

CHAPTER 7
PRACTICE AND PROCEDURE

[Previously ch 15, renumbered 10/20/75 Supp.]
[Prior to 10/8/86, Commerce Commission[250]]

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

7.1(1) This chapter applies to contested case proceedings, investigations, and other hearings conducted by the board or a presiding officer, unless such proceedings, investigations, and hearings are excepted below, otherwise ordered in any proceeding if reasonably necessary to fulfill the objectives of the proceeding, or are subject to special rules or procedures that may be adopted in specific circumstances. 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.

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) With the exception of rules 7.22(17A,476) (ex parte communications), 7.26(17A,476) (appeals from a proposed decision of a presiding officer), and 7.27(17A,476) (rehearing and reconsideration), none of these procedures shall apply to electric transmission line hearings under Iowa Code chapter 478 and 199—Chapter 11 or to pipeline or underground gas storage hearings under Iowa Code chapter 479 or 479B and 199—Chapters 10 and 13. Procedural rules applicable to these proceedings are found in the respective chapters.

7.1(4) Notice of inquiry dockets. The board may issue a notice of inquiry and establish a docket through which the inquiry can be processed. The procedural rules in this chapter shall not apply to these dockets. Instead, the procedures for a notice of inquiry docket shall be specified in the initiating order and shall be subject to change by subsequent order or ruling by the board or the assigned inquiry docket manager. The procedures may include some or all of these procedural rules.

7.1(5) Reorganizations. Procedural rules applicable to reorganizations are included in 199—32.9(476). In the event the requirements in 199—32.9(476) conflict with the requirements in this chapter, the 199—32.9(476) requirements are controlling.

7.1(6) Discontinuance of service incident to utility property transfer.

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. This rule does not limit rights or obligations created by other applicable statutes or rules including, but not limited to, the rights and obligations created by Iowa Code sections 476.22 to 476.26. Additional rules applicable to discontinuance of service by local exchange utilities and interexchange utilities are contained at rule 199—22.16(476). Discontinuance of service to individual customers is addressed in rules 199—19.4(476), 20.4(476), 21.4(476), and 22.4(476). Procedures in the event of a sale or transfer of a customer base by a telecommunications carrier are contained in 199—paragraph 22.23(2)“e.”

b. Application. A public utility shall obtain board approval prior to discontinuance of utility service. The public utility shall file an application for permission to discontinue service that includes 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, the transferor utility and the transferee shall file a joint application.

c. Approval. Within 30 days after an application is filed, the board shall approve the application or docket the application for further investigation. Failure to act on the application within 30 days will be deemed approval of the application.

d. Contested cases. Contested cases under paragraph “c” shall be completed within four months after 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(7) 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 required by law, may be waived by the board or presiding officer pursuant to 199—1.3(17A,474,476).

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

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

“*Complainants*” are 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 479B, or of any order or rule of the board.

“*Consumer advocate*” means the consumer advocate 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 requires the board to render a decision in the proceeding in six months or less.

“*Filed*” means received at the office of the board in a manner and form in compliance with the board’s filing requirements.

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

“*Issuance*” means the date written on the order unless another date is specified in the order.

“*Parties*” include, but are not limited to, complainants, petitioners, applicants, respondents, and intervenors.

“*Party*” means each person named or admitted as a party.

“*Person*” means 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, the administrative law judge, or another person so designated by the board for the purposes of a particular proceeding.

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

“*Respondent*” means any person against whom a complaint or petition is filed, or who by reason of interest or possible interest in the subject matter of a petition or application or the relief sought therein is made a respondent, or to whom an order is directed by the board initiating a proceeding.

“*Service*” means service by first-class mail pursuant to subrule 7.4(6), unless otherwise specified.

199—7.3(17A,476) Presiding officers. Presiding officers may be designated by the board to preside over contested cases and conduct hearings and shall 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 which 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, investigation, or other hearing, subject to review by the board on its own motion or upon application 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 placed in the board's records and information center. Orders shall be deemed effective upon issuance unless otherwise provided in the order. Parties and members of the public may view orders in the board's records and information center and may also view orders (other than orders granting confidential treatment) and a daily summary of filings on the board's Web site located at www.state.ia.us/iub.

7.4(2) Communications.

a. All communications to the board or presiding officer shall be addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, unless otherwise specifically directed by the board or presiding officer. Pleadings and other papers required to be filed with the board shall be filed within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt by the executive secretary in a form that complies with the board's filing requirements. Documents filed with the board shall comply with the requirements in 199—subrule 2.1(3). Persons filing a document with the board must comply with the service requirements in subrule 7.4(6) at the time the document is filed with the board.

b. The board may accept filings electronically from time to time pursuant to instructions that will be delineated in the board order or other official statement authorizing those filings. See rule 7.7(17A,476) for requirements for electronic information filed with the board.

7.4(3) Reference to docket number. All filings made in any proceeding after the proceeding has been docketed by the board shall include on the first page a reference to the applicable docket number(s).

7.4(4) Number of copies.

a. An original and ten copies are required for most initial filings in a docket made with the board. There are some exceptions, which are listed below. The board or presiding officer may request additional copies.

A = Annual Report (rate-regulated 2 copies, non-rate-regulated 1 copy)

C = Complaints filed pursuant to 199—6.2(476) (original)

CCF = Customer Contribution Fund (original + 1 copy)

E = Electric Franchise or Certificate (original + 3 copies)

EAC = Energy Adjustment Clause (original + 3 copies)

EDR = Electric Delivery Reliability (original + 3 copies)

ES = Extended Area Services (original + 2 copies)

GCU = Generating Certificate Utility (original + 20 copies)

H = Accident (original + 1 copy)

HLP = Hazardous Liquid Pipeline (original + 2 copies)

NIA = Negotiated Interconnection Agreement (original + 3 copies)

P = Pipeline Permit (original + 2 copies)

PGA = Purchased Gas Adjustment (original + 3 copies)

R = Reports-Outages (original + 1 copy)

RFU = Refund Filing Utility (original + 4 copies)

RN = Rate Notification (original + 3 copies)

TF = Tariff Filing (original + 4 copies)

b. Unless otherwise ordered or specified in this rule, parties must file an original and ten copies of all filings including, but not limited to, pleadings and answers (rule 7.9(17A, 476)), prefiled testimony and exhibits (rule 7.10(17A,476)), motions (rule 7.12(17A,476)), petitions to intervene and responses (rule 7.13(17A,476)), proposals for settlement and responses (rule 7.18(17A,476)), stipulations (rule 7.19(17A, 476)), withdrawals (rule 7.21(17A,476)), briefs (subrule 7.23(8)), motions to vacate (subrule 7.23(11)), motions to reopen (rule 7.24(17A,476)), interlocutory appeals (rule 7.25(17A,476)), appeals from proposed decisions of the presiding officers and responses (rule 7.26(17A,476)), applications for rehearing and responses (rule 7.27(17A,476)), and requests for stay and responses (rule 7.28(17A,476)).

c. When separate dockets are consolidated into a single case, parties shall file one extra copy for each consolidated docket, in addition to the original and the normally required number of copies. For example, if three separate dockets are consolidated into a single case, parties must file an original plus two copies plus the normally required number of copies of each document.

d. Rule 7.23(17A,476) contains requirements regarding the required number of copies for evidence introduced at hearing and for briefs. Subrule 7.10(5) contains requirements regarding the required number of copies for workpapers and supporting documents.

e. 199—Chapter 26 contains additional requirements regarding the number of copies required to be filed in rate and tariff proceedings.

7.4(5) Defective filings. Only applications, pleadings, documents, testimony, and other submissions that conform to the requirements of an applicable rule, statute, or order of the board or presiding officer will be accepted for filing. Applications, pleadings, documents, testimony, and other submissions that fail to substantially conform with 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. If a filing is defective due only to the number of copies filed, the board's records and information center staff may correct the shortage of copies with the permission of the filing party and the filing party's agreement to cover all costs of reproduction.

7.4(6) Service of documents.

a. *Method of service.* Unless otherwise specified by the board or presiding officer or otherwise agreed to by the parties, documents that are required to be served in a proceeding may be served by first-class mail or overnight delivery, properly addressed with postage prepaid, or by delivery in person. In expedited proceedings, if service is made by first-class mail instead of by overnight delivery or personal service, the sending party must supplement service by sending a copy by electronic mail or facsimile if an electronic mail address or facsimile number has been provided by the receiving party. When a document is served, the party effecting service shall file with the board proof of service in substantially the form prescribed in 199—subrule 2.2(16) or an admission of service by the party served or the party's attorney. The proof of service shall be attached to a copy of the document served. When service is made by the board, the board will attach a service list with a certificate of service signed by the person serving the document to each copy of the document served.

b. *Date of service.* Unless otherwise ordered by the board or presiding officer, the date of service shall be 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 pursuant to subrule 7.4(2).

c. Parties entitled to service. A party or other person filing a notice, motion, pleading, or other document in any proceeding shall contemporaneously serve the document on all other parties. Parties shall serve documents containing confidential information pursuant to a confidentiality agreement executed by the parties, if any. If the parties are unable to agree on a confidentiality agreement, they may ask the board or presiding officer to issue an appropriate order. A party formally filing any document or any other material with the board shall serve three copies of the document or material on the consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. "Formal filings" include, but are not limited to, all documents that are filed in a docketed proceeding, or that request initiation of a docketed proceeding. The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0063.

d. Service upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

7.4(7) Written appearance. Each party to a proceeding shall file a separate written appearance, substantially conforming to the form set forth in 199—subrule 2.2(15), identifying one person upon whom the board may 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 party files an application, petition, or other initial pleading, or an answer or other responsive pleading, containing the information that would otherwise be required in an appearance, the filing of a separate appearance is not required. 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(8) Representation by attorney at law.

a. Any party to a proceeding before the board or a presiding officer may appear and be heard through a licensed attorney at law. If the attorney is not licensed by the state of Iowa, permission to appear must be granted by the board or presiding officer. A verified statement that contains the attorney's agreement to submit to and comply with the Iowa Code of Professional Responsibility for Lawyers must be filed with the board and the written appearance of a resident attorney must be provided for service pursuant to Iowa Admission to the Bar rule 31.14(2).

b. A corporation or association may appear and present evidence by an officer or employee. However, only licensed attorneys shall 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 required of attorneys before the courts of Iowa.

7.4(9) Cross reference to public documents and confidential filings. The board's rule regarding public documents and confidential filings is at 199—1.9(22).

7.4(10) Expedited proceedings.

a. If a person claims that a statutory or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall include the phrase "Expedited Proceedings Required" in the caption of the first pleading filed by the person in the proceeding. 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 purposes of the required time for decision until the date on which the first pleading containing the required phrase is filed or such other date that the board or presiding officer finds is just and reasonable under the circumstances.

b. If a person claims that a statutory or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall state the basis for the claim in the first pleading in which the claim is made.

c. Shortened time limits applicable to expedited proceedings are contained in rules 7.9(17A,476) (pleadings and answers), 7.12(17A,476) (motions), 7.13(17A,476) (intervention), 7.15(17A,476) (discovery), and 7.26(17A,476) (appeals from proposed decisions). An additional service requirement applicable to expedited proceedings is contained in subrule 7.4(6) (service of documents).

d. A party may file a motion that proceedings be expedited even though such treatment is not required 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 paragraph 7.4(10) "c" do not apply to voluntary expedited proceedings under this paragraph unless ordered by the board or presiding officer.

199—7.5(17A,476) Time requirements.

7.5(1) Time shall be computed as provided in Iowa Code subsection 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) Telephone proceedings. The board or presiding officer may hold proceedings by telephone conference call in which all parties have an opportunity to participate. The board or presiding officer will determine the location of the parties and witnesses for telephone hearings. 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 files. This rule applies to all electronic information (electronic files) filed with the board. The board or presiding officer, on the board's or presiding officer's own motion or at the request of a party, may provide for additional or different requirements in specific cases, if necessary.

7.7(1) Electronic files shall be accompanied by a hard-copy printout and a hard-copy index that identifies each electronic file and includes, for each file, a brief description of the sources of inputs, operations performed, and where outputs are next used.

7.7(2) Electronic files that are compressed shall be accompanied by software and clear documentation to reverse the process of compression. If the software may be downloaded and used by the board without incurring a fee, the person filing the compressed electronic files may provide a reference to the Web source of the software.

7.7(3) Spreadsheets, workbooks, and databases shall include all cell formulae and cell references to allow board staff to analyze and reproduce calculations.

7.7(4) All electronic files shall be provided in editable form. Any files submitted in portable document format (PDF) shall be accompanied by the original files from which the PDF files were created, in native format and including calculations and formulae.

7.7(5) Electronic information shall be filed in accordance with the board's standards for electronic information unless prior arrangements are made. Standards are available from the board's Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319-0069, and may be reviewed on the board's Web site (www.state.ia.us/iub). If a person proposes to submit electronic information that does not comply with the standards, the person shall contact the executive secretary or general counsel of the board prior to submission. The board or presiding officer may order different requirements and standards for good cause.

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 first-class mail unless otherwise ordered.

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

7.9(1) Pleadings. Pleadings may be required by statute, rule, or order.

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 served upon the respondent or other party. However, when a statute or other provision of law requires the board to issue a decision in the case in six months or less, the answer shall be filed with the board within 10 days of service of the pleading being answered, unless otherwise ordered by the board or presiding officer.

b. Each answer must 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.

e. An answer shall substantially comply with the form prescribed in 199—subrule 2.2(8).

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 board contested case proceedings. If ordered to do so, parties must file the prefiled testimony and exhibits according to the schedule in the procedural order.

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 corrections to make, then the corrections should be filed in written form prior to the hearing.

7.10(3) Parties who wish to present a witness or other evidence in a proceeding shall comply with the board's or presiding officer's order concerning prefiled testimony and documentary evidence, unless otherwise ordered, or unless otherwise provided by statute or other provision of law.

7.10(4) Prefiled testimony and exhibits must 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(5) Prefiled testimony and exhibits shall include, where applicable:

a. All supporting workpapers.

(1) Unless otherwise ordered by the board or presiding officer, electronic workpapers in native electronic formats that comply with the standards in rule 7.7(17A,476) shall be provided. Noncompliant electronic workpapers shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant electronic copies shall be provided upon request by any party, the board, or the presiding officer.

(2) All other workpapers and hard-copy printouts of electronic files shall be clearly tabbed and indexed, and pages shall be numbered. Each section shall include a brief description of the sources of inputs, operations contained therein, and where outputs are next used.

(3) Workpapers' underlying analyses and data presented in exhibits shall 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.

(4) The source of any number used in a workpaper that was not generated by that workpaper shall 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 standards in rule 7.7(17A,476). Noncompliant electronic computer-generated exhibits shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant electronic copies shall be provided upon request by any party, the board, or the presiding officer.

e. Unless otherwise ordered by the board or presiding officer, the following number of copies shall be filed:

- (1) Electronic workpapers - two copies and two hard-copy printouts.
- (2) Other workpapers - five copies.
- (3) Specific studies or financial literature - two copies.
- (4) Computer-generated exhibits - two copies.

7.10(6) If a party has filed part or all of prefiled testimony and exhibits as confidential pursuant to 199—1.9(22), 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 must refile the testimony and exhibits without the confidential stamp on each page.

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 should ordinarily file only the material, relevant portions in an exhibit or read them into the record. If a party offers the entire book, report, or other document containing the evidence being offered, the party shall plainly designate the evidence so offered.

199—7.12(17A,476) Motions. Motions, unless made during hearing, shall 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 shall be supported by affidavit. Motions shall substantially comply with the form prescribed in 199—subrule 2.2(14). Motions shall be filed and served pursuant to rule 7.4(17A,476). 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 statutory or other provision of law requires the board to issue a decision in the case in six months or less, written responses to a motion must be filed within 7 days of 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 at 199—subrules 7.15(4) and 7.15(5).

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 statutory or other provision of law requires the board to issue a decision in the case in six months or less, the petition to intervene must be filed no later than 10 days following the order setting a procedural schedule, unless otherwise ordered by the board or presiding officer. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10).

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 shall 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 shall 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 shall generally be 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 shall be 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 any or all matters at issue in two or more contested cases. When deciding whether to consolidate, the board or presiding officer shall 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 shall either be responded to or objected to, with concisely stated grounds for relief, within seven days of receipt. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, this time is reduced to five days.

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) shall be as provided in the Iowa Rules of Civil Procedure.

7.15(4) Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer.

7.15(5) Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the board or presiding officer. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, this time is reduced to five days. The board or presiding officer may rule on the basis of the written motion and any response, or may order argument or other proceedings on the motion.

199—7.16(17A,476) Subpoenas.

7.16(1) Issuance.

a. An agency subpoena shall be issued to a party on request. The request shall be in writing and include 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 must be received 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.

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 conference. An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall 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 shall contain a statement adequate 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 shall 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 shall be furnished at least seven days in advance to all parties to the proceeding. Attendance at any settlement conference shall be limited to the parties to a proceeding and their representatives. A party that has been given notice and opportunity to participate in the conference and does not do so shall be 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. Unless otherwise ordered by the board or presiding officer, the party shall file its comments within 14 days of filing of the motion proposing settlement, and shall serve such comments on all parties to the proceeding at the time of filing. Unless otherwise ordered by the board or presiding officer, parties shall file reply comments within 7 days of filing of the comments.

7.18(4) Contents of comments. A party contesting a proposed settlement must 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) shall not apply to a proposed settlement filed concurrently by all parties to the proceeding.

7.18(7) Inadmissibility. Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law, including, but not limited to, Iowa R. Evid. 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 shall not be construed to 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 communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives shall not communicate directly or indirectly with the board or presiding officer in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The board or presiding officer shall not communicate directly or indirectly with parties or their representatives in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate.

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 shall 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 shall 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 shall determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice, taking into account the preferences of the parties. Normally, the petitioner shall open the presentation of evidence. In cases where testimony has been prefiled, each witness shall be available for cross-examination on all testimony prefiled by or on behalf of that witness when the witness takes the stand, either alone or as a member of a witness panel.

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 7.10(17A,476). Nonsubstantive corrections to prefiled testimony may be made at the beginning of the testimony. However, if more than three corrections need to be made, the sponsoring party shall file corrected prefiled testimony prior to the hearing. The sponsoring party must provide one copy of prefiled testimony and included exhibits to the court reporter.

b. The board or presiding officer shall 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 previously included with prefiled testimony, the party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence shall be appropriately marked and made part of the evidentiary record. If an exhibit is admitted, unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the exhibit to each opposing party, one copy for each board member or presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

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 shall briefly summarize the testimony or, with the permission of the board or presiding officer, present the testimony. The board or presiding officer may require the offering party to file a written statement of the excluded oral testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record. Unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the document or exhibit to each opposing party, one copy for each board member or presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for 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 shall 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 and to examine and cross-examine witnesses at any hearing, but such person shall not be a party to the proceedings unless so designated. The testimony or statement of any person so appearing shall be given under oath and such person shall be subject to cross-examination by parties to the proceeding, unless the board or presiding officer orders otherwise.

7.23(8) Briefs.

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

b. Unless otherwise ordered, parties shall file an original and ten copies of briefs with the board and shall serve two copies of briefs on the other parties pursuant to subrule 7.4(6). Parties may serve one paper copy and one copy by electronic mail on the other parties instead of two paper copies. Three copies of briefs shall be served on the consumer advocate pursuant to subrule 7.4(6).

c. Initial briefs shall contain a concise statement of the case. Arguments based on evidence introduced during the proceeding shall specify the portions of the record where the evidence is found. Initial briefs shall include all arguments the party intends to offer in support of its case and against the record case of the adverse party or parties. Unless otherwise ordered, a reply brief shall 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 shall not be deemed a waiver of that issue and shall not preclude the board or presiding officer from deciding the issue on the basis of evidence appearing in the record.

d. Every brief of more than 20 pages shall contain on its front leaves a table of contents with page references. Each party's initial brief shall not exceed 90 pages and each subsequent brief shall not exceed 40 pages, exclusive of the table of contents, unless otherwise ordered. Such orders may be issued ex parte. A brief that exceeds these page limits shall be deemed a defective filing and may be rejected as provided in subrule 7.4(5).

e. Briefs shall comply with the following requirements.

- (1) The size of pages shall be 8½ by 11 inches.
- (2) All printed matter must appear in at least 11-point type.
- (3) There shall be margins of at least one inch on the top, bottom, right, and left sides of the sheet.
- (4) The body of the brief shall be double-spaced.
- (5) Footnotes may be single-spaced but shall not exceed one-half page in length.
- (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 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 shall not be deemed a waiver of the issue.

7.23(10) Record. The record of the case is maintained in the board's records and information center at the office of the board. Unless held confidential pursuant to 199—1.9(22), parties and members of the public may examine the record and obtain copies of documents other than the transcript. The transcript will be available for public examination, but copying of the transcript may be restricted by the terms of the contract with the court reporting service.

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 notification or mailing of the decision, a motion to vacate may be filed with the board. The motion to vacate must 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 must be substantiated by affidavit attached to the motion. Unless otherwise ordered, adverse parties shall have 10 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. Properly substantiated and timely filed motions to vacate shall be granted for good cause shown. The burden of proof as to good cause is on the moving party. “Good cause” for purposes of this rule shall have 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 rule 7.25(17A,476).

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

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 rule 7.26(17A,476), or a request for stay pursuant to rule 7.28(17A,476).

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 shall be made prior to the expiration of the time for appeal from the proposed decision, and the motion shall stay the time for filing an appeal. A motion to reopen the record shall substantially comply with the form prescribed in 199—subrule 2.2(12). Affidavits of witnesses who will present new evidence shall be attached to the motion and shall include an explanation of the competence of the witness to sponsor the evidence 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 must 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. A copy of the presiding officer’s proposed decision and order in a contested case shall be sent by first-class mail, on the date the order is issued, to the last-known address of each party. The decision shall normally include “Proposed Decision and Order” in the title and shall inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

7.26(2) Appeal from proposed decision. A proposed decision and order of the presiding officer in a contested case shall become 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. The appellant shall file an original and ten copies of the notice of appeal with the board, provide a copy to the presiding officer, and simultaneously serve a copy of the notice pursuant to subrule 7.4(6) on all parties.

7.26(4) The board shall not consider any claim of error based on evidence which was not introduced before the presiding officer. Newly discovered material evidence must be presented to the presiding officer pursuant to a motion to reopen the record, unless the board orders otherwise.

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 shall 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 give adequate consideration to evidence introduced at hearing, the appellant shall 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. 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. If parties wish to respond to the notice of appeal, or file a cross-appeal, they must file the response or notice of cross-appeal within 14 days after the filing of the notice of appeal, unless otherwise ordered by the board. When a statutory or other provision of law requires the board to issue a decision in the case in less than six months, the response or cross-appeal must be filed within 7 days of filing the notice of appeal.

- a. Responses shall specifically respond to each of the substantive paragraphs of the notice of appeal and shall state whether an opportunity to file responsive briefs or to participate in oral argument is requested.
- b. Parties who file a cross-appeal must comply with the requirements for filing a notice of appeal contained in this rule, other than the requirement to file notice of the cross-appeal within 15 days after the proposed decision is issued.

7.26(7) Ruling on appeal. After the filing of the last appeal, response, or cross-appeal, the board shall 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.

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. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the contested case is issued. This subrule shall not be construed as prohibiting reconsideration of board orders in other than contested cases.

7.27(2) Contents of application. Applications for rehearing or reconsideration shall 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 shall 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. An application shall substantially comply with the form prescribed in 199—subrule 2.2(13).

7.27(3) Requirements for objections to applications for rehearing or reconsideration. Notwithstanding the provisions of subrule 7.9(2), an answer or objection to an application for a rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board. The answer or objection to the application shall substantially comply with the form prescribed in 199—subrule 2.2(8).

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 shall state the reasons justifying a stay or other temporary remedy and be served on all other parties pursuant to subrule 7.4(6).

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

7.28(3) A stay may be vacated by the board upon application of any party.

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 required 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 shall 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 shall be immediately delivered to persons who are required to comply with the order by the most reasonably available method, which may include one or more of the following methods: personal delivery; certified mail; first-class mail; fax; or E-mail. To the degree practical, the board shall 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 shall make reasonable efforts to contact the persons who are required 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.

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