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## LEGAL UPDATE

Legal Services Division



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Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

### ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — AUGUST 11, 2020

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

#### **UTILITIES DIVISION, Rate Cases, Tariffs, and Rate-Regulation Election Practice and Procedure, 7/29/20 IAB, ARC 5107C, ADOPTED.**

**Background.** This rulemaking updates and revises rules establishing procedures for filing applications for rate increases by rate-regulated utilities. The rulemaking includes updates of language regarding electric cooperatives and municipal utilities, implementation of requirements for utilities using a future test year, requirements for the subsequent proceeding based upon a future test year, certain statutory filing and notice requirements, and requirements for general rate case filings by small utility companies.

**Commentary.** Committee members stated that significant discussion of these rules has occurred and urged the Iowa Utilities Board to work with affected stakeholders to resolve issues with the rulemaking.

Ms. Julie Vande Hoef spoke on behalf of Alliant Energy. She asserted that the proposed rules would be cumbersome, cause confusion for customers, hinder economic development, and increase energy costs. She expressed support for a future test year approach, which would allow customers and the state to plan energy costs. She also expressed support for requiring rate-regulated utilities to use a template for customer notifications and expressed concern regarding the removal of the template requirement in the proposed rules and its replacement with a hearing process instead. She asserted the new process would not be efficient or cost effective. She asked that required customer notice include overall customer impact and a notice template for historic and future test year approaches. She also sought clearly defined filing requirements for future test year forecasts and urged the board to review detailed recommendations filed by Alliant regarding the proposed rules. She expressed hope that an effective subsequent proceeding requirement could be formulated and sought further input as the board continues work on the rulemaking.

Mr. Tony Phillips spoke on behalf of Black Hills Energy. He expressed concern regarding the requirements for a subsequent proceeding, which he asserted would lead to additional litigation. He stated that the requirements are not supported by the Iowa Code. He also expressed concern regarding the requirements relating to earnings. He asserted the requirements would discourage the use of a future test year and did not account for the possibility of receiving lower earnings than projected.

Ms. Paula Dierenfeld spoke on behalf of the Iowa Business Energy Coalition. She explained that the board and stakeholders have been working on this subject for years and expressed appreciation for the board's efforts thus far. She stated that the rulemaking is generally moving in the right direction and in compliance with statutory requirements, although minor modifications may still be necessary.

Ms. Jennifer Easler, the Consumer Advocate, also spoke. She agreed with Ms. Dierenfeld's comments and expressed support for using the current rulemaking process to balance the interests of interested

parties. She explained that the future test year approach is designed to obtain information used to set utility rates and that having good information is important to ensuring an effective rate-setting process.

**Action.** No action taken.

**UTILITIES DIVISION, *Electric Lines*, 7/29/20 IAB, ARC 5121C, NOTICE.**

**Background.** This rulemaking rewrites rules governing the franchising of electric transmission lines, including rules for route selection, informational meetings in counties where property rights will be affected, notice requirements, and processes for establishing, amending, and extending a franchise.

**Commentary.** Committee members stated that significant feedback had been received on the rulemaking concerning several issues from a variety of stakeholders. Members expressed concern regarding the definitions contained in the rulemaking, particularly the definition of “affected person” and its reference to “good-faith effort.” Members also stated that the rulemaking should require better notice for property tenants than only a good-faith effort.

Mr. Todd Schulz spoke on behalf of ITC Midwest. He requested a 70-day delay on two components of the rulemaking regarding submission of voluntary route studies with petitions, and railroad crossings. He asserted that these components have possible unintended consequences and noted proposed compromise language. Ms. Leanna Whipple, also speaking on behalf of ITC Midwest, acknowledged the Iowa Utilities Board’s intent to ensure parties have sufficient time to review a route study, but noted that the board can grant parties additional time to review such information and asserted that the rule may have unintended consequences because route studies typically exceed the statutory requirements at issue, therefore utilities may be incentivized to simplify route studies or to not conduct them at all. She asked for additional time to work with the board and the Office of Consumer Advocate to resolve the unintended consequences. She asserted that the language concerning railroad crossings reverses the statutory presumption that railroads consent to crossing by electric lines by instead forcing utilities to prove that railroads have not claimed a special circumstance that would render the statutory presumption inapplicable. She explained that the timeline for completing construction of a railroad crossing and paying the applicable fee is not compatible with the 120-day timeline in the rule language. Regarding a solution proposed by the Office of Consumer Advocate to resolve the issue by having the board waive the rule as needed, she explained that it would be problematic to have to repeatedly seek waivers when the issue recurs.

In response to Mr. Schulz’s and Ms. Whipple’s comments, Mr. Matt Oetker, speaking on behalf of the board, asserted that ITC Midwest is misreading the language concerning railroads, but the rule can be waived if needed. He indicated that the new language regarding route studies was in response to recent litigation where utilities waited for what the board considered too long before filing route studies that had been completed well before hearings had been scheduled in the litigation. He stated that the board wants landowners to have the information in the route study sooner and emphasized the evidentiary value of the information contained in a route study, both to demonstrate that a utility has met statutory requirements and to give information to landowners. He maintained that utilities would be unlikely to stop carrying out such studies.

Committee members asked for more information on why the requirement to submit route studies would be problematic. Ms. Whipple explained that the vast majority of franchise petitions are granted based on evidence contained in the petition itself, so the statutory requirements are met without the need for the information in the route study. Route studies contain information well beyond the statutory requirements and are used to investigate circumstances, such as endangered species, archeological, and tribal concerns, that are particular to each route. She suggested that the board may be assuming that route studies are carried out to prove statutory compliance, which she stated is only one portion of the information in the study. She stated that ITC Midwest would be willing to share such information when it is contested in a hearing, but requiring that route studies be submitted in other circumstances would create confusion and unnecessarily add further process requirements and heightened scrutiny. She also asserted that requiring route studies to be submitted so early in the process would require that such studies be scaled back in scope.

Mr. John Long spoke on behalf of the Office of Consumer Advocate. He expressed support for the board's approach regarding route studies and railroad crossings.

**Action.** A motion for a 70-day delay carried on a 7-1 roll call vote.

**REVENUE DEPARTMENT, *Sales and Use Tax Exemptions for Grain Bins*, 07/15/20 IAB, ARC 5098C, ADOPTED.**

**Background.** This rulemaking implements 2019 Iowa Acts, House File 779, which added an exemption from sales and use tax for the sales price of a grain bin, as the term "grain bin" is defined in the exemption, including the materials and replacement parts used to construct or repair a grain bin. The rulemaking includes an explanation, as well as examples, regarding the materials that are taxable and those that are exempt under the new exemption.

**Commentary.** Mr. Cody Edwards, an attorney with Dickinson Law representing Countryside Construction, expressed concern with the lack of clarity in the sales and use taxation of grain bins and requested that more clarity be provided regarding the classification of tangible personal property versus real property. Mr. Edwards stated that taxable and exempt materials related to grain bins as listed in the rulemaking are ambiguous as to whether a specific material is taxable to the contractor or to the end user. Mr. Edwards explained that it is unclear whether a contractor can purchase a specific material as exempt for resale or whether the contractor must pay sales tax on the material because it becomes part of a grain bin structure. Mr. Edwards requested that the rulemaking be placed on hold until it is clarified.

Mr. Tim Reilly, speaking on behalf of the department, explained that the department determined that it is better to treat grain bins and the materials used to construct grain bins in the same manner as other construction-related materials and projects. This means that similar to other construction projects, contractors must maintain records of the materials purchased so if the contractor does not pay sales tax at the time the materials are purchased, the contractor remits use tax when the materials are used in a construction project. Mr. Reilly stated that the department attempted to clarify this through the examples that are provided in the rulemaking. Mr. Reilly also stated that any ambiguity is eliminated by the fact that the rulemaking states that grain bins are real property and that grain bin materials are building materials.

Committee members asked which materials will be taxed and which materials will be exempt if the rulemaking does not go into effect. Mr. Reilly explained that the exemption in Iowa Code §423.3(16A) went into effect on July 1, 2020, and that the exemption is not dependent on the rulemaking.

Committee members asked why permanent sweeps or augers are exempt and removable sweeps and augers are taxable. Mr. Reilly explained that the exemption applies to equipment that is permanently attached to a grain bin due to the definition of "grain bin" in the rule and because the equipment is permanently attached, it cannot be used for other purposes.

Committee members asked that Mr. Edwards summarize the grain bin tax issue for the committee so the committee can conduct a special review at the December meeting.

**Action.** The committee will conduct a special review at the December ARRC meeting.

**Next Meeting.** The next committee meeting will be held in the House Chamber, Statehouse, on Tuesday, September 8, 2020, beginning at 9:00 a.m. Instructions for participation will be provided at a later date.

LSA Staff Contacts: Jack Ewing, 515.281.6048 or [Jack.Ewing@legis.iowa.gov](mailto:Jack.Ewing@legis.iowa.gov);  
Kate O'Connor, 515.281.6329 or [Kate.OConnor@legis.iowa.gov](mailto:Kate.OConnor@legis.iowa.gov)

Internet Site: [www.legis.iowa.gov/committees/committee?groupID=705](http://www.legis.iowa.gov/committees/committee?groupID=705)

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