

**STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD**

<b>IN RE:</b>  <b>RATE CASES, TARIFFS, AND RATE REGULATION ELECTION PRACTICE AND PROCEDURE [199 IAC CHAPTER 26]</b>	<b>DOCKET NO. RMU-2020-0026</b>
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**COMMENTS ON DRAFT ADOPTED AND FILED RULES**

The Iowa Environmental Council, Environmental Law and Policy Center, and Sierra Club provide the following additional comments to the Iowa Utilities Board (Board) in response to the Order Providing for Stakeholder Review of Draft Adopted and Filed Rules and Second Customer Notice Form (Order) in Docket No. RMU-2020-0026 filed on February 12, 2021.

We continue to recommend Chapter 26 rules incorporate a requirement to provide analysis of cost-effectiveness of generation, which the Board has stated is an issue appropriate for rate cases. We also continue to recommend additional filings on the reporting of utility lobbying expenses beyond the disclosure requirement the board has proposed to add to section 26.4(4). We note that no party has provided a substantive argument opposing these additions. MidAmerican Energy Company and Interstate Power and Light previously argued that the proposals are not relevant, but the argument disregards the statutory requirement to prohibit direct and indirect lobbying and the Board's order in the Wind XII docket that the Board could disallow costs for uneconomic generation in a rate case.

**I. The cost-effectiveness of a utility's whole fleet of generating assets should be evaluated in a rate case.**

As we stated in our comments on September 1, 2020, Iowa law requires utilities to demonstrate that their rates are reasonable and just. (Joint Comments of IEC, ELPC, and Sierra Club, filed Sept. 1, 2020, at 2 (citing IOWA CODE § 476.8).) This demonstration necessarily requires analysis of expenditures recovered from ratepayers, including generation assets. The Board has held that “should a rate-regulated utility continue to utilize an uneconomic facility, the Board may disapprove the costs incurred as imprudent or unreasonable during a rate case.” *In re: MidAmerican Energy Company* (Wind XII), Docket No. RPU-2018-0003, Final Decision and Order (Filed Dec. 4, 2018). MidAmerican has agreed that it is appropriate to evaluate the economics of a generation facility in a general proceeding such as a rate case. *In Re MidAmerican Energy Company*, Docket No. EPB-2020-0156, Reply Testimony of Michael Fehr at 5.

In order for the Board to make a determination about whether or not a utility continues to rely on an uneconomic generating asset, rate cases should include an evaluation of the cost-effectiveness of a utility's entire generation fleet. To conduct such an evaluation, the Board needs information about the cost-effectiveness of facilities, and the Board rules should include a requirement for such information in an application in 26.4(4) and 26.4(5).

We recommend adding the following language to the draft rule:

Add to 26.4(4)(d):

(25) An analysis demonstrating that the continued operation of every generating facility included in rate base is cost-effective.

Add to 26.5(4)(d):

(14) An analysis demonstrating that the continued operation of every generating facility included in rate base is cost-effective.

Adding this language will reduce discovery by other parties to the case and will ensure the Board has a complete record on which to base its decision. In the absence of a requirement to provide the information, the Board will likely face a question about what information is needed to determine cost-effectiveness of generation repeatedly in future rate cases.

**II. Transparency of lobbying expenses facilitates compliance with Iowa Code section 476.18.**

We are concerned that utilities will improperly recover lobbying expenses from customers, including lobbying against customers' interests, unless the rule includes greater transparency.

As we noted in prior comments, Iowa Code prohibits recovery of lobbying expenses from customers. IOWA CODE § 476.18(1). Lobbying itself is not defined in state law. However, the state of Iowa defines "lobbyist" more broadly than the federal law. Under Iowa law, a lobbyist is anyone who "[r]eceives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official." IOWA CODE § 68B.2(13). It also includes anyone who spends \$1000 per year to influence legislation or rule, anyone who is a designated representative of an organization influencing legislation or rule. *Id.* Federal law, by contrast, sets a threshold: it excludes individuals who spend less than 20 percent of their time on lobbying. 2 U.S.C. § 1602(10).

The prohibition against charging ratepayers lobbying expenses includes indirect costs of lobbying. *Id.* The prohibition against indirect lobbying prevents ratepayer money from being funneled to unregulated third parties who conduct lobbying. The draft rules require a utility to provide a "statement that no direct or indirect lobbying expenses are included for recovery in the proposed rates." (Proposed Rule 26.4(4)(d)(23); 26.4(5)(d)(13).) This statement by itself does not provide sufficient evidence to demonstrate the exclusion of lobbying expenses.

As we noted in our prior comments, utilities often conduct indirect lobbying through third-party associations or businesses. (Joint Comments filed Sept. 1, 2020, at 5.) Utilities have relied on the disclosure of those third parties to determine lobbying expenses to exclude from rates. *In Re Interstate Power & Light*, Docket No. RPU-2019-0001, Direct Testimony of Karl Rábago at 67. Because of the narrower definition of lobbying in federal law, some third parties do not disclose lobbying expenses – even if they may exist – and utilities do not investigate further. *Id.* The end result is inclusion of lobbying expenses in customer rates.

We have seen more evidence of the indirect lobbying approach in the current legislative session. For example, the Iowa Utilities Association has actively lobbied in favor of a bill to prohibit local government positions that would restrict natural gas and propane usage. *See* Lobbyist Declarations for HF 555 (2021), available at <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=89&ba=HF555>. Dues for the Iowa Utilities Association were not excluded from Alliant Energy’s most recent rate case. *In Re Interstate Power & Light*, Docket No. RPU-2019-0001, Direct Testimony of Karl Rábago at 65. Other national trade associations have also conducted direct or indirect lobbying on similar bills. *See* Jeff Brady and Dan Charles, “As Cities Grapple With Climate Change, Gas Utilities Fight To Stay In Business,” National Public Radio (Feb. 22, 2021), available at <https://www.npr.org/2021/02/22/967439914/as-cities-grapple-with-climate-change-gas-utilities-fight-to-stay-in-business>.

Beyond the inconsistency with Section 476.18, customers deserve transparency about utility spending that runs counter to customers’ own interests. In the case of the bill referenced above, preventing all-electric homes may increase costs and subjects more people to indoor air pollution. *See* Claire McKenna, et al., “All-Electric New Homes: A Win for the Climate and the Economy,” RMI (Oct. 15, 2020), available at <https://rmi.org/all-electric-new-homes-a-win-for->

[the-climate-and-the-economy/](#); Brady Seals and Andee Krasner, “Gas Stoves: Health and Air Quality Impacts and Solutions,” RMI (2020), available at <https://rmi.org/insight/gas-stoves-pollution-health/>. Forcing customers to pay for lobbying support for these bills runs counter to their own interests, but customers, stakeholders, and the Board will not even know whether the costs are being incorporated into above-the-line rates unless the rules provide for additional transparency.

We recommend the Board add the reporting of direct and indirect lobbying expenses as an item to be filed under rule 26.4(4)(d) and 26.4(5)(d) to provide increased transparency and streamline proceedings. We recommend adding the following language:

Replace the language at 26.4(4)(d)(23) with the following:

The costs of all direct state and federal lobbying and a list of dues paid to trade associations or other organizations that conduct lobbying, with the allocation of those dues to ratepayers and shareholders. The filing must include documentation of all efforts to verify the amounts used for lobbying by third parties.

Replace the language at 26.4(5)(d)(13) with the following:

The costs of all direct state and federal lobbying and a list of dues paid to trade associations or other organizations that conduct lobbying, with the allocation of those dues to ratepayers and shareholders. The filing must include documentation of all efforts to verify the amounts used for lobbying by third parties.

These additions would provide greater transparency, reduce the possibility of inappropriate lobbying expenses being borne by customers, and are consistent with the prohibition in Iowa Code § 476.18(1).

### **III. Conclusion**

We appreciate the requirement in the draft rule to certify the exclusion of lobbying expenses by requiring a disclosure statement as part of the minimum filing requirements in section 26.4(4). However, our recommendations have not been fully addressed in the proposed rules. We continue to believe that the rules should require filing information necessary to determine cost-

effectiveness of generating assets and provide greater detail and transparency of lobbying expenses, and we stand by our prior comments.

As we stated before, incorporating the Board's finding regarding the cost-effectiveness of generating assets into rule will streamline the rate case process and avoid having to repeatedly address the issue. Reporting lobbying data would provide greater transparency to the public and Board while ensuring that utilities comply with the statute. In combination, these proposed additions to the rules will provide consistency with the statute and better outcomes.

DATE: March 4, 2021.

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