

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: POLE ATTACHMENTS RULE MAKING [199 IAC Chapter 27] AND AMENDMENT TO 199 IAC 15.5(2) | DOCKET NO. RMU-2012-0002 |
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ORDER ADOPTING AMENDMENTS TO 199 IAC 25.4

(Issued December 2, 2013)

On May 20, 2013, the Utilities Board (Board) issued an order in which it adopted an amendment to 199 IAC 15.5(2), decided not to adopt a new chapter 27 to address pole attachment agreements, and proposed amendments to 199 IAC 25.4 that established procedures and time limits for pole attachments to poles owned by electric and telecommunications utilities in Iowa. The proposed amendments to 199 IAC 25.4 were published in the Iowa Administrative Bulletin in Vol. XXXV, No. 25 (6/12/13) p. 1941, as ARC 0784C.

In the May 20, 2013, order, the Board stated that after reviewing the comments addressing the original proposed rule, there appeared to be two rule making alternatives to address pole attachments. The Board pointed out that one of the alternatives would have the Board not adopt the original proposed rules in Chapter 27 and instead the Board would propose amendments to the Iowa Electrical Safety Code in 199 IAC Chapter 25 limited to the safety of pole attachments, with timeframes for notice of violations, opportunity to correct violations, penalties, and

dispute resolution procedures. The second alternative would be to adopt the original pole attachment rules as proposed in 199 IAC Chapter 27 with certain revisions and certify to the Federal Communications Commission (FCC) that the Board was asserting jurisdiction over the rates, terms, and conditions of pole attachments by communications providers on poles owned by electric and telecommunications utilities.

The Board determined that the most effective course of action was the first alternative, in which the Board would not certify FCC compliance with the provisions of 47 CFR § 1.140 et seq., but would propose amendments that would establish additional requirements in 199 IAC Chapter 25 to ensure that pole attachments meet the safety requirements of the Iowa Electrical Safety Code. The Board determined that adopting amendments to the Iowa Electrical Safety Code would accomplish the Board's objective of ensuring the safety of pole attachments without adding unnecessary regulations.

In the May 20, 2013, order, the Board pointed out that the primary change in the proposed amendments from the rules originally proposed in the new chapter is the removal of any reference to rates, terms, and conditions for pole attachment agreements. The proposed amendments address only safety issues related to pole attachments. The proposed amendments do not require pole attachment agreements to be in writing and do not make any reference to rates, terms, or

conditions in a pole attachment agreement. Pole attachment agreements in Iowa will remain subject to the jurisdiction of the FCC.

On July 2, 2013, comments regarding the proposed amendments to 199 IAC 25.4 were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate); Mediacom Communications Corporation (Mediacom); Cox Telcom, LLC (Cox); the Iowa Association of Electric Cooperatives (IAEC); AT&T Corp., Teleport Communications America, LLC, and New Cingular Wireless d/b/a AT&T Mobile (AT&T); and the Iowa Utilities Association (IUA).

On July 12, 2013, the Board conducted an oral presentation at which the Board asked several questions related to the written comments and participants provided additional comments concerning the proposed amendments. One of the specific issues addressed at the oral presentation was whether there should be changes to the proposed amendments to address service drops and overloading.

At the oral presentation, the Board stated it would issue an order allowing for additional written comments. On July 17, 2013, the Board issued an order setting a date for additional comments based upon the comments at the oral presentation and the initial written comments. In the order, the Board requested that parties address (1) whether notice is required for service drops and overloading; (2) if notice is proposed, should the rules specify the type of notice; and (3) language that will meet the requirements of the pole occupant for service drops and overloading and continue to ensure the safety of the service drop and overloading. Additional written

comments were filed by Qwest Corporation d/b/a CenturyLink QC (CenturyLink), IUA, Mediacom, and AT&T.

The Board is adopting the amendments as proposed with certain revisions as discussed below. The adopted amendments are set out in their entirety in the "Adopted and Filed" notice that is attached to this order and incorporated herein by reference. The amendments will be published in the January 8, 2014, Iowa Administrative Bulletin and will become effective February 12, 2014.

The Board has summarized relevant comments and revisions adopted to the proposed amendments below.

GENERAL COMMENTS

1. Consumer Advocate stated that it supports the Board's approach to adopting rules addressing the safety of pole attachments.
2. Mediacom agreed with the Board's decision to focus the proposed rules on the safety aspects of pole attachments. Mediacom agreed with holding electric utilities to the same standards as communications companies, requiring companies to cooperate in determining causation of violations and expanding "good cause" reason for extending the timeframes for repair. However, Mediacom had several suggestions for changes to the proposed language.

In general, Mediacom suggested changes that it believes are required to ensure that the rules adopted by the Board with regard to pole attachments do not conflict with federal rules. Mediacom pointed out that the Pole Attachment Act allows

utilities to deny access only for transparent reasons related to objective engineering criteria, such as insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes. 47 U.S.C. § 224(f)(2). Mediacom suggested that the requirement that requests for pole attachments be made in writing conflicts with various aspects of federal law and state law. Mediacom suggested that to avoid confusion regarding the applicability of the access language in proposed paragraph 25.4(2)"c," chapter 25 must also include language clarifying that the rules are not intended to conflict with or supersede federal law in any respect or be considered "certification" under 47 U.S.C. 224(c).

Mediacom suggested that the Board's decision to not differentiate between service drops and standard attachments with regard to access and notice requirements and leave the issue as a point of negotiation violates federal and state law. Mediacom suggested that the regular permitting process can take months and federal law requires that cable service drops to be performed within seven business days after the order is placed. Mediacom stated that the Board must include language in the proposed rules that is consistent with federal and state law as related to service drops.

Mediacom suggested an express clarification to paragraph 25.4(2)"c" as well as a general statement that the rules adopted are not meant to conflict with any federal law and are not meant to constitute certification. This would include language

that allows pole occupants to install service drops without prior approval from the pole owner and include a definition of a "service drop."

3. Cox stated that without waiving any legal rights, it is satisfied the new proposed rules would be workable for Cox operations in Iowa.

4. AT&T supported the Board's decision to not seek FCC certification and address just the safety issues related to pole attachments. AT&T did suggest some changes to the proposed amendments to ensure the rules do not go beyond addressing safety concerns.

5. IAEC stated that it does not object to the provisions of the rules that require pole attachments be constructed, installed, operated, and maintained in compliance with the Iowa Electrical Safety Code; the provisions concerning notification of a violation and the requirements for corrective action; and the provisions for addressing disputes and complaints.

IAEC stated that it does object to the text of the proposed amendments in 25.4(2)"c" concerning access to poles. The proposed amendments would require the pole owner, including electric cooperatives and municipals, to provide non-discriminatory access to poles. IAEC stated that under federal statutes and current FCC regulations, cooperatives and municipals are not obligated to provide such access. In addition, IAEC stated that there is no requirement under state law to provide non-discriminatory access.

IAEC represented that many of its members do provide access to entities wishing to attach to their poles and, in cases where such access is permitted, the IAEC does not object to the attachments being governed by the proposed rules; however, IAEC objected to the creation of, what it considered, a new legal obligation to provide nondiscriminatory access. IAEC suggested the Board modify the language in paragraph 25.4(2)"c" by inserting the words "to the extent required by law" at the beginning of the paragraph.

6. IUA stated that its members are disappointed that the Board did not adopt the second alternative of certification to the FCC of Board jurisdiction over rates, terms, and conditions of pole attachments; however, IUA stated that the members support the proposed amendments. The proposed amendments should provide workable remedies to ensure the safety of pole attachments. IUA suggested that the rules will begin the establishment of a culture of compliance with safety regulations related to pole attachments. IUA has suggested specific changes to 199 IAC 25.3(1) and 25.3(3) to require all utilities to create their own inspection and maintenance plans. IUA stated that the proposed changes will strengthen the enforcement of the existing rules because the Board will have a guide to how each utility, as defined in 199 IAC 25.1(3), will conduct inspections and maintenance of their respective facilities.

SPECIFIC COMMENTS

The specific comments addressing the proposed amendments and the revisions made by the Board are discussed below each proposed amendment.

199—25.4(476,478) Correction of problems found during inspections and pole attachment procedures.

25.4(1) Corrective action shall be taken within a reasonable period of time on all potentially hazardous conditions, instances of safety code noncompliance, maintenance needs, potential threats to safety and reliability, or other concerns identified during inspections. Hazardous conditions shall be corrected promptly. In addition to the general requirements stated in this subrule, pole attachments shall comply with the specific requirements and procedures established in subrule 25.4(2).

Comments

No comments were filed regarding this subrule.

Board Decision

The Board will adopt this subrule as proposed.

Proposed Amendment to 25.4(2)

25.4(2) To ensure the safety of pole attachments to poles owned by utilities in Iowa, this subrule establishes requirements for attaching electric lines, communications lines, cable systems, video service lines, data lines, wireless antennae and other wireless facilities, or similar lines and facilities that are attached to the excess space on poles owned by utilities.

Comment

AT&T suggested that the reference to excess space in this subrule be deleted. AT&T stated that the reference is confusing. IUA supported the language and would add the language to the definition of pole attachment.

Board Decision

The Board will adopt this subrule as proposed. The reference to excess space was added to clarify where pole attachments were to be installed and there should not be an issue that pole attachments are to be installed in the excess space on poles. Where there is not sufficient excess space, the pole owner will need to address that problem.

Proposed Amendment to 25.4(2)"a"

a. Definitions. The following definitions shall apply to this rule.

"Pole" means any pole owned by a utility that carries electric lines, communications lines, cable systems, video service lines, data service lines, wireless antennae or other wireless facilities, or similar lines and facilities.

"Pole attachment" means any electric line, communication circuit, cable system, video service line, data service line, antenna and other associated wireless equipment, or similar lines and facilities attached to a pole or other supporting structure subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199–25.2(476,476A,478).

"Pole occupant" means any electric utility, telecommunications carrier, cable system provider, video service provider, data service provider, wireless service provider, or similar person or entity that constructs, operates, or maintains pole attachments as defined in this chapter.

"Pole owner" means a utility that owns poles subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199–25.2(476,476A,478).

Comments

IUA suggested that the reference to excess space be added to the definition of "pole attachment."

Mediacom proposed adding a definition of "service drop" to this paragraph. The definition proposed is "Service drop means a connection from distribution facilities to the building or structure being served."

Board Decision

The Board will adopt this paragraph as proposed. A reference to excess space is not necessary to clarify the definition of "pole attachment." A definition of service drop is not necessary since electric and communications companies understand what a service drop is and the Board does not want to adopt a definition that might place a limitation on that understanding.

Proposed Amendment to 25.4(2)"b"

b. Compliance with Iowa electrical safety code. Pole attachments to poles shall be constructed, installed, operated, and maintained in compliance with the Iowa electrical safety code, 199–25.2(476,476A,478), and the requirements and procedures established in this subrule.

Comments

There were no comments filed regarding this paragraph.

Board Decision

The Board will adopt this paragraph as proposed.

Proposed Amendment to 25.4(2)"c"

c. Requests for access to poles. A pole owner shall provide nondiscriminatory access to poles it owns. Request for access to poles by an electric utility, telecommunications carrier, cable system operator, video service provider, data service provider, wireless service provider, or similar person or entity shall be made in writing or by any method as may be agreed upon by the pole owner and the person or entity

requesting access to the pole. If access is denied, the pole owner shall explain in detail the specific reason for denial and how the denial relates to reasons of lack of capacity, safety, reliability, or engineering standards.

Comments

1. Mediacom suggested that the requirement that all access requests be made in writing potentially conflicts with the FCC's long-standing rule that attachers subject to federal law may overlash their existing permitted attachments without any approval of the pole owner. Mediacom pointed out that overlashed cables occupy the same foot of space licensed to the attaching entity and require the installation of no additional hardware to the pole. Mediacom stated that FCC rules prohibit pole owners from requiring additional approval and consent for overlashing. Mediacom suggested language to address this issue.

Mediacom suggested language to ensure that there is no doubt that all federal rules continue to apply to pole occupants and pole owners that are subject to federal law. The language suggested by Mediacom is as follows:

Notwithstanding the foregoing, a pole occupant is not required to obtain approval from a pole owner prior to installing a service drop. Nothing in this subrule is intended to conflict with any federal laws, rules or orders, including laws of Congress or rules of the Federal Communications Commission, relating to access to poles owned or controlled by a "utility," as that term is defined by federal law.

2. AT&T recommended the wholesale deletion of paragraph 25.4(2)"c." AT&T stated that the rule goes far beyond addressing safety issues and well into asserting jurisdiction over the terms and conditions of pole attachments. According

to AT&T, this proposed language in this paragraph addresses access to poles and not just safety issues. AT&T stated that the proposed language is duplicative of FCC regulations and unnecessary.

Board Decision

The Board does not consider that the proposed language requiring non-discriminatory access to poles asserts jurisdiction over the terms and conditions of pole attachments as suggested by AT&T. Under federal law, electric and telecommunications companies, except for cooperatives and municipal utilities, are required to provide non-discriminatory access to poles they own. This paragraph potentially extends that requirement to cooperatives and municipals, but does not assert Board jurisdiction over pole attachment agreements. The Board understands that there is a potential conflict with federal law and regulations that could arise if exceptions to the approval requirement in the proposed language are not provided for service drops and overlashing. Separate provisions related to service drops and overlashing are addressed below.

The Board is adopting a revision to the paragraph that addresses the issue of whether cooperatives and municipals should be required to provide non-discriminatory access to the poles they own. The Board understands the IAEC position regarding establishing in these rules a legal requirement requiring non-discriminatory access. IAEC does not believe Iowa law requires cooperatives or municipals to provide non-discriminatory access. To address this issue, the Board

will adopt the language suggested by IAEC with a modification requiring non-discriminatory access only if required by federal or state law. If IAEC is correct in its interpretation of the current law, then the provision requiring non-discriminatory access will not apply to cooperatives or municipal utilities. However, with the modification adopted by the Board, if IAEC's interpretation is determined not to be correct, then no change will need to be made to this provision. The language addressing this issue adopted by the Board is "to the extent required by federal or state law."

The Board does not consider the requirement that a person seeking to install a pole attachment make a written request to attach to an electric or telephone pole to be in conflict with federal law or FCC regulations. Rather, this provision relates directly to the safety of new pole attachments. This requirement ensures that pole owners become aware of new pole attachments and that companies intending to install new pole attachments do so in compliance with the Iowa Electrical Safety Code.

This paragraph also allows pole owners and pole occupants to agree on other methods for notifying the pole owner of a new pole attachment. The Board considers an agreement between the parties to be the best way for pole owners and pole occupants to address the issue of new pole attachments. The practices and procedures negotiated between pole owners and pole occupants should be in compliance with federal regulations and Iowa safety requirements.

In proposing the amendments to 199 IAC chapter 25 rather than asserting jurisdiction over the rates, terms, and conditions of pole attachments, the Board included the language requested by the communications companies about non-discriminatory access and the specific reason for a denial be based on lack of capacity, safety, reliability, or engineering standards. The Board considers these requirements to be reasonable. The Board does not consider additional language regarding compliance with federal regulations or laws as suggested by some comments to be necessary or helpful. Non-specific language would render the rules unenforceable without requiring an extensive analysis of federal regulations and laws each time a question about the application of the rules is raised. The burden should be on any person raising an issue about a conflict between the Board's pole attachment requirements and federal laws and regulations and not on the Board or the pole owner.

The Board understands that service drops and overloading will need to be specifically addressed in these rules to avoid any potential conflicts with federal law and regulations. Federal law and regulations allow a company to install service drops and overloading without prior approval. Even though prior approval is not required, some type of notice for both service drops and overloading needs to be provided to the pole owner. Several comments supported notice of service drops and overloading. The Board does not consider it necessary for there to be notice for service drops prior to the installation of the service drop. After-the-fact notice will let

the pole owner know when service drops are attached to the pole owner's poles and will provide the pole owner with information necessary to locate and inspect the service drop to determine if the service drop is in compliance with the Iowa Electrical Safety Code.

The Board considers the notice requirements for overlashing to be different from the notice requirements for service drops. Overlashing of existing lines by a communications company may create situations that the pole owner will need to address prior to the overlashing being installed. The Board recognizes that many instances of overlashing will not require any action by the pole owner; however, in some instances the size of the overlashing may raise safety concerns. To address this issue, the Board is adopting revisions to the proposed amendments that include a prior notice requirement when overlashing is to be installed so pole owners can review the proposed overlashing for safety or other concerns. Since prior approval is not required for the overlashing, the provision will only include notice to the pole owner and not require approval by the pole owner. The Board is not adopting a specific type of notice, just that notice be provided. As with other provisions in these amendments, agreement between the parties is the best way to address notice of overlashing.

The adopted provision that will require prior notice and an opportunity for the pole owner to determine if the overlashing raises safety concerns is consistent with the position taken by the FCC. The FCC held that to the extent overlashing does not

significantly increase the burden on the pole, overlashing one's own pole attachment should be permitted, and to the extent that the overlashing does create an additional burden on the pole, any concerns should be satisfied by compliance with generally accepted engineering practices. Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rule and Policies Governing Pole Attachments, Report and Order, 13 FCC Rcd 6777, 6807, ¶ 64 (1998). The FCC has also reaffirmed the continued approval of third-party overlashing, "subject to the same safety, reliability, and engineering constraints that apply to overlashing one's own pole attachment." Amendment of Commission's Rules and Policies Governing Pole Attachments, Consolidated Order on Reconsideration, 16 FCC Rcd 12103, 12141, ¶ 73 (2001). The FCC stated that consent was not required for the overlashing by the host attaching entity or the third party overlasher, other than the original approval required for the host attaching entity. Id., at ¶ 75. However, the FCC stated that "the utility is entitled to notice of the overlashing." Id., at ¶ 73. The FCC concluded that "third party overlashing is subject to the same safety, reliability, and engineering constraints that apply to the overlashing the host pole attachment." Id.

The Board is adopting additional language below to paragraph 25.4(2)"c" that addresses service drops and overlashing. The paragraph adopted below also includes the modified language suggested by IAEC. As with other provisions in these

amendments, parties may negotiate different notice requirements for service drops and overloading. The adopted paragraph is as follows:

c. Requests for access to poles and exceptions for service drops and overloading of existing lines.

(1) A pole owner shall provide nondiscriminatory access to poles it owns, to the extent required by federal or state law. Request for access to poles by an electric utility, telecommunications carrier, cable system operator, video service provider, data service provider, wireless service provider, or similar person or entity shall be made in writing or by any method as may be agreed upon by the pole owner and the person or entity requesting access to the pole. If access is denied, the pole owner shall explain in detail the specific reason for denial and how the denial relates to reasons of lack of capacity, safety, reliability, or engineering standards.

(2) Service drops are not subject to the notice requirements in subparagraph 25.4(2)"c"(1). Instead, pole occupants shall provide notice to pole owners within 30 days of the installation of a new service drop, unless the pole occupant and pole owner have negotiated a different notification requirement.

(3) Overloading of existing lines is not subject to the notice requirements in subparagraph 25.4(2)"c"(1). Pole occupants shall provide notice to pole owners of proposed overloading at least seven days prior to installation of the overloading, unless the pole occupant and pole owner have negotiated a different notification requirement.

Proposed Amendment to 25.4(2)"d"

d. Notification of violation. A pole owner shall notify in writing a pole occupant of an alleged violation of the Iowa electrical safety code by a pole attachment owned by the pole occupant or may provide notice by another method as may be agreed upon by the parties to a pole attachment agreement. The notice shall include the address and pole location where the alleged violation occurred, a description of the alleged violation, and suggested corrective action.

Comments

There were no comments filed regarding this paragraph.

Board Decision

The Board will adopt the paragraph as proposed.

Proposed Amendment to 25.4(2)"e"(1)

e. Corrective action.

(1) Upon receipt of notification from a pole owner that the pole occupant has one or more pole attachments in violation of the Iowa electrical safety code, the pole occupant shall respond to the pole owner within 30 days, or 60 days if 25 or more alleged violations are received at one time, in writing or by another method as may be agreed upon by the pole occupant and the pole owner. The response shall provide a plan for corrective action, state that the violation has been corrected, indicate that the pole attachment is owned by a different pole occupant, or indicate that the pole occupant disputes that a violation has occurred. The violation shall be corrected within 90 days of the date notification is received, or 180 days if 25 or more alleged violations are received by the pole occupant at one time, unless good cause is shown for any delay in taking corrective action. A disagreement that a violation has occurred, a claim that correction is not possible within the specific time frames due to events beyond the control of the pole occupant, or a claim that a different pole occupant is responsible for the alleged violation will be considered good cause to extend the time for taking corrective action. The pole occupant and pole owner may also agree to an extension of the time for taking corrective action. The pole owner and pole occupant shall cooperate in determining the cause of a violation and an efficient and cost-effective method of correcting a violation.

Comments

1. Mediacom repeated its suggestion, not adopted by the Board in the proposed amendments, that advance notice be given before a pole owner provides a pole attaching entity with a list of 25 or more alleged pole violations. Mediacom stated that it has over 300,000 attachments statewide in Iowa and ensuring timely repairs, even with the longer timeline, will be less difficult with advance notice.

Advance notice will allow Mediacom to prepare to take corrective action, ensure it is the proper attaching entity, and be present at inspections. Mediacom suggested that the Board could provide for 15-day notice if the Board considers 30 days too long.

Mediacom suggested that the pole owner be required to use its best efforts to ensure that the notice contains only those violations that the occupant allegedly caused so that the attaching entity is not required to dispute causation as a matter of course.

2. AT&T requested the Board provide additional incremental time to respond to and correct violations when pole occupants are faced with multiple violations. AT&T stated that many pole owners conduct a review of attachments to their poles for alleged safety violations as a result of a companywide survey of all or a large portion of the attachments to the utility's poles. Alleged violations can then be brought to the attention of pole occupants all at once. It is not uncommon for the pole occupant to receive a notice of violations for dozens or even hundreds of pole attachments at once. AT&T suggested that for every 25 violations received at one time, the rule should increase the time to respond by 15 additional days and the time to correct the violations by 60 additional days.

Board Decision

The Board has determined that there does not need to be any additional time provided to pole occupants that receive notice of a significant number of alleged violations at one time for the pole occupant to correct, or dispute, the alleged

violations. Some communications companies that indicated they have received a large number of alleged violations at one time either have, or should have, pole attachment agreements with pole owners and those agreements should address the time for corrective action when notice of a significant number of alleged violations are received. These rules are to apply to both current pole occupants and future pole occupants and the rules provide standard requirements where a pole attachment agreement does not exist. By allowing for different procedures to be negotiated, the rules provide the opportunity for parties to address issues related to notice of numerous violations at one time while retaining standard requirements for those pole occupants that have not negotiated agreements.

The Board is adopting two revisions to this subparagraph. Rather than have separate time periods for a pole occupant to respond to notice violations depending on the number of violations in the notice, the Board is removing the 30-day time period and is adopting the 60-day time period for all responses. This revision will make the rule clearer and reduce any confusion regarding how long a pole occupant has to respond to notice of violations. The Board is also adopting a revision to the time periods proposed for correction of a violation. Rather than a 90-day and a 180-day period depending on the number of violations received at one time, the Board is adopting the 180-day time period for all violations. The 180-day time period will make the rule clearer, reduce any confusion over when corrections are required to be completed, and will be consistent with the time that Board Safety and Engineering

Section staff considers reasonable to correct violations found during inspections.

The adopted subparagraph with the two revisions is as follows:

e. Corrective action.

(1) Upon receipt of notification from a pole owner that the pole occupant has one or more pole attachments in violation of the Iowa electrical safety code, the pole occupant shall respond to the pole owner within 30 days, or 60 days if 25 or more alleged violations are received at one time, in writing or by another method as may be agreed upon by the pole occupant and the pole owner. The response shall provide a plan for corrective action, state that the violation has been corrected, indicate that the pole attachment is owned by a different pole occupant, or indicate that the pole occupant disputes that a violation has occurred. The violation shall be corrected within 90 180 days of the date notification is received, or 180 days if 25 or more alleged violations are received by the pole occupant at one time, unless good cause is shown for any delay in taking corrective action. A disagreement that a violation has occurred, a claim that correction is not possible within the specific time frames due to events beyond the control of the pole occupant, or a claim that a different pole occupant is responsible for the alleged violation will be considered good cause to extend the time for taking corrective action. The pole occupant and pole owner may also agree to an extension of the time for taking corrective action. The pole owner and pole occupant shall cooperate in determining the cause of a violation and an efficient and cost-effective method of correcting a violation.

Proposed Amendment to 25.4(2)"e"(2)

(2) If the violation could reasonably be expected to endanger life or property, the pole occupant shall take the necessary action to correct, disconnect, or isolate the problem immediately upon notification. If immediate corrective action is not taken by the pole occupant for a violation that could reasonably be expected to endanger life or property, the pole owner may take the necessary corrective action and the pole occupant shall reimburse the pole owner for the actual cost of any corrective measures. If the pole owner is later determined to have caused the violation and the pole occupant has taken corrective action, the pole owner shall reimburse the pole occupant for the actual cost of the corrective action. Disputes concerning the ownership of the pole attachment should be resolved as quickly as possible.

Comment

AT&T urged the Board to modify subparagraph 25.4(2)"e"(2) so that reimbursement of costs to the pole owner as well as the pole occupant are for "actual reasonable costs." According to AT&T, this change would ensure that parties are mindful of costs associated with emergency corrective action.

Board Decision

The Board will adopt this subparagraph with one revision to address AT&T's concerns. The Board will revise the proposed subparagraph by adding the word "reasonable" between the words "actual" and "cost" in next to last and last sentences of the subparagraph.

Proposed Amendment to 25.4(2)"f"

f. Negotiated resolution of disputes. Parties to disputes over alleged violations of the Iowa electrical safety code, the cause of a violation, the pole occupant responsible for the violation, the cost-effective corrective action, or any other dispute regarding the provisions of subrule 25.4(2) shall attempt to resolve disputes through good-faith negotiations. Parties may file an informal complaint with the board pursuant to 199–Chapter 6 as part of negotiations.

Comments

There were no comments filed concerning this proposed paragraph.

Board Decision

The Board will adopt this paragraph as proposed.

Proposed Amendment to 25.4(2)"g"

g. Complaints. Complaints concerning the requirements or procedures established in subrule 25.4(2), including access to the excess pole space or alleged violations of the Iowa electrical safety code, may be filed with the board by pole owners or pole occupants pursuant to the complaint procedures in 199-Chapter 6.

Comment

AT&T suggests that the language "access to the excess pole space or" be deleted since the Board is not asserting jurisdiction over access to poles.

Board Decision

The Board will adopt this paragraph with a revision that deletes the words ""access to the excess pole space or."

Proposed Amendment to 25.4(2)"h"

h. Persons found to have violated the provisions of subrule 25.4(2) may be subject to civil penalties pursuant to Iowa Code section 476.51 or to other action by the board.

Comments

There were no comments filed concerning this proposed paragraph.

Board Decision

The Board will adopt this paragraph as proposed.

IUA's PROPOSED AMENDMENTS TO 199 IAC 25.3

IUA suggests the following additional amendments to 199 IAC 25.3 in addition to the amendments to 199 IAC 25.4 proposed by the Board.

199—25.3(476,478) Inspection and maintenance plans.

25.3(1) *Filing of plan.* Each electric utility shall adopt and file with the board a written plan for inspecting and maintaining its electric or communications facilities, including but not limited to supply lines and substations (excluding generation stations) in order to determine the necessity for replacement, maintenance, and repair, and for tree trimming or other vegetation management. If the plan is amended or altered, revised copies of the appropriate plan pages shall be filed.

25.3(3) *Contents of plan.* The inspection plan shall include the following elements:

a. *General.* A listing of all counties or parts of counties in which the utility has electric supply lines in Iowa. If the utility has district or regional offices responsible for implementation of a portion of the plan, the addresses of those offices and a description of the territory for which they are responsible shall also be included.

b. *Inspection of lines, communications facilities, poles, pole attachments, and substations.*

(1) Inspection schedules. The plan shall contain a schedule for the periodic inspection of the various units of the utility's ~~electric plant~~ facilities. The period between inspections shall be based on accepted good practice in the industry, but for communications facilities, lines and substations shall not exceed ten years for any given line or piece of equipment. Lines operated at 34.5 kV or above shall be inspected at least annually for damage and to determine the condition of the overhead line insulators.

(2) Inspection coverage. The plan shall provide for the inspection of all communications facilities, supply line and substation units within the adopted inspection periods and shall include a complete listing of all categories of items to be checked during an inspection.

(3) Conduct of inspections. Inspections shall be conducted in a manner conducive to the identification of safety, maintenance, and reliability concerns or needs.

(4) Instructions to inspectors. Copies of instructions or guide materials used by utility inspectors in determining whether a facility is in acceptable condition or in need of corrective action or further investigation.

Comments

1. IUA proposed the Board adopt amendments to rule 25.3 to require pole occupants to prepare their own inspection and maintenance plans. IUA stated that the plans would provide workable remedies to ensure the safety of pole attachments and would establish a culture of compliance. IUA stated that the proposed changes will strengthen the enforcement of the existing rules because the Board will have a guide showing how each utility, as defined in 199 IAC 25.1(3), will conduct inspections and maintenance of their respective facilities.

2. Mediacom suggested that the proposed requirement would create a constant stream of conflicting data sent between pole owners and occupants, causing the same plant to be inspected numerous times. According to Mediacom, the conflicting data would create disputes and all of the plant on a pole would have to be inspected at the same time to resolve the disputes. Mediacom suggested that its proposal that pole occupants be given notice of inspections so the pole occupants can cooperate in the inspections and even perform joint inspections should be adopted. Mediacom suggested that joint inspections would not only lead to more accurate inspection results and timely repairs, they would also produce a cooperative joint use environment overall by reducing the incidence of disputes. Mediacom proposed revisions to subparagraph 199 IAC 25.3(3)"b"(1) to address joint inspections. Mediacom raised the issue of the cost of requiring a cable company to inspect all of its pole attachments in Iowa. Mediacom stated that the IUA proposal

was presented late in the rule making process and additional comments would be necessary before such a proposal should be adopted.

3. IAEC stated that it could support a requirement that all utilities inspect their own facilities. IAEC raised an issue of whether the IUA proposal is outside the scope of the published rule and, if adopted, the amendments would have to be republished.

Board Decision

The Board will not adopt the amendments to 199 IAC 25.3 proposed by IUA. There is a significant question of whether the proposed amendments are outside the scope of the rule making in this docket and adoption of requirements that pole occupants develop and implement inspection and maintenance plans requires additional comments from the participants. Additional information would also need to be obtained about the conditions that would be required of plans developed by pole occupants and whether inspections should be coordinated with pole owners.

The Board does consider further consideration of the proposed amendments to be important and will open a separate docket to address the proposed amendments.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Amendments to 199 IAC 25.4 are adopted, as revised in this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 2nd day of December 2013.

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code section 17A.4 and Iowa Code chapters 476 and 478, the Utilities Board (Board) gives notice that on December 2, 2013, the Board issued an order in Docket No. RMU-2012-0002, In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), "Order Adopting Amendments to 199 IAC 25.4." In this notice, the Board is adopting amendments to 199 IAC 25.4 to establish requirements for pole attachments installed by electric utilities, telecommunications carriers, cable system providers, video service providers, data service providers, wireless service providers, and similar persons and entities to poles owned by electric and telecommunications companies. Notice of the proposed amendments was published in IAB Vol. XXXV, No. 25 (6/12/13), p. 1941, as ARC 0784C.

In an order issued May 20, 2013, the Board decided not to adopt a new chapter 27 that would assert jurisdiction over the rates, terms, and conditions of pole attachment agreements and certify that jurisdiction to the Federal Communications Commission (FCC). Instead, the Board gave notice of the proposed amendments to 199 IAC 25.4 that are being adopted, with certain revisions, amending the Iowa Electrical Safety Code to address pole attachments. The adopted amendments establish timeframes for notice of violations of the Iowa Electrical Safety Code, the time within which to correct

violations, penalties, dispute resolution procedures, and possible penalties if violations are not corrected.

In the May 20, 2013, order, the Board determined that adopting amendments to the Iowa Electrical Safety Code should accomplish the Board's objective of ensuring the safety of pole attachments without adding unnecessary regulations. The Board pointed out that the Board was no longer proposing to assert jurisdiction over the rates, terms, and conditions for pole attachment agreements and certification to the FCC. The Board stated that the proposed amendments did not require pole attachment agreements to be in writing and did not make any reference to rates, terms, or conditions in a pole attachment agreement. The Board pointed out that pole attachment agreements in Iowa would remain subject to the jurisdiction of the FCC. The Board stated that there appeared to be general consensus that the Board has jurisdiction over the safety of pole attachments.

On July 2, 2013, comments regarding the proposed amendments to 199 IAC 25.4 were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate); Mediacom Communications Corporation (Mediacom); Cox Telcom, LLC (Cox); the Iowa Association of Electric Cooperatives (IAEC); AT&T Corp., Teleport Communications America, LLC, and New Cingular Wireless d/b/a AT&T Mobile (AT&T); and the Iowa Utilities Association (IUA).

On July 12, 2013, the Board conducted an oral presentation at which the Board asked several questions related to the written comments and participants provided additional comments concerning the proposed amendments. One of the specific issues

addressed at the oral presentation was whether there should be changes to the proposed amendments to address service drops and overlashing.

After the oral presentation, the Board issued an order establishing a date for additional written comments. In the order, the Board requested that, in addition to any other issues a party wished to address, parties address (1) whether notice is required for service drops and overlashing; (2) if notice is proposed, should the rules specify the type of notice; and (3) suggest language that will meet the requirements of the pole occupant for service drops and overlashing and continue to ensure the safety of the service drop and overlashing. Additional written comments were filed by Qwest Corporation d/b/a CenturyLink QC (CenturyLink), IUA, Mediacom, and AT&T.

A summary of the comments and the revisions adopted to the proposed amendments can be found in the "Order Adopting Amendments to 199 IAC 25.4," which is accessible through the Board's electronic filing system (EFS) at the EFS Web site at <http://efs.iowa.gov>.

There were no comments, written or oral, concerning the proposed amendments in subrule 25.4(1) or in proposed paragraphs 25.4(2)"b," "d," "f," and "h." Non-substantive revisions have been adopted in paragraphs 25.4(2)"a" and "g."

A comment was made suggesting that the reference to "excess space" in subrule 25.4(2) be deleted as confusing. The Board decided that the language should remain in the adopted amendment since the term "excess space" space was added to clarify where pole attachments were to be installed.

Comments were made suggesting that the term "excess space" be added to the definition of "pole attachment" and that a definition of "service drop" be added. The

Board decided not to adopt either suggestion. The Board did not consider the addition of the term "excess space" to be necessary and the Board was concerned that any definition of "service drop" might limit the general industry understanding of the term.

Several comments with suggested changes were made regarding paragraph 25.4(2)"c." Comments suggested that the requirement for written requests could conflict with federal law concerning overlashing and service drops. Commenters also pointed out that federal law allowed a pole occupant to install a service drop and overlashing without the consent or approval of the pole owner. Language was suggested to ensure there would be no conflict with any federal law or regulations in the adopted amendments. It was also suggested that the paragraph be deleted since it arguably addressed more than the safety of pole attachments.

The Board considered these comments and agreed that it should adopt language in paragraph 25.4(2)"c" that exempted service drops and overlashing from the prior written request requirement but required notice to the pole owner of the installation of service drops and overlashing. The Board decided not to adopt the other suggested changes since the Board considered the adopted language to be consistent with federal law and regulations and, without the prior request requirements for pole attachments, there would not be an adequate way to ensure that new pole attachments were made in compliance with the Iowa Electrical Safety Code.

There were also comments from the Iowa Association of Electrical Cooperatives that the requirement for non-discriminatory access to poles owned by electric cooperatives and municipal utilities created a legal obligation for these utilities that is not found in current Iowa law. To address this concern, the Board adopted a provision in paragraph

25.4(2)"c" that creates an exception from the non-discriminatory access requirement if the pole owner is not required by federal or state law to provide non-discriminatory access.

Comments with regard to paragraph 25.4(2)"e" suggested that more time incrementally be allowed for correcting violations based upon the number of pole violations that were received at one time by the pole occupant. Comments also suggested that the pole owner be required to give the pole occupant advance notice if 25 or more violations were to be sent at one time. The Board decided that no additional time needed to be provided and prior notice was not required. The amendment allows pole occupants and pole owners to agree to different notice and correction time periods which the Board considers a preferable way of addressing notices that include a listing of more than 25 violations. The requirements adopted provide a standard requirement where there is no agreement between the pole occupant and the pole owner.

The Board did adopt revisions to paragraph 25.4(2)"e" to simplify and clarify the time period to respond to violations and to correct violations. Where the proposed amendment established separate time periods for notice of fewer than 25 violations and notice of 25 or more violations, the adopted amendment extends the time period for responses to all violations to 60 days and for corrective action to 180 days. The Board decided that having on one date for responses and one date to complete corrective action would reduce confusion about the time periods required by the amendment.

After analysis and review of the adopted amendments, the Board tentatively concludes that the proposed amendments, as adopted, will have a beneficial effect on the safety and reliability of pole attachments to electric and telecommunications poles in

Iowa. The safety and reliability of pole attachments that provide electric service and communications service to Iowa residents and businesses is a necessity for economic development and the safety of the public and utility pole workers. Safe and reliable installation of pole attachments will have a beneficial effect on jobs in Iowa, although that effect cannot be quantified.

The adopted amendments are intended to implement Iowa Code section 17A.4 and Iowa Code chapters 476 and 478.

These amendments will become effective February 12, 2014.

Adopt the following amendments to rule **199—25.4(476,478)**:

199—25.4(476,478) Correction of problems found during inspections and pole attachment procedures.

25.4(1) Corrective action shall be taken within a reasonable period of time on all potentially hazardous conditions, instances of safety code noncompliance, maintenance needs, potential threats to safety and reliability, or other concerns identified during inspections. Hazardous conditions shall be corrected promptly. In addition to the general requirements stated in this subrule, pole attachments shall comply with the specific requirements and procedures established in subrule 25.4(2).

25.4(2) To ensure the safety of pole attachments to poles owned by utilities in Iowa, this subrule establishes requirements for attaching electric lines, communications lines, cable systems, video service lines, data lines, wireless antennae and other wireless facilities, or similar lines and facilities that are attached to the excess space on poles owned by utilities.

a. *Definitions.* The following definitions shall apply to this rule.

"Pole" means any pole owned by a utility that carries electric lines, communications lines, cable systems, video service lines, data service lines, wireless antennae or other wireless facilities, or similar lines and facilities.

"Pole attachment" means any electric line, communication circuit, cable system, video service line, data service line, antenna and other associated wireless equipment, or similar lines and facilities attached to a pole or other supporting structure subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

"Pole occupant" means any electric utility, telecommunications carrier, cable system provider, video service provider, data service provider, wireless service provider, or similar person or entity that constructs, operates, or maintains pole attachments as defined in this chapter.

"Pole owner" means a utility that owns poles subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

b. *Compliance with Iowa electrical safety code.* Pole attachments to poles shall be constructed, installed, operated, and maintained in compliance with the Iowa electrical safety code, 199—25.2(476,476A,478), and the requirements and procedures established in this subrule.

c. *Requests for access to poles, exceptions for service drops and overlashing.*

(1) A pole owner shall provide nondiscriminatory access to poles it owns, to the extent required by federal or state law. Requests for access to poles by an electric utility, telecommunications carrier, cable system operator, video service provider, data service provider, wireless service provider, or similar person or entity shall be made in

writing or by any method as may be agreed upon by the pole owner and the person or entity requesting access to the pole. If access is denied, the pole owner shall explain in detail the specific reason for denial and how the denial relates to reasons of lack of capacity, safety, reliability, or engineering standards.

(2) Service drops are not subject to the notice and approval requirements in subparagraph 25.4(2)"c"(1). Instead, pole occupants shall provide notice to pole owners within 30 days of the installation of a new service drop, unless the pole occupant and pole owner have negotiated a different notification requirement.

(3) Overlapping of existing lines is not subject to the notice and approval requirements in subparagraph 25.4(2)"c"(1). Pole occupants shall provide notice to pole owners of proposed overlapping at least seven days prior to installation of the overlapping, unless the pole occupant and pole owner have negotiated a different notification requirement.

d. Notification of violation. A pole owner shall notify in writing a pole occupant of an alleged violation of the Iowa electrical safety code by a pole attachment owned by the pole occupant, or may provide notice by another method as may be agreed upon by the parties to a pole attachment agreement. The notice shall include the address and pole location where the alleged violation occurred, a description of the alleged violation, and suggested corrective action.

e. Corrective action.

(1) Upon receipt of notification from a pole owner that the pole occupant has one or more pole attachments in violation of the Iowa electrical safety code, the pole occupant shall respond to the pole owner within 60 days in writing or by another method as may

be agreed upon by the pole occupant and the pole owner. The response shall provide a plan for corrective action, state that the violation has been corrected, indicate that the pole attachment is owned by a different pole occupant, or indicate that the pole occupant disputes that a violation has occurred. The violation shall be corrected within 180 days of the date notification is received unless good cause is shown for any delay in taking corrective action. A disagreement that a violation has occurred, a claim that correction is not possible within the specific time frames due to events beyond the control of the pole occupant, or a claim that a different pole occupant is responsible for the alleged violation will be considered good cause to extend the time for taking corrective action. The pole occupant and pole owner may also agree to an extension of the time for taking corrective action. The pole owner and pole occupant shall cooperate in determining the cause of a violation and an efficient and cost-effective method of correcting a violation.

(2) If the violation could reasonably be expected to endanger life or property, the pole occupant shall take the necessary action to correct, disconnect, or isolate the problem immediately upon notification. If immediate corrective action is not taken by the pole occupant for a violation that could reasonably be expected to endanger life or property, the pole owner may take the necessary corrective action and the pole occupant shall reimburse the pole owner for the actual cost of any corrective measures. If the pole owner is later determined to have caused the violation and the pole occupant has taken corrective action, the pole owner shall reimburse the pole occupant for the actual cost of the corrective action. Disputes concerning the ownership of the pole attachment should be resolved as quickly as possible.

f. *Negotiated resolution of disputes.* Parties to disputes over alleged violations of the Iowa electrical safety code, the cause of a violation, the pole occupant responsible for the violation, the cost-effective corrective action, or any other dispute regarding the provisions of subrule 25.4(2) shall attempt to resolve disputes through good-faith negotiations. Parties may file an informal complaint with the board pursuant to 199–Chapter 6 as part of negotiations.

g. *Complaints.* Complaints concerning the requirements or procedures established in subrule 25.4(2), including access to the excess pole space or alleged violations of the Iowa electrical safety code, may be filed with the board by pole owners or pole occupants pursuant to the complaint procedures in 199—Chapter 6.

h. Persons found to have violated the provisions of subrule 25.4(2) may be subject to civil penalties pursuant to Iowa Code section 476.51 or to other action by the board.

December 2, 2013

/s/ Elizabeth S. Jacobs

Elizabeth S. Jacobs

Chair