

## UTILITIES DIVISION[199]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to Iowa Code section 17A.4 and Iowa Code chapters 476, 478, and 477A, the Utilities Board (Board) gives notice that on October 24, 2012, the Board issued an order in Docket Nos. RMU-2012-0002 and RMU-2011-0007, In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), “Order Commencing Rule Making and Closing Docket No. RMU-2011-0007,” that commenced a rule making in which the Board is proposing a new chapter that establishes Board requirements for pole attachments by communications, data, and similar companies to poles owned by electric and telecommunications utilities. The rules are being proposed in response to a petition for rule making filed by the Iowa Utility Association (IUA) that requested the Board commence a rule-making proceeding to amend the Board’s Iowa Electrical Safety Code rules in 199 IAC Chapter 25 by adding new provisions that address safety violations of pole attachments, penalty provisions, and dispute resolution procedures that are currently subject to the jurisdiction of the Federal Communications Commission (FCC) pursuant to 47 CFR §1.140, et seq.

On December 28, 2011, the Board issued an order in Docket No. RMU-2011-0007 establishing dates for responses to the petition for rule making. The Iowa Utility Association; MidAmerican Energy Company; Interstate Power and Light Company; ITC Midwest LLC; the Iowa Association of Municipal Utilities; the Consumer Advocate Division of the Department of Justice; AT&T Communications of the Midwest, Inc., TCG Omaha, and New Cingular Wireless d/b/a AT&T Mobility; CenturyLink, Inc.; Cox Iowa Telecom, LLC, Inc.; the Iowa Cable & Telecommunications Association, Inc.; Sprint Nextel Corp.; and the Iowa Association of Electric Cooperatives filed comments and participated in that docket.

On February 6, 2012, the Board issued an order denying the petition for rule making filed by IUA and scheduling a workshop for interested persons to discuss the issues raised by the responses. On March 21, 2012, Board staff conducted the workshop as scheduled. Based upon the written comments and the discussion at the workshop, the Board conducted a thorough review of the issues raised. After the review, the Board revised the proposed pole attachment rules, and on August 22, 2012, Board staff held a meeting with all participants to discuss the revised proposed rules. On August 30, 2012, Board staff sent a follow-up e-mail and allowed participants to provide a final round of comments. Final comments in response to Board staff’s August 30, 2012, e-mail were filed by MidAmerican Energy Company.

The purpose of the proposed rules is to assert jurisdiction over pole attachments now under the jurisdiction of the FCC. FCC regulations provide that a state can certify that it has asserted jurisdiction over these pole attachments. (See 47 CFR §1.1414.) To assert such jurisdiction, the state must have adopted rules that establish jurisdiction over the rates, terms, and conditions of the pole attachments. The proposed rules are designed to meet the FCC requirements for state certification.

The Board is placing the proposed rules in a separate chapter and not in 199 IAC Chapter 25, where the Iowa Electrical Safety Code is established, to ensure there are no conflicts with the Iowa Electrical Safety Code. Placing the rules in a separate chapter allows the rules to be limited to the purpose of asserting jurisdiction over pole attachments owned or operated by communications utilities, cable system providers, video service providers, data service providers, wireless providers, or similar entities. The poles that are subject to these rules are poles owned by electric and telecommunications utilities. Consistent with the FCC rule, poles owned by electric cooperatives and municipal utilities or other governmental entities are exempted. (See 47 CFR §1.1402(a).) The Board retains safety jurisdiction

over pole attachments for electric cooperatives and municipals pursuant to the Iowa Electrical Safety Code in 199 IAC Chapter 25.

Based upon the concerns raised by the electric utilities, the Board has defined pole attachments in the proposed rules to include wireless antennas and other wireless facilities and data provider facilities. The electric utilities expressed concern that FCC regulations and current Board rules might not provide the necessary procedures to ensure wireless providers and data providers install pole attachments in accordance with the safety requirements in the Iowa Electrical Safety Code.

To ensure compliance with the Iowa Electrical Safety Code and to ensure that pole owners and pole-attaching entities reach some agreement about pole attachments before the attachments are constructed, the Board is proposing that parties involved in pole attachments have a written agreement which includes rates, terms, and conditions and the rates must be consistent with FCC regulations. Comments suggested that some pole-attaching entities might require some transition time to comply with the requirement for written agreements. The proposed rules provide for a one-year transition period for pole-attaching entities to have the written agreements in place.

In the proposed rules, the Board is proposing time lines for correction of any violations of the Iowa Electrical Safety Code and a requirement that parties negotiate in good faith before bringing a complaint about pole attachments to the Board.

The order commencing rule making issued by the Board can be found on the Board's Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2012-0002.

The Board is also proposing in this Notice to amend 199 IAC 15.5(2) by deleting an incorrect reference and replacing it with the correct reference. This is an editorial change and does not affect the substance of subrule 15.5(2).

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before January 4, 2013. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments must be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.

An opportunity for interested persons to present oral comments on the proposed pole attachment rules will be held at 1 p.m. on February 12, 2013, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)725-7334 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

After analysis and review of this rule making, the Board tentatively concludes that the proposed rules, if adopted, will have a beneficial effect on the safety and reliability of electric service in Iowa. Reliable electric service is a necessity for economic development, so the proposed rules will have a beneficial effect on jobs in Iowa, although that effect cannot be quantified.

These amendments are intended to implement Iowa Code section 17A.4 and Iowa Code chapters 476, 478, and 477A.

The following amendments are proposed.

ITEM 1. Amend subrule 15.5(2) as follows:

**15.5(2) Relationship to avoided costs.** For purposes of this subrule, "new capacity" means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

A rate for purchases satisfies the requirements of this rule if the rate equals the avoided costs determined after consideration of the factors set forth in ~~rule 15.6(476)~~ subrule 15.5(6); except that a rate for purchases other than from new capacity may be less than the avoided cost if the board determines

that a lower rate is consistent with subrule 15.5(1) and is sufficient to encourage cogeneration and small power production.

Unless the qualifying facility and the utility agree otherwise, rates for purchases shall conform to the requirements of this rule regardless of whether the electric utility making purchases is simultaneously making sales to the qualifying facility.

In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for purchases do not violate this rule if the rates for the purchases differ from avoided costs at the time of delivery.

ITEM 2. Adopt the following new 199—Chapter 27:

CHAPTER 27  
POLE ATTACHMENT

**199—27.1(476,477A,478) Purpose and scope.**

**27.1(1) Purpose.** These rules establish procedures relating to the nondiscriminatory attachment of communications lines, cable systems, video service lines, data lines, wireless antennas and other wireless facilities, or similar lines and facilities that are attached to poles, or in ducts, conduits, or rights-of-way, owned by electric or telecommunications utilities. These rules establish attachment requirements, time lines for corrective action for violations of these rules or of the Iowa electrical safety code, 199—25.2(476,476A,478), and complaint procedures. Pole attachments of cable system providers and video service providers are subject to the provisions of these rules pursuant to the provisions of Iowa Code section 477A.3(1)“b.” These rules do not apply to poles, ducts, conduits, or rights-of-way owned by a utility that is cooperatively organized or by a municipality or other governmental entity.

**27.1(2) Definitions.** For the rules in this chapter, the following definitions shall apply:

“*Pole*” means any pole, duct, conduit, or right-of-way owned by an electric or telecommunications utility that carries electric distribution lines, electric transmission lines, communications lines, cable systems, video service lines, data service lines, wireless antennas or other wireless facilities, or similar lines and facilities, except for poles, ducts, conduits, and rights-of-way owned by a utility that is cooperatively organized or by a municipality or other governmental entity.

“*Pole attachment*” means any communication circuit, cable system, video service line, data service line, antenna and other associated wireless equipment, guy wire, underground riser with facilities in conduit or covered by U-guard, grounding materials and equipment, or similar lines and facilities attached to a pole or other supporting structure subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478), except for poles or other structures owned by a utility that is cooperatively organized or by a municipality or other governmental entity.

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

“*Pole owner*” means an electric or telecommunications utility that owns poles, ducts, conduits, and rights-of-way subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478), except for any utility that is cooperatively organized or that is owned by a municipality or other governmental entity.

**199—27.2(476,477A,478) Pole attachment requirements.**

**27.2(1) Written agreements.** Any telecommunications carrier, cable system provider, video service provider, data service provider, wireless service provider, or similar person or entity is prohibited from attaching any communication circuit, cable system, video service line, data service line, antenna and other associated wireless equipment, guy wire, underground riser with facilities in conduit or covered by U-guard, grounding materials and equipment, or similar lines or facilities to a pole or other structure owned by a pole owner without first entering into a written agreement with the pole owner. The written agreement shall include the rates, terms, and conditions upon which access for a pole attachment is

provided. Rates agreed to in any written agreement shall be consistent with the requirements of 47 CFR §1.1409.

There will be a one-year transition period from [insert the effective date of these rules] to allow for negotiation and execution of written pole attachment agreements required by this rule.

**27.2(2) Requests for access to poles.** Requests for access to poles, ducts, conduits, and rights-of-way by a telecommunications carrier, cable system provider, video service provider, data service provider, wireless service provider, or similar person or entity shall be made in writing or by such other method as may be agreed to by the parties in a written agreement. The pole owner shall respond to the request in writing, or other method agreed to by the parties to a written agreement, within 45 days by either granting access or denying access. If access is denied, the pole owner shall explain in detail the specific reason for denial.

**27.2(3) Compliance with Iowa electrical safety code.** Attachments to poles and other supporting structures shall be constructed and installed in compliance with the Iowa electrical safety code, 199—25.2(476,476A,478), and the rules in this chapter.

**199—27.3(476,477A,478) Notification, corrective action, and complaint procedures.**

**27.3(1) Notification of violation.** A pole owner shall notify a pole occupant of an alleged violation of the Iowa electrical safety code related to a pole attachment in writing, or by such other method as may be agreed to by the parties in a written agreement, with a description of the location of the alleged violation, a description of the alleged violation, and suggested corrective action.

**27.3(2) Corrective action.**

*a.* Upon receipt of notification from a pole owner that a pole attachment is in violation of the Iowa electrical safety code, the pole occupant shall respond to the pole owner within 30 days in writing, or by such other method as may be agreed to by the parties in a written agreement, with a plan for corrective action, that the violation has been corrected, or that the pole occupant disputes that there is a violation.

*b.* The violation shall be corrected within 90 days of the date notification is received, unless good cause is shown for the delay in taking the corrective action. A disagreement that a violation has occurred is good cause to extend the 90-day period to take corrective action. Corrective action shall not be delayed beyond 120 days from the date notification is received without agreement from the pole owner. A dispute whether the pole attachment is in violation of the Iowa electrical safety code that is not resolved within the 120-day period may be presented to the board for resolution.

*c.* If the violation could reasonably be expected to endanger life or property, the pole occupant shall take the necessary action to correct, disconnect, or isolate the problem immediately upon notification. If immediate corrective action is not taken by the pole occupant for violations that could reasonably be expected to endanger life or property, the pole owner may take the necessary corrective action, and the pole occupant shall reimburse the pole owner for the actual cost of such corrective action.

**27.3(3) Negotiated resolution of disputes.** Parties to disputes over alleged violations of the Iowa electrical safety code or the rules in this chapter shall attempt to resolve disputes through good-faith negotiations. Parties may file an informal complaint with the board pursuant to 199—Chapter 6 as part of negotiations.

**27.3(4) Complaints.** Complaints concerning the rates, terms, or conditions for pole attachments subject to the rules in this chapter, alleged violations of the Iowa electrical safety code, or alleged violations of the rules in this chapter may be filed with the board pursuant to the complaint procedures in 199—Chapter 6. Persons found to have violated the rules in this chapter may be subject to civil penalties pursuant to Iowa Code section 476.51 or 478.29 or other action by the board.

These rules are intended to implement Iowa Code section 17A.4 and Iowa Code chapters 476, 477A, and 478.