OBJECTION

Pursuant to Iowa Code §17A.4(6), the Administrative Rules Review Committee voted to object to Rule 199 IAC 20.20—Service to Electric Vehicle Charging Stations. The Committee initially reviewed the rule at its June 11, 2019 meeting, during which Committee members questioned the rule's impact on a charging service provider's ability to generate its own electricity or procure electricity from sources other than the electric utility with an exclusive right to serve that location. Upon the rule's return to this Committee, the rule has not changed and the Iowa Utilities Board has yet to address these issues; therefore, the Committee objects on the grounds that the rule is unreasonable, arbitrary and capricious, and beyond the authority delegated to the Iowa Utilities Board.

The rule is unreasonable due to the Iowa Utilities Board's failure to consider the legislative policy underlying the state's exclusive service territory law, Iowa Code §476.25. The policy states that it is in the public interest to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public. The Board received comments on how Rule 20.20 could be revised to satisfy this policy; however, in adopting the rule, the Board addresses neither how Rule 20.20 furthers this policy nor any of the revisions proposed. Instead, the Board's order states only the obvious—that §476.25 is not altered and must be followed.

The Committee also believes the rule is arbitrary and capricious in that it has been adopted without regard to the facts presented during the rulemaking. The record developed during the Board's rulemaking suggests that certain logical and predictable configurations and arrangements supporting self-generation may violate Iowa's definition of public utility and the exclusive service territory law; yet the Board failed to address these arrangements and discuss how they could become compliant with existing statutes and rules.

Rule 20.20 also goes beyond the authority delegated to the Iowa Utilities Board because it is based on an erroneous interpretation of the term "public utility." Subrule 20.20(1) exempts electric energy sold for the purpose of electric vehicle charging from Board regulation by declaring that it is neither the "furnishing of electricity to the public" nor the "resale of electric service." The Committee believes this language is beyond the authority delegated to the Iowa Utilities Board because it is contrary to the plain language of Iowa Code §476.1(3)(a) and the definition of "public utility" therein, and is contrary to the interpretation of §476.1 in *SZ Enterprises LLC v. Iowa Utilities Board,* 850 N.W.2d 441 (Iowa 2014), in which appropriately sized behind-the-meter generation factored heavily into whether an entity qualified as a public utility. Furthermore, because "public utility" is a defined term and Chapter 476 does not explicitly give the Board authority to interpret the term, the Board has no authority to interpret, define, or modify the term "public utility." The Board's rule language is an interpretation of this statutorily defined term, for which the Board has no authority, and the Board's rule language is likely not entitled to deference upon review.

Finally, in arguments made to the Committee at its June 11, 2019 meeting, the Board stated that a scenario under which a charging service provider could generate and sell its own electricity directly to the public was perhaps 10 years away. The Committee believes this is irrelevant. Rulemaking participants have provided the Board with the logical and predictable outcomes of Rule 20.20 and the Committee believes the time to address them is now, and not in the future.

Objection filed November 12, 2019