

**UTILITIES DIVISION[199]**

**Notice of Intended Action**

**Proposing rulemaking related to practice and procedure  
and providing an opportunity for public comment**

The Utilities Board hereby proposes to rescind Chapter 7, “Practice and Procedure,” Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3, 474.5 and 476.2.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 17A.2, 474.5 and 476.2.

*Purpose and Summary*

The Board commenced this proposed rulemaking under the provisions of Executive Order 10. The chapter is intended to explain the procedures governing contested case proceedings, investigations, and other proceedings conducted by the Board or a presiding officer and to secure a fair and cost-effective determination in every such proceeding. The Board is proposing to rescind the existing Chapter 7 and promulgate a new version of Chapter 7 with updated language to reflect current Board procedures, the removal of unnecessary and unneeded language, and the reduction of restrictive terms.

Prior to submission of this Notice of Intended Action, the Board held a technical conference with stakeholders, which included a discussion regarding the proposed new version of Chapter 7. The technical conference was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills); MidAmerican Energy Company (MidAmerican); Interstate Power and Light Company (IPL); ITC Midwest; and Iowa-American Water Company (Iowa-American). The Board also accepted written comments, which were filed by OCA, IPL, Iowa-American, MidAmerican, Black Hills, the Iowa Business Energy Coalition, ITC Midwest, and the Clean Energy Districts of Iowa, and a joint written comment from the Iowa Environmental Council (IEC), the Environmental Law and Policy Center (ELPC), and the Sierra Club. Based on the written and oral comments received, the Board modified Chapter 7 to produce the version published herein.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, 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 rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on June 12, 2024. Comments should be directed to:

IT Support  
Iowa Utilities Board  
Phone: 515.725.7300  
Email: [ITSupport@iub.iowa.gov](mailto:ITSupport@iub.iowa.gov)

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

June 12, 2024 9 to 10 a.m.	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa
June 27, 2024 9 to 10 a.m.	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7  
PRACTICE AND PROCEDURE

**199—7.1(17A,474,476) Scope and applicability.**

**7.1(1)** This chapter applies to contested case proceedings, investigations, and other proceedings conducted by the board or a presiding officer, unless the proceedings have specific procedures established in board rules. If there are no other applicable procedural rules, this chapter applies to other types of agency action, unless the board or presiding officer orders otherwise. The rules in this chapter regarding the content and format of pleadings, testimony, workpapers, and other supporting documents apply to both paper filings and electronic filings made pursuant to 199—Chapter 14. The rules in this chapter regarding filing, service, and the necessary number of copies apply to paper filings. The filing and service of electronically filed documents are governed by 199—Chapter 14. The board has established additional procedural requirements in other chapters as described in subrules 7.1(2) through 7.1(5).

**7.1(2)** Additional rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives are contained in 199—Chapter 26.

**7.1(3)** Notice of inquiry dockets and investigations. The board may issue a notice of inquiry or open an investigation and establish a docket through which the inquiry or investigation can be processed. The

procedural rules in this chapter apply to these dockets, unless otherwise ordered by the board or presiding officer.

**7.1(4) Reorganizations.** Procedural rules applicable to reorganizations are included in rule 199—32.9(476). In the event the requirements in rule 199—32.9(476) conflict with the requirements in this chapter, the requirements in rule 199—32.9(476) are controlling.

**7.1(5) Discontinuance of service incident to utility property transfer.** This subrule does not apply to telecommunications service providers registered with the board pursuant to Iowa Code section 476.95A.

*a. Scope.* This rule applies to discontinuance of utility service pursuant to Iowa Code section 476.20(1), which includes the termination or transfer of the right and duty to provide utility service to a community or part of a community incident to the transfer, by sale or otherwise, except a stock transfer incident to corporate reorganization.

*b. Application.* An application for permission to discontinue service should include a summary of the relevant facts and the grounds upon which the application should be granted. When the discontinuance of service is incident to the transfer of utility property, a joint application will be filed by the transferor utility and the transferee.

*c. Approval.* Within 30 days after an application is filed, the board will approve the application or docket the application for further investigation.

*d. Contested cases.* Contested cases under paragraph 7.1(5)“c” will be completed within four months after the date of docketing.

*e. Criteria.* The application will be granted if the board finds the utility service is no longer necessary or if the board finds the transferee is ready, willing, and able to provide comparable utility service.

**7.1(6)** The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise prescribed by law, may be waived by the board or presiding officer pursuant to rule 199—1.3(17A,474,476).

**7.1(7) Procedural orders.**

*a.* Authority to issue procedural orders in all proceedings, including contested case proceedings, investigations, and all other dockets and matters before the board when a majority of the board is not available due to emergency, or for the efficient and reasonable conduct of proceedings, is granted to a single board member. If no member of the board is available to issue a procedural order due to emergency, or for the efficient and reasonable conduct of proceedings, the procedural order may be issued by a presiding officer designated by the board. If a presiding officer is not available to issue a procedural order due to an emergency, or for the efficient and reasonable conduct of proceedings, a procedural order may be issued by the general counsel of the board.

*b.* Procedural orders under this subrule will be issued only upon the showing of good cause and when the prejudice to a nonmoving party is not great. The procedural order under this subrule will state that it is issued pursuant to the delegation authority established in subrule 7.1(7) and that the procedural order so issued is subject to review by the board upon its own motion or upon motion by any party or other interested person.

**199—7.2(17A,476) Definitions.** Except where otherwise specifically defined by law:

“*Board*” means the Iowa utilities board or a majority thereof.

“*Complainants*” means persons who complain to the board of any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of Iowa Code chapters 476 through 476C, 477, 477A, and 477C through 479B or of any order or rule of the board.

“*Consumer advocate*” means the office of consumer advocate, a division of the Iowa department of justice, referred to in Iowa Code chapter 475A.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Data request*” means a discovery procedure in which the requesting party asks another person for specified information or requests the production of documents.

“*Expedited proceeding*” means a proceeding before the board in which a statutory or other provision of law directs the board to render a decision in the proceeding in six months or less.

“*Filed*” means accepted for filing by the board as defined in rule 199—14.3(17A,476).

“*Intervenor*” means any person who, upon written petition, is permitted to intervene as a party in a specific proceeding before the board.

“*Issuance*” means the date on which an order is uploaded into the board’s electronic filing system.

“*Party*” means each person named or admitted as a party in a proceeding before the board.

“*Person*” means the same as defined in Iowa Code section 4.1(20) and includes individuals and all forms of legal entities.

“*Petitioner*” or “*applicant*” means any party who, by written petition, application, or other filing, applies for or seeks relief from the board.

“*Presiding officer*” means one board member or another person designated by the board with the authority to preside over a particular proceeding or matter before the board.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a proceeding that has been assigned by the board to the presiding officer.

“*Service*” means service as prescribed in 199—Chapter 14.

**199—7.3(17A,476) Presiding officers.** Presiding officers may be designated by the board to preside over contested cases or other proceedings and conduct hearings and have the following authority, unless otherwise ordered by the board:

1. To regulate the course of hearings;
2. To administer oaths and affirmations;
3. To rule upon the admissibility of evidence and offers of proof;
4. To take or cause depositions to be taken;
5. To dispose of procedural matters, discovery disputes, motions to dismiss, and other motions that may involve final determination of proceedings, subject to review by the board on its own motion or upon application by any party;
6. To certify any question to the board, in the discretion of the presiding officer or upon direction of the board;
7. To permit and schedule the filing of written briefs;
8. To hold appropriate conferences before, during, or after hearings;
9. To render a proposed decision and order in a contested case proceeding, or other proceeding, subject to review by the board on its own motion or upon appeal by any party; and
10. To take any other action necessary or appropriate to the discharge of duties vested in the presiding officer, consistent with law and with the rules and orders of the board.

**199—7.4(17A,474,476) General information.**

**7.4(1) Orders.** All orders will be issued and uploaded into the board’s electronic filing system. Orders are effective upon acceptance into the electronic filing system, unless otherwise provided in the order. Orders and other filings in dockets may be viewed in the specific docket accessed through the board’s electronic filing system.

**7.4(2) Communications.**

*a. Electronic communications.* Unless otherwise specifically provided, all electronic communications and documents are officially filed when they are accepted for filing as defined in rule 199—14.3(17A,476). The electronic service provisions in the “electronic service” rule in 199—Chapter 14 apply.

*b. Paper filings.* Paper filings may only be made with board approval, except for filings made pursuant to the exceptions in rule 199—14.4(17A,476).

**7.4(3) Reference to docket number.** The applicable docket number(s) should be included on the first page of all filings.

**7.4(4) Defective filings.** Only submissions that conform to the requirements of the applicable rule, statute, or order of the board or presiding officer will be accepted for filing, and submissions that fail to

substantially conform with the applicable requirements will be considered defective and may be rejected unless waiver of the relevant requirement has been granted by the board or presiding officer prior to filing. The board or presiding officer may reject a filing even though board employees have file-stamped or otherwise acknowledged receipt of the filing.

**7.4(5) Service of documents.**

*a. Method of service.*

(1) Paper service. Paper service of filings is only necessary on those parties, or persons, whom the board has approved to receive paper service. All filings served by paper are to be filed electronically pursuant to the “electronic service” rule in 199—Chapter 14 in the appropriate docket in the electronic filing system, include a certificate of service, and be served on the consumer advocate.

(2) Electronic service. The board’s rule regarding electronic service is the “electronic service” rule in 199—Chapter 14.

(3) Service of documents containing confidential information. Parties may condition the service of unredacted documents containing confidential information on the execution of a confidentiality agreement. If the parties are unable to agree on a confidentiality agreement, they may ask the board or presiding officer to issue an appropriate order.

*b. Date of service.*

(1) Paper service. Unless otherwise ordered by the board or presiding officer, the date of service is the day when the document served is deposited in the United States mail or overnight delivery, is delivered in person, or otherwise as the parties may agree. Although service is effective, the document is not deemed filed with the board until it is received by the board.

(2) The board’s rule regarding electronic service is the “electronic service” rule in 199—Chapter 14.

*c. Service upon attorneys.* When a party has appeared by attorney, service upon the attorney is deemed proper service upon the party.

**7.4(6) Appearance.** Each party to a proceeding is to file a written appearance in the docket that identifies one person upon whom the board may electronically serve all orders, correspondence, or other documents. If a party has previously designated a person to be served on the party’s behalf in all matters, filing the appearance will not change this designation, unless the party directs that the designated person be changed in the appearance. If a person files an application, petition, or other initial pleading, or an answer or other responsive pleading on behalf of a party, containing the person’s contact information, the filing of a separate appearance is not necessary. The appearance may be filed with the party’s initial filing in the proceeding or may be filed after the proceeding has been docketed.

**7.4(7) Representation by attorney.**

*a.* Any party to a proceeding before the board or a presiding officer may appear and be heard through a licensed attorney. If the attorney is not licensed by the state of Iowa, the attorney is to apply for admission pro hac vice pursuant to and abide by the provisions of Iowa Court Rule 31.14.

*b.* A corporation or association may appear and present evidence by an officer or employee. However, only licensed attorneys may represent a party before the board or a presiding officer in any matter involving the exercise of legal skill or knowledge, except with the consent of the board or presiding officer. All persons appearing in proceedings before the board or a presiding officer shall conform to the standard of ethical conduct applicable to attorneys appearing before the courts of Iowa.

**7.4(8) Expedited proceedings.**

*a.* If a person claims that a provision of law imposes an obligation on the board to render a decision in a contested case in six months or less, the person will include the phrase “expedited proceedings” in the caption of the first pleading filed by the person in the proceeding and set the basis for the claim in the body of the pleading. If the phrase is not so included in the caption, the board or presiding officer may find and order that the proceeding did not commence for time calculation purposes until the date on which the first pleading containing the “expedited proceedings” phrase is filed or such other date that the board or presiding officer finds is just and reasonable under the circumstances.

*b.* Shortened time limits applicable to expedited proceedings are contained in rules 199—7.9(17A,476) (pleadings and answers), 199—7.12(17A,476) (motions), 199—7.13(17A,476) (intervention), 199—7.15(17A,476) (discovery), and 199—7.26(17A,476) (appeals from proposed

decisions). An additional service requirement applicable to expedited proceedings is contained in subrule 7.4(5) (service of documents).

*c.* A party may file a motion that proceedings be expedited even though such treatment is not mandated by statute or other provision of law. Such voluntary expedited treatment may be granted at the board's or presiding officer's discretion in appropriate circumstances considering the needs of the parties and the interests of justice. In these voluntary expedited proceedings, the board or presiding officer may shorten the filing dates or other procedures established in this chapter. The shortened time limits and additional service requirement applicable to expedited proceedings established in this chapter and listed in subrule 7.4(8) do not apply to voluntary expedited proceedings under this paragraph unless ordered by the board or presiding officer. If a party requests an expedited proceeding pursuant to this paragraph, the party will include "Expedited Proceedings" in the title.

**199—7.5(17A,476) Time requirements.**

**7.5(1)** Time is computed as provided in Iowa Code section 4.1(34).

**7.5(2)** In response to a request or on its own motion, for good cause, the board or presiding officer may extend or shorten the time to take any action, except as precluded by statute.

**199—7.6(17A,476) Electronic proceedings.** The board or presiding officer may hold proceedings by telephone conference call or other electronic means, such as a webinar service, in which all parties have an opportunity to participate. The board or presiding officer will determine the location of the parties and witnesses for electronic proceedings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when locations are determined.

**199—7.7(17A,476) Electronic information.** Filing of electronic information shall comply with the board's rules on electronic filing in 199—Chapter 14 and the board's published standards for electronic information, available on the board's website at [iub.iowa.gov](http://iub.iowa.gov) or from the board's customer service center.

**199—7.8(17A,476) Delivery of notice of hearing.** When the board or presiding officer issues an order containing a notice of hearing, delivery of the order will be by electronic notice through the electronic filing system, and to those persons who have been approved to receive paper documents, unless otherwise ordered.

**199—7.9(17A,476) Pleadings and answers.**

**7.9(1) Pleadings.** Pleadings may be filed pursuant to statute, rule, or order or filed to initiate a docket.

**7.9(2) Answers.**

*a.* Unless otherwise ordered by the board or presiding officer, answers to complaints, petitions, applications, or other pleadings shall be filed with the board within 20 days after the day on which the pleading being answered was filed in the board's electronic filing system and served upon the respondent or other party. However, when a provision of law requires that the board issue a decision in the case in six months or less, the answer shall be filed with the board within ten days of service of the pleading being answered unless otherwise ordered by the board or presiding officer.

*b.* An answer will specifically admit, deny, or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support each answer.

*c.* Any party who deems the complaint, petition, application, or other pleading insufficient to show a breach of legal duty or grounds for relief may move to dismiss instead of, or in addition to, answering.

*d.* A party may apply for a more definitive and detailed statement instead of, or in addition to, answering, if appropriate.

**7.9(3) Amendments to pleadings.** Amendments to pleadings may be allowed upon proper motion at any time during the pendency of the proceeding upon such terms as are just and reasonable.

**199—7.10(17A,476) Prefiled testimony and exhibits.**

**7.10(1)** The board or presiding officer may order the parties to file prefiled testimony and exhibits prior to the hearing. The use of prefiled testimony is the standard method for providing testimony in contested cases and other proceedings.

**7.10(2)** Prefiled testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. If possible, each line should be separately numbered. When a witness who has submitted prefiled testimony takes the stand, the witness does not ordinarily repeat the written testimony or give new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. However, the witness may be permitted to correct or update prefiled testimony on the stand and, in appropriate circumstances and with the approval of the board or presiding officer, may give a summary of the prefiled testimony. If the witness has more than three substantive corrections to make to the prefiled testimony or exhibits, then the corrected testimony or exhibits shall be filed in the appropriate docket in the board's electronic filing system at least three days prior to the hearing. The prefiled testimony and any exhibits are to be marked and identified in conformance with the board's approved naming convention provided on the board's electronic filing system website or as directed in a board order.

**7.10(3)** Prefiled testimony and exhibits are to be accompanied by an affidavit in substantially the following form: "I, [person's name], being first duly sworn on oath, state that I am the same [person's name] identified in the testimony being filed with this affidavit, that I have caused the testimony [and exhibits] to be prepared and am familiar with its contents, and that the testimony [and exhibits] is true and correct to the best of my knowledge and belief as of the date of this affidavit."

**7.10(4)** Prefiled testimony, exhibits, and supporting documents shall be filed in the board's electronic filing system in conformance with this rule and the following:

*a.* All supporting workpapers.

(1) The board's standards for electronic information, which are available on the board's website or from the board's customer service center, govern the filing of electronic workpapers in native electronic formats.

(2) Workpapers' underlying analyses and data presented in exhibits should be explicitly referenced within the exhibit, including the name and other identifiers (e.g., cell coordinates) for electronic workpapers and volume, tab, and page numbers for other workpapers.

(3) The source of any number used in a workpaper that was not generated by that workpaper will be identified.

*b.* The derivation or source of all numbers used in either testimony or exhibits that were not generated by workpapers.

*c.* Copies of any specific studies or financial literature relied upon or complete citations for them if publicly available.

*d.* Electronic copies, in native electronic format, of all computer-generated exhibits that comply with the board's standards for electronic information, which are available on the board's website or from the board's customer service center.

**7.10(5)** The board's standards for electronic information, which are available on the board's website or from the board's customer service center, and the electronic filing rules in 199—Chapter 14 govern the filing of prefiled testimony and exhibits.

**7.10(6)** If a party has filed part or all of its prefiled testimony and exhibits as confidential and then later withdraws the claim of confidentiality for part or all of the testimony and exhibits, or if the board denies the request to hold the testimony and exhibits confidential, the party shall refile the testimony and exhibits with the information made public.

**199—7.11(17A,476) Documentary evidence in books and materials.** When documentary evidence being offered is contained in a book, report, or other document, the offering party will file only the material, relevant portions in an exhibit.

**199—7.12(17A,476) Motions.** Motions, unless made during hearing, are to be in writing, state the grounds for relief, and state the relief or order sought. Motions based on matters that do not appear

of record may be supported by affidavit or other evidence. The filing of motions is governed by 199—Chapter 14. Any party may file a written response to a motion no later than 14 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. When a provision of law directs the board to issue a decision in the case in six months or less, a party filing a written response is to do so within seven days from the date the motion is filed, unless otherwise ordered by the board or presiding officer. Failure to file a timely response may be deemed a waiver of objection to the motion. Requirements regarding motions related to discovery are contained in rule 199—7.15(17A,476).

**199—7.13(17A,476) Intervention.**

**7.13(1)** Petition. Unless otherwise ordered by the board or presiding officer, a request to intervene in a proceeding shall be by petition to intervene filed no later than 20 days following the order setting a procedural schedule. However, when a provision of law directs the board to issue a decision in the case in six months or less, the petition to intervene is to be filed no later than ten days following the order setting a procedural schedule, unless otherwise ordered by the board or presiding officer.

**7.13(2)** Response. Any party may file a response within seven days of service of the petition to intervene unless the time period is extended or shortened by the board or presiding officer.

**7.13(3)** Grounds for intervention. Any person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board or presiding officer. In determining whether to grant intervention, the board or presiding officer will consider:

- a. The prospective intervenor's interest in the subject matter of the proceeding;
- b. The effect of a decision that may be rendered upon the prospective intervenor's interest;
- c. The extent to which the prospective intervenor's interest will be represented by other parties;
- d. The availability of other means by which the prospective intervenor's interest may be protected;
- e. The extent to which the prospective intervenor's participation may reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and
- f. Any other relevant factors.

**7.13(4)** In determining the extent to which the prospective intervenor's interest will be represented by other parties, the consumer advocate's role of representing the public interest will not be interpreted as representing every potential interest in a proceeding.

**7.13(5)** The board or presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation in the proceeding. Leave to intervene is generally granted by the board or presiding officer to any person with a cognizable interest in the proceeding.

**7.13(6)** When two or more intervenors have substantially the same interest, the board or presiding officer, in the board's or presiding officer's discretion, may order consolidation of petitions and briefs and limit the number of attorneys allowed to participate actively in the proceedings to avoid a duplication of effort.

**7.13(7)** A person granted leave to intervene is a party to the proceeding. However, unless the board or presiding officer rules otherwise for good cause shown, an intervenor is bound by any agreement, arrangement, or order previously made or issued in the case.

**199—7.14(17A,476) Consolidation and severance.**

**7.14(1)** *Consolidation.* The board or presiding officer may consolidate in one docket any or all matters at issue in two or more dockets. When deciding whether to consolidate, the board or presiding officer may consider:

- a. Whether the matters at issue involve common parties or common questions of fact or law;
- b. Whether consolidation is likely to expedite or simplify consideration of the issues involved;
- c. Whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and
- d. Any other relevant factors.



**7.14(2) Severance.** The board or presiding officer may order any contested case or portions thereof severed for good cause.

**199—7.15(17A,476) Discovery.**

**7.15(1)** Discovery procedures applicable in civil actions are available to parties in contested cases.

**7.15(2)** Unless otherwise ordered by the board or presiding officer or agreed to by the parties, data requests or interrogatories served by any party are to be responded to or objected to, with concisely stated grounds for relief, within seven business days of receipt. When a provision of law directs the board to issue a decision in the case in six months or less, this time is reduced to five days. Data requests or interrogatories served on a day the board is closed or after 4:30 p.m. central time on a day the board is open are considered served on the next business day.

**7.15(3)** Unless otherwise ordered by the board or presiding officer, time periods for compliance with all forms of discovery other than those stated in subrule 7.15(2) are the same as those provided in the Iowa Rules of Civil Procedure.

**7.15(4)** A party shall make a good faith effort to resolve a discovery dispute by personally speaking with or attempting to speak with the opposing party before filing a discovery motion with the board. A motion relating to discovery must set forth the date and time the moving party spoke with or attempted to speak with the opposing party in a good faith attempt to resolve the dispute.

**199—7.16(17A,476) Subpoenas.**

**7.16(1) Issuance.**

*a.* An agency subpoena will be issued to a party on a written request that includes the name, address, and telephone number of the requesting party. In the absence of good cause for permitting later action, a request for a subpoena will be filed at least seven days before the scheduled hearing.

*b.* Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses. Subpoenas cannot be served electronically through the electronic filing system.

**7.16(2) Motion to quash or modify.** Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason.

**199—7.17(17A,476) Prehearing or scheduling conference.** The board or presiding officer may schedule a prehearing conference, scheduling conference, or other informal conference at the board's or presiding officer's discretion or at the request of any party for any appropriate purpose. Any agreement reached at the conference will be made a part of the record in the manner directed by the board or presiding officer.

**199—7.18(17A,476) Settlements.** Parties to a contested case may propose to settle all or some of the issues in the case. The board or presiding officer will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

**7.18(1) Proposal of settlements.** Two or more parties may by written motion propose settlements for adoption by the board or presiding officer. The motion will contain sufficient information to advise the board or presiding officer and parties not expressly joining the proposal of its scope and of the grounds on which adoption is urged. Parties may propose a settlement for adoption by the board or presiding officer at any time.

**7.18(2) Conference.** After proposal of a settlement that is not supported by all parties, and prior to approval, the settling parties are to convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing the settlement proposal. Written notice of the date, time, and place is to be furnished at least seven days in advance to all parties to the proceeding. Only parties and their representatives are entitled to attend a settlement conference. A party that has been

given notice and opportunity to participate in the conference and does not do so is deemed to have waived its right to contest a proposed settlement, unless good cause is shown for the failure to participate.

**7.18(3) *Comment period.*** When a party to a proceeding does not join in a settlement proposed for adoption by the board or presiding officer, the party may file comments contesting all or part of the settlement with the board within 14 days of the filing of the motion proposing settlement unless otherwise ordered by the board or the presiding officer. Unless otherwise ordered by the board or presiding officer, parties may file reply comments within seven days of filing of the comments.

**7.18(4) *Contents of comments.*** A party contesting a proposed settlement is to specify in its comments the portions of the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Any failure by a party to file comments may, at the board's or presiding officer's discretion, constitute waiver by that party of all objections to the settlement.

**7.18(5) *Contested settlements.*** If the proposed settlement is contested, in whole or in part, on any material issue of fact by any party, the board or presiding officer may schedule a hearing on the contested issue(s). The board or presiding officer may decline to schedule a hearing where the contested issue of fact is not material or where the contested issue is one of law.

**7.18(6) *Unanimous proposed settlement.*** In proceedings where all parties join in the proposed settlement, parties may propose a settlement for adoption by the board or presiding officer any time after docketing. Subrules 7.18(2) through 7.18(5) do not apply to a proposed settlement filed concurrently by all parties to the proceeding. 199—Chapter 26 applies to settlements in rate cases.

**7.18(7) *Inadmissibility.*** Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement is privileged to the extent provided by law, including but not limited to Iowa Rule of Evidence 5.408.

**199—7.19(17A,476) *Stipulations.*** Parties to any proceeding or investigation may, by stipulation filed with the board, agree upon the facts or law or any portion thereof involved in the controversy, subject to approval by the board or presiding officer.

**199—7.20(17A,476) *Investigations.*** The availability of discovery pursuant to Iowa Code section 17A.13 or the Iowa Rules of Civil Procedure does not limit the investigatory powers of the board, its representatives, or the consumer advocate.

**199—7.21(17A,476) *Withdrawals.*** A party requesting a contested case proceeding may, with the permission of the board or presiding officer, withdraw that request at any time prior to the issuance of a proposed or final decision in the case.

**199—7.22(17A,476) *Ex parte communication.*** Ex parte communications are governed by Iowa Code section 17A.17.

**199—7.23(17A,476) *Hearings.***

**7.23(1) *Board or presiding officer.*** The board or presiding officer presides at the hearing and may rule on motions and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The board or presiding officer will maintain the decorum of the hearing and may refuse to admit, may set limits on, or may expel from the hearing anyone whose conduct is disorderly.

**7.23(2) *Witnesses.*** Each witness will be sworn or affirmed by the board, presiding officer, or the court reporter and be subject to examination and cross-examination. The board or presiding officer may limit questioning in a manner consistent with law. In appropriate circumstances, the board or presiding officer may order that witnesses testify as members of a witness panel.

**7.23(3) *Order of presenting evidence.*** The board or presiding officer will determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice, considering the preferences of the parties. Normally, the petitioner opens the presentation of evidence. In cases where testimony has been prefiled and unless otherwise ordered by the board or the presiding officer, each party will make its witnesses available for cross-examination on all testimony filed or on behalf of that witness.

**7.23(4) Evidence.**

*a.* Subject to terms and conditions prescribed by the board or presiding officer, parties have the right to introduce evidence, cross-examine witnesses, and present evidence in rebuttal. Ordinarily, prefiled testimony is used in hearings pursuant to rule 199—7.10(17A,476). The sponsoring party is to provide one copy of prefiled testimony and included exhibits to the court reporter.

*b.* The board or presiding officer will rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with law.

*c.* Stipulation of facts is encouraged. The board or presiding officer may make a decision based on stipulated facts.

*d.* Unless the exhibit was previously included with prefiled testimony, the party seeking admission of an exhibit at a hearing is to provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence are to be marked in accordance with the board's approved naming convention and made part of the evidentiary record. If an exhibit is admitted, unless it was previously included with prefiled testimony, the sponsoring party is to provide at least one copy of the exhibit to each opposing party, one copy to each board member or presiding officer, one copy to the witness (if any), one copy to the court reporter, and two copies to board staff, unless otherwise ordered. Parties are to file all their admitted hearing exhibits in the board's electronic filing system within three days of the close of the hearing.

*e.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony is expected to briefly summarize the testimony or, with the permission of the board or presiding officer, present the testimony. The board or presiding officer may direct the offering party to file a written statement of the excluded oral testimony. If the excluded evidence consists of a document or exhibit, it will be marked as part of an offer of proof and inserted in the record. Unless previously included with prefiled testimony, the sponsoring party is to provide at least one copy of the document or exhibit to each opposing party, one copy to each board member or presiding officer, one copy to the witness (if any), one copy to the court reporter, and two copies to board staff, unless otherwise ordered.

**7.23(5) Objections.** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. All objections will be timely made on the record and state the grounds relied on. The board or presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**7.23(6) Further evidence.** At any stage during or after the hearing, the board or presiding officer may order a party to present additional evidence and may conduct additional proceedings as appropriate.

**7.23(7) Participation at hearings by nonparties.** The board or presiding officer may permit any person to be heard at any hearing, but such person is not a party to the proceedings unless so designated. The testimony or statement of any person so appearing is given under oath and such person is subject to cross-examination by parties to the proceeding, unless the board or presiding officer orders otherwise. If a person who is not a party to a proceeding appears at a hearing and requests to examine or cross-examine witnesses, the board or presiding officer may grant the person intervention in the proceeding as a party for the limited purpose requested by the person and in compliance with subrule 7.4(7).

**7.23(8) Briefs.**

*a.* Unless waived by the parties with the consent of the board or presiding officer, times for the filing and service of briefs will be set by the board or presiding officer. Unless otherwise ordered by the board or presiding officer, initial briefs will be filed simultaneously by all parties and reply briefs will be filed simultaneously.

*b.* Initial briefs should contain a concise statement of the case and all arguments, with citations to the evidence, that the party intends to offer in support of its case. Unless otherwise ordered, a reply brief should be confined to refuting arguments made in the brief of an adverse party. Unless specifically ordered to brief an issue, a party's failure to address an issue by brief will not be deemed a waiver of that issue and does not preclude the board or presiding officer from deciding the issue on the basis of evidence appearing in the record.

c. Every brief of more than 20 pages should contain at its beginning a table of contents with page references.

d. Briefs should comply with the following requirements:

- (1) The size of pages should be 8½ by 11 inches.
- (2) All printed matter should appear in at least 11-point type.
- (3) There should be margins of at least one inch on the top, bottom, right, and left sides of the sheet.
- (4) The body of the brief should be double spaced.
- (5) Footnotes may be single spaced.
- (6) The printed matter may appear in any pitch, as long as the characters are spaced in a readable manner. Any readable font is acceptable.

**7.23(9) Oral arguments.** The board or presiding officer may set a time for oral argument to address issues raised by the parties during the proceeding or at the conclusion of the hearing or may set a separate date and time for oral argument. The board or presiding officer may set a time limit for argument. Oral argument may be either in addition to or in lieu of briefs. Unless specifically ordered to argue an issue, a party's failure to address an issue in oral argument will not be deemed a waiver of the issue.

**7.23(10) Record.** The record of the case is maintained in the board's electronic filing system. Unless the record is held confidential pursuant to the "public information and inspection of records" rule in 199—Chapter 1, parties and members of the public may examine the record and obtain copies of documents, including the transcript, when available.

**7.23(11) Default.**

a. If a party fails to appear at a hearing after proper service of notice, or fails to answer or otherwise respond to an appropriate pleading directed to and properly served upon that party, the board or presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Default decisions or decisions rendered on the merits after a party has failed to appear at a hearing constitute final agency action unless otherwise ordered by the board or presiding officer. However, within 15 days after the date of electronic notification or mailing of the decision, a motion to vacate may be filed with the board. The motion to vacate should state all facts relied on by the moving party that show good cause existed for that party's failure to appear at the hearing or answer or otherwise respond to an appropriate pleading directed to and properly served upon that party. The stated facts should be substantiated by citation to evidence in the record or by affidavit attached to the motion. Unless otherwise ordered, adverse parties have ten days to respond to a motion to vacate. If the decision is rendered by a presiding officer, the board may review it on the board's own motion within 15 days after the date of notification or mailing of the decision.

c. The time for appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. A motion to vacate will not be granted except upon a finding of good cause. The burden of proof as to good cause is on the moving party. "Good cause" for purposes of this rule has the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

e. A presiding officer's decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case. A presiding officer's decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to the "interlocutory appeals" rule of 199—Chapter 7.

f. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the board or presiding officer may schedule another contested case hearing.

g. A default decision may award any relief consistent with the record in the case. The default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a timely motion to vacate, an appeal

pursuant to the “appeals to board from a proposed decision of a presiding officer” rule of 199—Chapter 7, or a request for stay pursuant to the “rehearing and reconsideration” rule of 199—Chapter 7.

**199—7.24(17A,476) Reopening record.** The board or presiding officer, on the board’s or presiding officer’s own motion or on the motion of a party, may reopen the record for the reception of further evidence. When the record was made before the board, a motion to reopen the record may be made any time prior to the issuance of a final decision. When the record was made before a presiding officer, a motion to reopen the record may be made any time prior to issuance of the proposed decision. If the moving party requests the opportunity to present new evidence, the moving party will attach an affidavit from each witness who will present the new evidence with an explanation of the competence of the witness and a description of the evidence to be included in the record.

**199—7.25(17A,476) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board may consider the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision would provide an adequate remedy. Any request for interlocutory review shall be filed within ten days of issuance of the challenged order, but no later than the time for compliance with the order or ten days prior to the date of hearing, whichever is first.

**199—7.26(17A,476) Appeals to board from a proposed decision of a presiding officer.**

**7.26(1)** Notification of proposed decision. Notice of the presiding officer’s proposed decision and order in a contested case will be sent through the electronic filing system, or by first-class mail if the board has granted a party approval to receive service in paper, on the date the order is issued. The decision will normally include “Proposed Decision and Order” in the title and will normally inform the parties of their right to appeal an adverse decision and the time in which an appeal may be taken.

**7.26(2)** Appeal from proposed decision. A proposed decision and order of the presiding officer in a contested case becomes the final decision of the board unless, within 15 days after the decision is issued, the board moves to review the decision or a party files an appeal of the decision with the board. The presiding officer may shorten the time for appeal. In determining whether a request for a shortened appeal period should be granted, the presiding officer may consider the needs of the parties for a shortened appeal period, relevant objections of the parties, the relevance of any written objections filed in the case, and whether there are any issues that indicate a need for the 15-day appeal period.

**7.26(3)** Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal.

**7.26(4)** On appeal of a proposed decision of a presiding officer that is based upon new evidence not introduced in the record before the presiding officer, the board will determine whether the new evidence warrants a new hearing. If the board determines that the new evidence is material to the proposed decision and a new hearing should be held, the board may remand the proposed decision to the presiding officer for the taking of the new evidence or may conduct a hearing and issue an order based upon the record before the presiding officer and the new evidence.

**7.26(5)** Contents of notice of appeal. The notice of appeal shall include the following in separately numbered paragraphs supported, where applicable, by controlling statutes and rules:

- a.* A brief statement of the facts.
- b.* A brief statement of the history of the proceeding, including the date and a description of any ruling claimed to be erroneous.
- c.* A statement of each of the issues to be presented for review.
- d.* A precise description of the error(s) upon which the appeal is based. If a claim of error is based on allegations that the presiding officer failed to correctly interpret the law governing the proceeding, exceeded the authority of a presiding officer, or otherwise failed to act in accordance with law, the appellant will include a citation to briefs or other documents filed in the proceeding before the presiding officer where the legal points raised in the appeal were discussed. If a claim of error is based

on allegations that the presiding officer failed to adequately consider evidence introduced at hearing, the appellant will include a citation to pages of the transcript or other documents where the evidence appears.

*e.* A precise statement of the relief requested.

*f.* A statement as to whether an opportunity to file a brief or make oral argument in support of the appeal is requested and, if an opportunity is sought, a statement explaining the manner in which briefs and arguments presented to the presiding officer are inadequate for purposes of appeal.

*g.* A request, if a party seeks a stay or other temporary remedy pending review of the proposed decision by the board, with the reasons justifying such a stay or other temporary remedy that includes a discussion of the factors listed in Iowa Code section 17A.19(5) “c.”

*h.* Certification of service showing the names and addresses of all parties upon whom a copy of the notice of appeal was served.

**7.26(6) Responsive filings and cross-appeals.** Parties may file a response to the notice of appeal or may file a cross-appeal within 14 days after the filing of the notice of appeal unless otherwise ordered by the board. If a request for a stay or other temporary remedy was included in the notice of appeal, any party wishing to respond to the request will include the response to the request in the party’s response to the notice of appeal or notice of cross-appeal. When a provision of law directs the board to issue a decision in the case in less than six months, the period for filing a response or cross-appeal is reduced to seven days from the filing of the notice of appeal.

*a.* Responses should specifically respond to each of the substantive paragraphs of the notice of appeal and state whether an opportunity to file responsive briefs or to participate in oral argument is requested.

*b.* The requirements contained in this rule pertaining to a notice of appeal also apply to a notice of cross-appeal, other than the time for filing.

**7.26(7) Ruling on appeal.** After the filing of the last appeal, response, or cross-appeal, the board will issue an order that may establish a procedural schedule for the appeal or may be the board’s final decision on the merits of the appeal. If a request for a stay or other temporary remedy was included in the notice of appeal, the request will be evaluated by the board using the factors stated in rule 199—7.28(17A,476). A stay or other temporary remedy may be vacated by the board upon application of any party or upon the board’s own motion.

### **199—7.27(17A,476) Rehearing and reconsideration.**

**7.27(1) Application for rehearing or reconsideration.** Any party to a contested case may file an application for rehearing or reconsideration of the final decision within 20 days after the issuance of a final decision in a contested case. The board will either grant or refuse an application for rehearing within 30 days after the filing of the application or may, after giving the interested parties notice and opportunity to be heard and after consideration of all the facts, including those arising since the making of the order, abrogate or modify its order. A failure by the board to act upon the application for rehearing within the above period is deemed a refusal of the application.

**7.27(2) Contents of application.** Applications for rehearing or reconsideration will specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration will present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

**7.27(3) Requirements for objections to applications for rehearing or reconsideration.** Notwithstanding the provisions of subrule 7.9(2) and unless otherwise ordered by the board, within 14 days of the date the application was filed, an answer or objection to the application may be filed.

### **199—7.28(17A,476) Stay of agency decision.**

**7.28(1)** Any party to a contested case proceeding may petition the board for a stay or other temporary remedy pending judicial review of the proceeding. The petition will state the reasons justifying a stay or other temporary remedy and be served on all other parties pursuant to subrule 7.4(5).

**7.28(2)** In determining whether to grant a stay, the board will consider the factors listed in Iowa Code section 17A.19(5)“c.”

**7.28(3)** A stay or other temporary remedy may be vacated by the board upon application of any party or upon the board’s own motion.

**199—7.29(17A,476) Emergency adjudicative proceedings.**

**7.29(1)** *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue an emergency adjudicative order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency adjudicative order, the board may consider factors including but not limited to the following:

- a. Whether there has been a sufficient factual investigation to provide reasonably reliable information under the circumstances;
- b. Whether the specific circumstances that pose immediate danger to the public health, safety, or welfare are likely to be continuing;
- c. Whether the person obligated to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

**7.29(2)** *Issuance of order.*

a. An emergency adjudicative order will contain findings of fact, conclusions of law, and policy reasons for the decision, if it is an exercise of the board’s discretion, to justify the determination of an immediate danger and the board’s decision to take immediate action.

b. The written emergency adjudicative order will be immediately delivered to persons who are to comply with the order by the most reasonably available method, which may include one or more of the following methods: notice through the electronic filing system, personal delivery, certified mail, first-class mail, fax, or email. To the degree practical, the board will select the method or methods most likely to result in prompt, reliable delivery.

c. Unless the written emergency adjudicative order is delivered by personal service on the day issued, the board will make reasonable efforts to contact the persons who are to comply with the order by telephone, in person, or otherwise.

**7.29(3)** *Completion of proceedings.* Issuance and delivery of a written emergency adjudicative order will normally include notification of a procedural schedule for completion of the proceedings.

These rules are intended to implement Iowa Code chapter 17A and sections 474.5 and 476.2.