9) Industry direct assessments and remainder assessments for gas and electric utilities exempted from rate regulation by the board shall be computed at one-half of the rate used in computing industry direct assessments and remainder assessments for other persons.

ITEM 3. Amend rule 199—17.3(476) as follows:

199—17.3(476) Expenses to be included in direct assessments. ~~In its direct assessments, the board does not bill more than costs assigned to a docket.~~ Direct assessments include the following expenses:

17.3(1) ~~Salaries of board and consumer advocate employees are computed at an expertise level on an hourly rate obtained by dividing the individual's merit class average annual salary and related benefit and related costs borne by the state by the appropriate number of standard working hours for the year.~~

~~The time of all board and consumer advocate employees engaged on the matter for which a direct assessment is to be made, whether on the property of a public utility, in the offices of the board, or elsewhere, including travel time, is included.~~

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

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

~~17.3(4)~~ Overhead expenses of the board and the consumer advocate reasonably attributable to activities of the board and consumer advocate that can be directly assessed under Iowa Code Supplement section 476.10 or Iowa Code section 476.101(10) are included. The following method is used to calculate the overhead expense factor used to calculate the overhead expenses reasonably attributable to activities of the board and consumer advocate.

~~a.~~ The overhead expense factor used in direct billing overhead expenses is recalculated and implemented with the July billing each year. The overhead expense factor is determined using the following formula:

$$\begin{array}{ccc} \text{20XX Fiscal Year} & & \text{20XX Approved Budget} \\ \text{Overhead Expense} & = & \text{Fiscal Year Expenditures} \\ \text{Factor} & & \text{20XX Approved Budget} \\ & & \text{Fiscal Year Salaries} \end{array}$$

~~b.~~ The “Approved Budget Fiscal Year Expenditures” and “Approved Budget Fiscal Year Salaries” are for those of the board and the consumer advocate added together.

~~c.~~ For each merit class salary, the overhead expense factor is multiplied by the salary computed pursuant to subrule 17.3(1) to produce the hourly rate to be charged in the direct assessment.

ITEM 4. Amend rule 199—17.4(476) as follows:

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

~~17.4(1)~~ **Applicability.** This rule applies only to direct assessments under Iowa Code Supplement section 476.10. The following persons shall 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:

~~17.4(2) a.~~ The board will not directly assess an 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.~~ The board will not directly assess an 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.~~ The board will not directly assess any Any person for filing written or oral comments in a rule-making proceeding.

~~17.4(3) d.~~ Ordinarily, the board will not directly assess a person who intervenes 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. ~~If the board determines there are unusual circumstances warranting assessment, it will issue an order at the earliest reasonable opportunity.~~

~~17.4(4)~~ **17.4(2)** The board considers the following factors in deciding whether to directly assess a person as defined in subrule 17.2(7), and the amount to be directly assessed, pursuant to Iowa Code Supplement section 476.10.

~~a.~~ Whether the person’s intervention and participation in a board proceeding expanded the scope of the proceeding without contributing to the public interest.

~~b.~~ Whether the person’s intervention and participating participation in a board proceeding was in good faith.

~~c.~~ The financial resources of the person.

~~d.~~ The impact of assessment on participation by intervenors.

~~e.~~ The nature of the proceeding or matter.

~~f.~~ The contribution of the person’s participation to the public interest.

~~g.~~ Whether directly assessing costs would be fair and in the public interest.

~~h.~~ Other factors deemed appropriate by the board in a particular case.

17.4(5) The board may decide not to directly assess a person after considering the factors in subrule 17.4(4).

17.4(6) In determining the financial resources of the person in 17.4(4) “c” above, the board may use revenue information previously submitted by the person to the board. If the person has not previously provided revenue information to the board, or has submitted incomplete information, the board may request that the person submit revenue information and, if the person does not do so, may make assumptions regarding the person’s financial resources for purposes of the direct assessment.

17.4(7) Most Iowa Code section 476.97 proceedings are considered for direct assessment under Iowa Code Supplement section 476.10 and this rule. The only exception is a section 476.97 complaint brought under section 476.101(8), which is assessed under section 476.101(10).

ITEM 5. Amend rule 199—17.5(476) as follows:

199—17.5(476) Reporting of operating revenues. Each year, the board sends an annual report form to every public utility. On or before April 1 of each year, every public utility shall file with the board its annual a report that includes a verified report, on forms prescribed by the board, showing its 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 annual report filed with the board.

ITEM 6. Amend rule 199—17.6(475A,476) as follows:

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

17.6(1) *Direct assessments.* The board shall ascertain, and add to the direct assessment, determine its own expenses to be billed and shall add the certified expenses incurred by the consumer advocate directly chargeable to the person. The board does not review the expenses certified to it by the consumer advocate. The board may present a bill for the direct assessment to any person either at the conclusion of the proceeding or matter, or from time to time during its progress.

17.6(2) *Remainder assessments.*

a.—The revenues for the remainder assessment shall be compiled by the board based on the report provided pursuant to rule 17.5(476).

b.—The board shall ascertain the total of the division’s expenses incurred during each fiscal year and add to it the certified expenses of the consumer advocate. Next, the board shall add together all amounts directly assessed, pipeline assessments, electric transmission line assessments, federal reimbursements, and miscellaneous reimbursements. This total shall be deducted from the total of the division’s and consumer advocate’s expenses. The remaining amount is the amount to be recovered through the remainder assessment. Subject to paragraphs 17.6(2) “c” and “d,” the board may assess the remaining amount to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from Iowa intrastate operations over which the board has jurisdiction during the last calendar year.

c.—If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of service over which the board has jurisdiction.

d.—The remainder assessments for gas and electric public utilities exempted from rate regulation pursuant to Iowa Code chapter 476 will be computed at one-half the rate used to compute the assessment for other persons.

e.—The board may make the remainder assessments on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the division and the consumer advocate. The board shall conform the amount of the estimated prior fiscal year’s assessments to the actual fiscal year expenditures not more than 90 days following the close of the fiscal year.

~~f. If a utility has gross operating revenue of \$50,000 or less for the prior calendar year, the board may decide not to bill the utility for its share of the remainder assessment.~~

~~17.6(3) 17.6(2) The bill or accompanying letter of transmittal to each utility shall indicate the assessable revenue for the utility, the rate at which the assessment was computed, and the assessment amount. Bills 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 Supplement section 476.10. In the event an objection is filed under rule 199—17.10(476,475A), the portion of the bill not contested must be paid within 30 days of receipt. The board shall develop procedures for the collection of unpaid bills.~~

~~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.~~

ITEM 7. Amend rule 199—17.7(476) as follows:

199—17.7(476) Funding of Iowa energy center and center for global warming center and regional environmental research. The board will send a bill to each gas and electric utility for funding the Iowa energy center and center for global warming center and regional environmental research. Within 30 days of receipt of the bill, each gas and electric utility shall remit to the utilities division of the department of commerce a check made payable to the treasurer of state for one-tenth of one percent of the total gross operating revenue during the last calendar year derived from its intrastate public utility operations for the funding of the Iowa energy center and center for global warming center and regional environmental research. ~~This remittance shall not be represented on customers' bills as a separate item.~~

ITEM 8. Amend rule 199—17.8(476) as follows:

199—17.8(476) Assessments under Iowa Code section ~~476.101(10)~~ 476.95B.

17.8(1) Applicability. This rule applies to assessments under Iowa Code section ~~476.101(10)~~ 476.95B.

17.8(2) In making assessments under Iowa Code section ~~476.101(10)~~ 476.95B, the board will allocate costs and expenses to all parties and participants. The allocation will not necessarily be an equal allocation.

17.8(3) The specific method of allocation will be made on a case-by-case basis, and ~~ordinarily~~ will be included in the final order in the docket, ~~unless otherwise ordered by the board.~~

17.8(4) The factors the board will consider may include, but are not limited to, Iowa revenues, grouping of parties and participants on the basis of position on the issues, and the factors under rule 199—17.4(476). ~~Joint participation by similarly oriented parties and participants~~ parties with similar positions on the issue will be encouraged by favorable allocations.

17.8(5) ~~The most recent revenue reports filed pursuant to rule 17.5(476) will be used to determine assessments, if available. If the participant has not previously provided revenue information to the board, or has provided incomplete revenue information, the board may request that the participant submit revenue information. If the participant does not do so, the board may make assumptions regarding the participant's revenue for purposes of the assessment. The board may make adjustments to the revenue figures as appropriate for the particular type of case.~~

ITEM 9. Rescind rule 199—17.9(478,479,479A,479B) and adopt the following new rule in lieu thereof:

199—17.9(477C) Assessments of expenses for dual party relay service program and equipment distribution program.

17.9(1) Wireless carriers and wireline local exchange carriers providing telecommunications services in Iowa shall comply with Iowa Code section 477C.7 for payment of assessments 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.

17.9(2) Wireless carriers and wireline local exchange carriers shall file the number of telecommunications service phone numbers with the payment required by Iowa Code section 477C.7. 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—subrule 1.9(8).

17.9(3) The board shall periodically 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.

ITEM 10. Adopt the following new rule 199—17.10(476,475A):

199—17.10(476,475A) Objection procedures.

17.10(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.

17.10(2) An objection must be in writing and must set forth the specific grounds upon which the person claims the assessment is excessive, unreasonable, erroneous, unlawful, or invalid. The objection shall identify 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 must be included in the objection. Absent a request for oral argument, the 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.

17.10(3) Upon receipt of an objection as described in subrule 17.10(2), the objection will be assigned a docket number in the board's electronic filing system, which shall include all filings pertaining to the objection. The consumer advocate shall receive notice of the objection through the board's electronic filing system.

17.10(4) This rule does not preclude the consumer advocate or board staff from directly resolving an objection concerning the assessment of expenses certified by the consumer advocate with the person raising the objection. In the event an objection is informally resolved, the fact that a resolution has occurred shall be filed in the docket.

17.10(5) 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.

17.10(6) 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.

17.10(7) Following the final submission of written material or oral argument, the board shall 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.

17.10(8) The objection procedures set forth in this rule may not be used by a person to challenge or revisit a direct assessment determination made in a final board order, including those issued under subrule 17.6(3). An objection to a direct assessment determination made in a final board order must be brought pursuant to Iowa Code section 476.12 or the judicial review procedures in Iowa Code chapter 17A.

17.10(9) Board expenses incurred in an objection proceeding shall be included in industry direct assessments.

ITEM 11. Adopt the following new rule 199—17.11(476,477C):

199—17.11(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.