

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to procedure for determining competitiveness

The Utilities Board hereby amends Chapter 5, “Procedure for Determining the Competitiveness of a Communications Service or Facility,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 474.5 and 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.1D, 476.2 and 546.7.

Purpose and Summary

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this rule making is to update and amend Chapter 5 of the Board’s rules establishing procedures for determining the competitiveness of a communications service or facility pursuant to Iowa Code section 476.1D.

The Board issued an order adopting amendments on March 25, 2019. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0021.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4283C**. The Board received written comments from the Iowa Communications Alliance (ICA) and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice. ICA supported the amendments, and OCA stated it did not object to the amendments. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on March 25, 2019.

Fiscal Impact

These amendments update and amend existing rules. No additional actions having a fiscal impact are being adopted.

Jobs Impact

After analysis and review of this rule making, the Board tentatively concludes that the amendments will not have a detrimental effect on employment in Iowa.

Waivers

No waiver provision is included in these amendments since the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 29, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—5.1(476) as follows:

199—5.1(476) Purpose. These rules govern the procedure for investigating and determining the applicable level of regulation ~~under Iowa Code Supplement section 476.1D~~ for a communications service or facility pursuant to Iowa Code section 476.1D.

ITEM 2. Amend subrule 5.2(1), introductory paragraph, as follows:

5.2(1) Petitioner. Any interested person may petition the board for a determination of the following under Iowa Code Supplement section 476.1D.

ITEM 3. Amend subrule 5.2(2), introductory paragraph, as follows:

5.2(2) Contents of petition. A petition for a determination under subrule 5.2(1) shall ~~substantially comply with the form prescribed in 199—subrule 2.2(1), except that references to rule making shall be replaced by references to the service or facility sought to be evaluated. In addition, the petition must contain or be submitted with the following information:~~

ITEM 4. Rescind subrule **5.2(3)**.

ITEM 5. Amend subrule 5.3(1) as follows:

5.3(1) Order. If the petitioner has complied with subrule 5.2(2), the board ~~may~~ shall issue an order docketing the matter as a formal notice and comment proceeding. ~~At any time the board may initiate a formal notice and comment proceeding on its own motion. At any time, the board may also on its own motion initiate evidentiary hearings to develop a reliable record of facts related to the issues raised and to allow discovery to the extent the board deems necessary. The petition will not be deemed to be an application for new or changed rates, charges, schedules or regulations and setting a procedural schedule.~~

ITEM 6. Rescind subrule 5.3(2) and adopt the following **new** subrule in lieu thereof:

5.3(2) Responses. Any person, including the consumer advocate, wanting to file a response to a petition must do so within 30 days of the filing of the petition or as otherwise directed by the board in its order docketing the matter.

ITEM 7. Rescind subrule **5.3(4)**.

ITEM 8. Rescind rule 199—5.4(476) and adopt the following **new** rule in lieu thereof:

199—5.4(476) Comments. All comments shall be sworn and shall be filed within 30 days after publication of notice of the proceeding in the Iowa Administrative Bulletin unless otherwise directed by the board. Reply comments may be allowed at the discretion of the board. Comments shall be filed electronically unless otherwise allowed by the board.

ITEM 9. Rescind rule 199—5.5(476) and adopt the following **new** rule in lieu thereof:

199—5.5(476) Formal proceeding. The board may schedule an oral argument, evidentiary hearing, or other formal proceeding as appropriate to allow all interested persons the opportunity to address the issues raised in the petition and any comments filed with the board. All persons filing comments will be required to appear at any formal proceeding that may be held. If the board holds an evidentiary hearing, all persons filing comments shall have at least one witness available who may be cross-examined about the subject matter of the comments.

ITEM 10. Rescind rule **199—5.8(476)**.

[Filed 3/25/19, effective 5/29/19]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/24/19.