

UTILITIES DIVISION[199]

Adopted and Filed

Rulemaking related to nonutility service

The Utilities Board hereby rescinds Chapter 34, “Nonutility Service,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 476.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 476.78, 476.80 and 476.81.

Purpose and Summary

Chapter 34 is intended to provide for rate-regulated utilities offering nonutility services to allow access to certain utility information when a competitor requests that information, provided certain requirements are met. The Board is rescinding and repromulgating Chapter 34 because the chapter’s provisions contain duplicative language contained in the Iowa Code and other portions of the Iowa Administrative Code. The Board is also reducing the amount of unnecessary and restrictive language in the chapter.

On February 15, 2024, the Board issued an order adopting amendments. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0034.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on November 15, 2023, as **ARC 7112C**. Public hearings were held on December 5, 2023, at 9 a.m. and January 23, 2024, at 9 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The public hearings were attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company; Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy; Iowa-American Water Company; and ITC Midwest LLC.

OCA submitted written comments prior to the hearing that supported the proposed Chapter 34. No additional comments were received at the hearing.

Changes from the Notice have been made to ensure clarity and proper grammar.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 15, 2024.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on April 10, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 199—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
NONUTILITY SERVICE

199—34.1(476) Statement of purpose. A public utility that engages in a systematic marketing effort, other than on an incidental or casual basis, to promote the availability of a nonutility service from the public utility shall allow competitors access to certain services.

199—34.2(476) Definitions.

“Engaged primarily in providing the same competitive nonutility services in the area” means that a person, on an ongoing basis, sells or leases equipment or products or offers services, accounting for at least 60 percent of the person's gross business revenue, that are functionally interchangeable with and considered similar by the public to the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

“Systematic marketing effort, other than on an incidental or casual basis” means an effort determined by the board to be recurring, active in nature, and done on a comprehensive basis. Factors to be considered include but are not limited to the types and number of media used; the frequency, extent, and duration of the marketing effort; the amount of marketing expenses incurred; and whether the public utility appeared to intend to significantly increase its market share.

199—34.3(476) Charges permitted. A person meeting the definition of “engaged primarily in providing the same competitive nonutility services in the area” in rule 199—34.2(476) may use, to the same extent utilized by the public utility for its nonutility service in connection with nonutility services, the customer lists, billing and collection system, and mailing system of the public utility company engaged in a systematic marketing effort, other than on an incidental or casual basis. The person shall be charged for the cost or expense incurred by the public utility in providing access to its systems and its lists, and the cost or expense will not be greater than the charge, fee, or cost imposed upon or allocated to the provision of nonutility service by the utility for the similar use of the systems.

199—34.4(476) Procedures for utilization of billing and collection system.

34.4(1) When a person meeting the definition of “engaged primarily in providing the same competitive nonutility services in the area” in rule 199—34.2(476) uses the billing and collection system of a public utility, the public utility shall promptly remit to that person all funds collected by the public utility on behalf of the person.

34.4(2) Where a customer makes a partial payment and owes both a public utility and a person(s) meeting the definition of “engaged primarily in providing the same competitive nonutility services in the area” in rule 199—34.2(476) for services or goods provided, the payment received is allocated first to the regulated utility bill, plus tax, unless otherwise allocated by the customer. Any balance remaining after payment of the utility bill, plus tax, is allocated between the public utility for any unpaid nonutility services and any other person(s) utilizing the utility's billing system, according to the ratio

of the amount billed by each, unless otherwise allocated by the customer. A public utility shall not disconnect a customer's utility service for nonpayment of a bill for nonutility services.

A person shall not use a public utility's billing and collection system to bill and receive payments only from customers who are habitually delinquent or who have failed or refused to make payment to the person.

These rules are intended to implement Iowa Code sections 476.78, 476.80, and 476.81.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/6/24.