

## PUBLIC UTILITY REGULATION

### **476.1 Applicability of authority.**

The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided.

As used in this chapter, "*board*" or "*utilities board*" means the utilities board within the utilities division of the department of commerce.

As used in this chapter, "*public utility*" shall include any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for:

1. Furnishing gas by piped distribution system or electricity to the public for compensation.
2. Furnishing communications services to the public for compensation.
3. Furnishing water by piped distribution system to the public for compensation.

Mutual telephone companies in which at least fifty percent of the users are owners, co-operative telephone corporations or associations, telephone companies having less than fifteen thousand customers and less than fifteen thousand access lines, municipally owned utilities, and unincorporated villages which own their own distribution systems are not subject to the rate regulation provided for in this chapter.

This chapter does not apply to waterworks having less than two thousand customers, municipally owned waterworks, joint water utilities established pursuant to chapter 389, rural water districts incorporated and organized pursuant to chapters 357A and 504 or 504A, cooperative water associations incorporated and organized pursuant to chapter 499, or to a person furnishing electricity to five or fewer customers either by secondary line or from an alternate energy production facility or small hydro facility, from electricity that is produced primarily for the person's own use.

A telephone company otherwise exempt from rate regulation and having telephone exchange facilities which cross state lines may elect, in a writing filed with the board, to have its rates regulated by the board. When a written election has been filed with the board, the board shall assume rate regulation jurisdiction over the company.

The jurisdiction of the board under this chapter shall include efforts designed to promote the use of energy efficiency strategies by rate or service-regulated gas and electric utilities.

[C66, 71, 73, 75, § 490A.1; C77, 79, 81, § 476.1; 81 Acts, ch 156, § 4]

83 Acts, ch 127, § 15, 16; 84 Acts, ch 1031, § 1; 88 Acts, ch 1172, §2; 90 Acts, ch 1252, §18; 91 Acts, ch 150, §1; 91 Acts, ch 168, §9; 96 Acts, ch 1196, § 1; 2004 Acts, ch 1175, § 393

Reference to chapter 504A in this section to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, § 191

### **476.1A Applicability of authority certain electric utilities.**

Electric public utilities having fewer than ten thousand customers and electric cooperative corporations and associations are not subject to the rate regulation authority of the board. Such utilities are subject to all other regulation and enforcement activities of the board, including:

1. Assessment of fees for the support of the division.
2. Safety and engineering standards for equipment, operations, and procedures.
3. Assigned area of service.
4. Pilot projects of the board.
5. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research established by the state board of regents.
6. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.
7. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans.

The board may waive all or part of the energy efficiency filing and review requirements for electric cooperative corporations and associations and electric public utilities which demonstrate superior results with existing energy efficiency efforts.

However, sections 476.20, 476.21, 476.41 through 476.44, 476.51, 476.56, 476.62, and 476.66 and chapters 476A and 478, to the extent applicable, apply to such electric utilities.

Electric cooperative corporations and associations and electric public utilities exempt from rate regulation under this section shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

The board of directors or the membership of an electric cooperative corporation or association otherwise exempt from rate regulation may elect to have the cooperative's rates regulated by the board. The board shall adopt rules prescribing the manner in which the board of directors or the membership of an electric cooperative may so elect. If the board of directors or the membership of an electric cooperative has elected to have the cooperative's rates regulated by the board, after two years have elapsed from the effective date of such election the membership of the electric cooperative may elect to exempt the cooperative from the rate regulation authority of the board.

86 Acts, ch 1039, § 1; 88 Acts, ch 1174, § 1; 88 Acts, ch 1175, § 1; 89 Acts, ch 297, § 9; 90 Acts, ch 1252, §19; 96 Acts, ch 1196, § 2, 3; 2001 Acts, 1st Ex, ch 4, §8, 36

#### **476.1B Applicability of authority municipally owned utilities.**

1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:
  - a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.
  - b. Safety standards.
  - c. Assigned areas of service, as set forth in sections 476.22 through 476.26.
  - d. Enforcement of civil penalties pursuant to section 476.51.

- e.* Disconnection of service, as set forth in section 476.20.
- f.* Discrimination against users of renewable energy resources, as set forth in section 476.21.
- g.* Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.
- h.* Enforcement of section 476.56.
- i.* Enforcement of section 476.66.
- j.* Enforcement of section 476.62.
- k.* Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents.
- l.* Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans.
- m.* An electric power agency as defined in chapters 28F and 476A that includes as a member a city or municipally owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board for those facilities.
- n.* Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

2. The board may waive all or part of the energy efficiency filing and review requirements for municipally owned utilities which demonstrate superior results with existing energy efficiency efforts.

3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation by the board under this chapter except for regulatory action pertaining to the enforcement of sections 476.11, 476.29, 476.95, 476.96, 476.100, 476.101, and 476.102.

86 Acts, ch 1162, § 1; 88 Acts, ch 1174, § 2; 88 Acts, ch 1175, § 2; 89 Acts, ch 297, § 10; 90 Acts, ch 1252, §20; 96 Acts, ch 1196, § 4, 5; 97 Acts, ch 81, §1, 2, 6; 99 Acts, ch 63, §7, 8; 2001 Acts, 1st Ex, ch 4, §9, 36

#### **476.1C Applicability of authority certain gas utilities.**

1. Gas public utilities having fewer than two thousand customers are not subject to the regulation authority of the utilities board under this chapter unless otherwise specifically provided. Sections 476.10, 476.20, 476.21, and 476.51 apply to such gas utilities.

Gas public utilities having fewer than two thousand customers shall be subject to the assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents and shall file energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may waive all or part of the energy efficiency filing requirements if the gas utility demonstrates superior results with existing energy efficiency efforts.

Gas public utilities having fewer than two thousand customers shall keep books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board. The board may inspect the accounts of the utility at any time.

A gas public utility having fewer than two thousand customers may make effective a new or changed rate,

charge, schedule, or regulation after giving written notice of the proposed new or changed rate, charge, schedule, or regulation to all affected customers served by the public utility. The notice shall inform the customers of their right to petition for a review of the proposal to the utilities board within sixty days after notice is served if the petition contains the signatures of at least one hundred of the gas utility's customers. The notice shall state the address of the utilities board. The new or changed rate, charge, schedule, or regulation takes effect sixty days after such valid notice is served unless a petition for review of the new or changed rate, charge, schedule, or regulation signed by at least one hundred of the gas utility's customers is filed with the board prior to the expiration of the sixty-day period.

If such a valid petition is filed with the board within the sixty-day period, any new or changed rate, charge, schedule, or regulation shall take effect, under bond or corporate undertaking, subject to refund of all amounts collected in excess of those amounts which would have been collected under the rates or charges finally approved by the board. The board shall within five months of the date of filing make a determination of just and reasonable rates based on a review of the proposal, applying established regulatory principles. The board may call upon the gas public utility and its customers to furnish factual evidence in support of or opposition to the new or changed rate, charge, schedule, or regulation. If the gas public utility disputes the finding, the utility may within twenty days file for further review, and the board shall docket the case as a formal proceeding under section 476.6, subsection 4, and set the case for hearing. The gas public utility shall submit factual evidence and written argument in support of the filing.

A gas public utility having fewer than two thousand customers shall not make effective a new or changed rate, charge, schedule, or regulation which relates to services for which a rate change is pending within twelve months following the date the petition to review the prior proposed rate, charge, schedule, or regulation was filed with the board or until the board has made its determination of just and reasonable rates, whichever date is earlier, unless the utility applies to the board for authority and receives authority to make a subsequent rate change at an earlier date.

Gas public utilities having fewer than two thousand customers shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage. Rates charged by a gas public utility having less than two thousand customers for transportation of customer-owned gas shall not exceed the actual cost of such transportation services including a fair rate of return.

2. If, as a result of a review of a proposed new or changed rate, charge, schedule, or regulation of a gas public utility having fewer than two thousand customers, the consumer advocate alleges in a filing with the board that the utility rates are excessive, the disputed amounts shall be specified by the consumer advocate in the filing. The gas public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of the filing which are in excess of rates or charges finally determined by the board to be lawful. If after formal proceeding and hearing pursuant to section 476.6 the board finds that the utility rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest. If the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

87 Acts, ch 21, § 1; 90 Acts, ch 1252, §21; 96 Acts, ch 1196, § 6

#### **476.1D Regulation and deregulation of communications services.**

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone

utility that is or becomes subject to effective competition, as determined by the board. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility in the geographic market being considered by the board and whether market forces in that market are sufficient to assure just and reasonable rates without regulation.

2. Deregulation of a service or facility for a utility is effective only after all of the following:

a. A finding of effective competition by the board.

b. Election by a utility providing the service or facility to file a deregulation accounting plan.

c. Approval of a utility's deregulation accounting plan by the board.

3. If the board determines a service or facility is subject to effective competition and approves the utility's deregulation accounting plan, the board shall deregulate the service or facility within a reasonable time.

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not be considered by the board in setting rates for the telephone utility unless they continue to affect the utility's regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. This section does not preclude the board from considering the investment, revenues, and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.

5. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board shall deregulate rates and may continue service regulation.

6. The board may reimpose rate and service regulation on a deregulated service or facility if it determines the service or facility is no longer subject to effective competition.

7. The board may reimpose service regulation only on a deregulated service or facility if the board determines the service or facility is an essential communications service or facility and the public interest warrants service regulation, notwithstanding the presence of effective competition.

8. If the board reimposes regulation pursuant to subsection 6 or 7, the reimposition of regulation shall apply to all providers of the service or facility.

9. The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not, for purposes of this subsection, request or obtain information related to the provider's costs or earnings.

10. The board, at the request of a long distance telephone company, shall classify such company as a competitive long distance telephone company if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from services and facilities that the board has determined to be subject to effective competition, or if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from intralata interexchange services and facilities. For purposes of this subsection, "*intralata interexchange services*" means those interexchange services that originate and terminate within the same local access transport area.

The board shall promptly notify the director of revenue that a long distance telephone company has been classified as a competitive long distance telephone company. Upon such notification by the board, the director of revenue shall assess the property of such competitive long distance telephone company, which property is first assessed for taxation in this state on or after January 1, 1996, in the same manner as all other property assessed as commercial property by the local assessor under chapters 427, 427A, 427B, 428, and 441. As used in this section, "*long distance telephone company*" means an entity that provides telephone service and facilities between local exchanges, but does not include a cellular service provider or a local exchange utility holding a certificate issued under section 476.29, subsection 12.

91 Acts, ch 150, §2; 95 Acts, ch 199, § 1; 96 Acts, ch 1219, § 73; 2003 Acts, ch 126, §1; 2003 Acts, ch 145, §286

#### **476.2 Board powers and rules utility's Iowa office.**

1. The board shall have broad general powers to effect the purposes of this chapter notwithstanding the fact that certain specific powers are hereinafter set forth. The board shall have authority to issue subpoenas and to pay the same fees and mileage as are payable to witnesses in the courts of record of general jurisdiction and shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers provided for in this chapter or in the board's rules. In the establishment, amendment, alteration or repeal of any of such rules, the board shall be subject to the provisions of chapter 17A.
2. The board shall employ at rates of compensation consistent with current standards in industry such professionally trained engineers, accountants, attorneys, and skilled examiners and inspectors, secretaries, clerks, and other employees as it may find necessary for the full and efficient discharge of its duties and responsibilities as required by this chapter.
3. The board may intervene in any proceedings before the federal energy regulatory commission or any other federal or state regulatory body when it finds that any decision of that tribunal would adversely affect the costs of any public utility service within the state of Iowa.
4. The board shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public utility all necessary information to enable the board to perform its duties.
5. Each rate-regulated gas and electric utility operating within the state shall maintain within the state the utility's principal office for Iowa operations. The principal office shall be subject to the jurisdiction of the board and shall house those books, accounts, papers, and records of the utility deemed necessary by the board to be housed within the state. The utility shall maintain within the state administrative, technical, and operating personnel necessary for the delivery of safe and reasonably adequate services and facilities as required pursuant to section 476.8. A public utility which violates this section shall be subject to the penalties provided in section 476.51 and shall be denied authority to recover, for a period determined by the board, the costs of an energy efficiency plan pursuant to section 476.6, subsection 8.
6. The board shall provide the general assembly with a report on the energy efficiency planning efforts undertaken by utilities required to offer energy efficiency plans pursuant to section 476.6, subsection 14. The report shall be completed by January 1, 1998.

[C66, 71, 73, 75, § 490A.2; C77, 79, 81, § 476.2]

90 Acts, ch 1168, §51; 90 Acts, ch 1252, §22; 96 Acts, ch 1196, § 7

### **476.3 Complaints investigation refunds.**

1. A public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the board. When there is filed with the board by any person or body politic, or filed by the board upon its own motion, a written complaint requesting the board to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter in contravention of this chapter, the written complaint shall be forwarded by the board to the public utility, which shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be specified by the board. Copies of the written complaint forwarded by the board to the public utility and copies of all correspondence from the public utility in response to the complaint shall be provided by the board in an expeditious manner to the consumer advocate. If the board determines the public utility's response is inadequate and there appears to be any reasonable ground for investigating the complaint, the board shall promptly initiate a formal proceeding. If the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the complaint. The complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint. The formal proceeding may be initiated at any time by the board on its own motion. If a proceeding is initiated upon petition filed by the consumer advocate, complainant, or the public utility, or upon the board's own motion, the board shall set the case for hearing and give notice as it deems appropriate. When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

2. If, as a result of a review procedure conducted under section 476.31, a review conducted under section 476.32, a special audit, an investigation by division staff, or an investigation by the consumer advocate, a petition is filed with the board by the consumer advocate, alleging that a utility's rates are excessive, the disputed amount shall be specified in the petition. The public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of filing of the petition in excess of rates or charges finally determined by the board to be lawful. If upon hearing the board finds that the utility's rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest, and if the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

Notwithstanding the provisions of this subsection, the consumer advocate shall not file a petition under this subsection that alleges a local exchange carrier's rates are excessive while the local exchange carrier is participating in a price regulation plan approved by the board pursuant to section 476.97.

3. A determination of utility rates by the board pursuant to this section that is based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.

[C66, 71, 73, 75, § 490A.3; C77, 79, 81, § 476.3; 81 Acts, ch 156, § 5, 9]

83 Acts, ch 127, § 17, 18; 89 Acts, ch 59, § 1; 89 Acts, ch 97, § 1; 95 Acts, ch 199, § 2

### **476.4 Tariffs filed.**

Every public utility shall file with the board tariffs showing the rates and charges for its public utility services

and the rules and regulations under which such services were furnished, on April 1, 1963, which rates and charges shall be subject to investigation by the board as provided in section 476.3, and upon such investigation the burden of establishing the reasonableness of such rates and charges shall be upon the public utility filing the same. These filings shall be made under such rules as the board may prescribe within such time and in such form as the board may designate. In prescribing rules and regulations with respect to the form of tariffs, the board shall, in the case of public utilities subject to regulation by any federal agency, give due regard to any corresponding rules and regulations of such federal agency, to the end that unnecessary duplication of effort and expense may be avoided so far as reasonably possible. Each public utility shall keep copies of its tariffs open to public inspection under such rules as the board may prescribe.

Every rate, charge, rule and regulation contained in any filing made with the commission on or prior to July 4, 1963, shall be effective as of such date, subject, however, to investigation as herein provided. If any such filing is made prior to the time the commission prescribes rules as aforesaid, and if such filing does not comply as to form or substance with such rules, then the public utility which filed the same shall within a reasonable time after the adoption of such rules make a new filing or filings complying with such rules, which new filing or filings shall be deemed effective as of July 4, 1963.

[C66, 71, 73, 75, § 490A.4; C77, 79, 81, § 476.4]

#### **476.4A Exemption from tariff filings for telephone utilities.**

Notwithstanding contrary provisions of this chapter, a telephone utility may offer centron, centrex, intraexchange private line, or multiline variety package service without filing a tariff unless the board determines such a procedure is not in the public interest. The telephone utility shall offer each service which is exempt from a tariff filing at a rate which exceeds the cost of the service. A telephone utility offering its services without filing a tariff shall not discriminate in an unreasonable manner for or against any customer.

A telephone utility shall provide the board with at least thirty days notice prior to a request to offer service without filing a tariff. The board may require the telephone utility to file its price lists, contracts, or cost allocations for services offered without a tariff. Any such price lists, contracts, or cost allocations so filed shall be afforded rebuttable presumptions that they meet the requirements of section 22.7, subsection 6.

The board shall consider the revenues, expenses and investment related to telephone utility services offered without a filed tariff in proceedings under section 476.3, 476.6 and 476.7.

84 Acts, ch 1267, § 1

#### **476.5 Adherence to schedules discounts.**

No public utility subject to rate regulation shall directly or indirectly charge a greater or less compensation for its services than that prescribed in its tariffs, and no such public utility shall make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

Nothing in this section shall be construed to prohibit any public utility furnishing communications services from providing any service rendered by it without charge or at reduced rate to any of its active or retired officers, directors, or employees, or such officers, directors or employees of other public utilities furnishing communications services. Provided, however, said service is for personal use, and not for engaging in a business for profit.

[C66, 71, 73, 75, § 490A.5; C77, 79, 81, § 476.5]

#### **476.6 Changes in rates, charges, schedules and regulations supply and cost review water costs for fire**

**protection.**

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 8 and 10.

2. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

3. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

4. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 10.

5. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 4, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 6, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

6. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or

regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

*7. Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

*8. Automatic adjustments permitted.* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

*9. Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

*10. Temporary authority.* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

A public utility may choose to place in effect temporary rates, charges, schedules, or regulations without board review ten days after the filing under this section. If the utility chooses to place such rates, charges, schedules, or regulations in effect without board review, the utility shall file with the board a bond or other corporate undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. At the conclusion of the proceeding if the board determines that the temporary rates, charges, schedules, or regulations placed in effect under this paragraph were not based on previously established regulatory principles, the board shall consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of

necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules, or regulations shall, for purposes of computing the time limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

11. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

12. *Natural gas supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

13. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

14. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy efficiency plan, the board shall apply the societal test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility.

15. *Water costs for fire protection in certain cities.*

a. *Application.* A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b. *Review.* The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph "a", including, but not limited to, soliciting oral or written testimony from other interested parties.

c. *Notice.* Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 2, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d. *Conditions for approval.* As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "a".

(4) That written notice has been provided pursuant to paragraph "c" and that the costs of the notice have been paid by the applicant.

e. *Inclusion within rates or charges.* If the board affirmatively determines that the conditions of paragraph "d" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

f. *Written order.* The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

16. *Energy efficiency implementation, cost review, and cost recovery.*

a. Gas and electric utilities required to be rate-regulated under this chapter shall file energy efficiency plans

with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

*b.* A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the department of natural resources to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards.

*c.* The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

*d.* Notice to customers of a contested case proceeding for review of energy efficiency plans and budgets shall be in a manner prescribed by the board.

*e.* A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 8, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph "*c*". The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

*f.* A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

*17. Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include, but is not limited to, a forecast of the requirements of its customers, its

anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

18. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

19. *Allocation of replacement tax costs.* The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

20. *Replacement tax study committee.* On or before July 1, 2000, the utilities board, in consultation with the department of revenue, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the general assembly that the committee include representatives of the utilities board, department of revenue, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The replacement tax study committee shall reconvene by January 1, 2006, to further study these same issues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter II, pro rata, based on the amount of tax paid.

21. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

22. *Electric power generating facility emissions.*

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a contested case proceeding pursuant to chapter 17A. The department of natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

b. The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.

c. The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

d. The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of

good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

e. The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

f. It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

g. The board shall report to the general assembly by January 21, 2003, on the appropriateness and desirability of requiring the municipal utilities and the rural electric cooperatives to file multiyear plans and budgets for managing regulated emissions from their electric power generating facilities fueled by coal and located in this state, similar to the process required for rate-regulated public utilities under this subsection.

[C66, 71, 73, 75, § 490A.6; C77, 79, 81, § 476.6; 81 Acts, ch 156, § 6, 9, ch 157, § 13; 82 Acts, ch 1100, § 23]

83 Acts, ch 127, § 1926, 51; 84 Acts, ch 1023, § 1; 87 Acts, ch 21, § 2; 89 Acts, ch 58, § 1; 89 Acts, ch 148, § 1; 89 Acts, ch 321, § 29; 90 Acts, ch 1103, §1; 90 Acts, ch 1252, §2327; 91 Acts, ch 253, § 22; 93 Acts, ch 68, §1; 96 Acts, ch 1196, § 8, 9; 98 Acts, ch 1013, §1; 98 Acts, ch 1148, §2, 9; 98 Acts, ch 1194, §37, 40; 2001 Acts, 1st Ex, ch 4, §10, 36; 2002 Acts, ch 1162, §70, 71; 2003 Acts, ch 126, §2, 3; 2003 Acts, ch 145, §286; 2004 Acts, ch 1006, §1

#### **476.7 Application by utility for review.**

If there shall be filed with the board by any public utility an application requesting the board to determine the reasonableness of the utility's rates, charges, schedules, service or regulations, the board shall promptly initiate a formal proceeding. Such a formal proceeding may be initiated at any time by the board on its own motion. Whenever such a proceeding has been initiated upon application or motion, the board shall set the case for hearing and give such notice thereof as it deems appropriate. Whenever the board, after a hearing held after reasonable notice, finds any public utility's rates, charges, schedules, service or regulations are unjust, unreasonable, insufficient, discriminatory or otherwise in violation of any provision of law, the board shall determine just, reasonable, sufficient and nondiscriminatory rates, charges, schedules, service or regulations to be thereafter observed and enforced.

[C66, 71, 73, 75, § 490A.7; C77, 79, 81, § 476.7]

#### **476.8 Utility charges and service.**

Every public utility is required to furnish reasonably adequate service and facilities. *"Reasonably adequate service and facilities"* for public utilities furnishing gas or electricity includes programs for customers to encourage the use of energy efficiency and renewable energy sources. The charge made by any public utility for any heat, light, gas, energy efficiency and renewable energy programs, water or power produced, transmitted, delivered or furnished, or communications services, or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. In determining reasonable and just rates, the board shall consider all factors relating to value and shall not be bound by rate base decisions or rulings made prior to the adoption of this chapter.

The board, in determining the value of materials or services to be included in valuations or costs of operations for rate-making purposes, may disallow any unreasonable profit made in the sale of materials to or services supplied for any public utility by any firm or corporation owned or controlled directly or indirectly by such utility or any affiliate, subsidiary, parent company, associate or any corporation whose controlling stockholders are also controlling stockholders of such utility. The burden of proof shall be on the public utility to prove that no unreasonable profit is made.

[C66, 71, 73, 75, § 490A.8; C77, 79, 81, § 476.8]

83 Acts, ch 127, § 27; 90 Acts, ch 1252, §28

**476.8A Tax reform act rate adjustment.** Repealed by 90 Acts, ch 1168, §64.

**476.9 Accounts rendered to board.**

1. Every public utility shall keep and render to the board in the manner and form prescribed by the board uniform accounts of all business transacted.
2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of heat, light, water or power or furnishing communications services to the public shall, if required by the board, keep and render separately to the board in like manner and form the accounts of all such other business, in which case all the provisions of this chapter shall apply to the books, accounts, papers and records of such other business and all profits and losses may be taken into consideration by the board if deemed relevant to the general fiscal condition of the public utility.
3. Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board, and to comply with all directions of the board relating to such books, accounts, papers and records.
4. The board shall consult with other state and federal regulatory bodies for the purpose of eliminating accounting discrepancies with regard to the keeping of public utility accounts before prescribing any system of accounts to be kept by the public utility.

[C66, 71, 73, 75, § 490A.9; C77, 79, 81, § 476.9]

**476.10 Investigations expense appropriation.**

In order to carry out the duties imposed upon it by law, the board may, at its discretion, allocate and charge directly the expenses attributable to its duties to the person bringing a proceeding before the board or to persons participating in matters before the board. The board shall ascertain the certified expenses incurred and directly chargeable by the consumer advocate division of the department of justice in the performance of its duties. The board and the consumer advocate separately may decide not to charge expenses to persons who, without expanding the scope of the proceeding or matter, intervene in good faith in a board proceeding initiated by a person subject to the board's jurisdiction, the consumer advocate, or the board on its own motion. For assessments in any proceedings or matters before the board, the board and the consumer advocate separately may consider the financial resources of the person, the impact of assessment on participation by intervenors, the nature of the proceeding or matter, and the contribution of a person's participation to the public interest. The board may present a bill for expenses under this paragraph to the person, either at the conclusion of a proceeding or matter, or from time to time during its progress. Presentation of a bill for expenses under this paragraph constitutes notice of direct assessment and request for payment in accordance with this section.

The board shall ascertain the total of the division's expenses incurred during each fiscal year in the

performance of its duties under law. The board shall add to the total of the division's expenses the certified expenses of the consumer advocate as provided under section 475A.6. The board shall deduct all amounts charged directly to any person from the total expenses of the board and the consumer advocate. The board may assess the amount remaining after the deduction to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from intrastate operations during the last calendar year over which the board has jurisdiction. For purposes of determining gross operating revenues under this section, the board shall not include gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members' gross operating revenues, or provided that such a member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues. If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of service over which the board has jurisdiction. The board may make the remainder assessments under this paragraph on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the utilities division and the consumer advocate. Not more than ninety days following the close of the fiscal year, the utilities division shall conform the amount of the prior fiscal year's assessments to the requirements of this paragraph. For gas and electric public utilities exempted from rate regulation pursuant to this chapter, the remainder assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other persons.

A person subject to a charge or assessment shall pay the division the amount charged or assessed against the person within thirty days from the time the division provides notice to the person of the amount due, unless the person files an objection in writing with the board setting out the grounds upon which the person claims that such charge or assessment is excessive, unreasonable, erroneous, unlawful, or invalid. Upon receipt of an objection, the board shall set the matter for hearing and issue its order in accordance with its findings in the proceeding.

The order shall be subject to review in the manner provided in this chapter. All amounts collected by the division pursuant to the provisions of this section shall be deposited with the treasurer of state and credited to the general fund of the state. Such amounts shall be spent in accordance with the provisions of chapter 8.

Whenever the board shall deem it necessary in order to carry out the duties imposed upon it in connection with rate regulation under section 476.6, investigations under section 476.3, or review proceedings under section 476.31, the board may employ additional temporary or permanent staff, or may contract with persons who are not state employees for engineering, accounting, or other professional services, or both. The costs of these additional employees and contract services shall be paid by the public utility whose rates are being reviewed in the same manner as other expenses are paid under this section. Beginning on July 1, 1991, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this section. The board shall increase quarterly assessments specified in unnumbered paragraph 2, by amounts necessary to enable the board to hire additional staff and contract for services under this section. The authority to hire additional temporary or permanent staff that is granted to the board by this section shall not be subject to limitation by any administrative or executive order or decision that restricts the number of state employees or the filling of employee vacancies, and shall not be subject to limitation by any law of this state that restricts the number of state employees or the filling of employee vacancies unless that law is made applicable to this section by express reference to this section. Before the board expends or encumbers an amount in excess of the funds budgeted for rate regulation and before the board increases quarterly assessments pursuant to this paragraph, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the board for rate regulation and that the board does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management the board may expend and encumber funds for the excess expenses, and increase quarterly assessments to raise the additional funds. The board and the office of consumer advocate may add additional

personnel or contract for additional assistance to review and evaluate energy efficiency plans and the implementation of energy efficiency programs including, but not limited to, professionally trained engineers, accountants, attorneys, skilled examiners and inspectors, and secretaries and clerks. The board and the office of consumer advocate may also contract for additional assistance in the evaluation and implementation of issues relating to telecommunication competition. The board and the office of the consumer advocate may expend additional sums beyond those sums appropriated. However, the authority to add additional personnel or contract for additional assistance must first be approved by the department of management. The additional sums for energy efficiency shall be provided to the board and the office of the consumer advocate by the utilities subject to the energy efficiency requirements in this chapter. Telephone companies shall pay any additional sums needed for assistance with telecommunication competition issues. The assessments shall be in addition to and separate from the quarterly assessment.

Fees paid to the utilities division shall be deposited in the general fund of the state. These funds shall be used for the payment, upon appropriation by the general assembly, of the expenses of the utilities division and the consumer advocate division of the department of justice. Subject to this section, the utilities division or the consumer advocate division may keep on hand with the treasurer of state funds in excess of the current needs of the utilities division or the consumer advocate division.

The administrator and consumer advocate shall account for receipts and disbursements according to the separate duties imposed upon the utilities and consumer advocate divisions by the laws of this state and each separate duty shall be fiscally self-sustaining.

All fees and other moneys collected under this section and sections 478.4, 479.16, and 479A.9 shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section and sections 478.4, 479.16, and 479A.9 shall be subject to the requirements of section 8.60.

[C66, 71, 73, 75, § 490A.10; C77, 79, 81, § 476.10; 81 Acts, ch 156, § 7, ch 158, § 1]

83 Acts, ch 127, § 28; 86 Acts, ch 1246, § 613, 614; 89 Acts, ch 103, § 1; 89 Acts, ch 296, § 72; 89 Acts, ch 321, § 30; 90 Acts, ch 1247, §11; 90 Acts, ch 1252, §29; 91 Acts, ch 260, § 1236, 1237; 93 Acts, ch 131, §20, 21; 94 Acts, ch 1107, §80; 95 Acts, ch 199, § 3; 2001 Acts, ch 9, §1, 3

#### **476.10A Funding for Iowa energy center and center for global and regional environmental research.**

1. *a.* The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

*b.* The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10. The board shall allow inclusion of these amounts in the budgets approved by the board pursuant to section 476.6, subsection 16, paragraph "c".

*c.* (1) Eighty-five percent of the remittances collected pursuant to this section is appropriated to the Iowa energy center created in section 266.39C.

(2) Fifteen percent of the remittances collected pursuant to this section is appropriated to the center for global and regional environmental research established by the state board of regents.

2. Notwithstanding section 8.33, any unexpended moneys remitted to the treasurer of state under this section shall be retained for the purposes designated. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys remitted under this section shall be retained and used for the purposes designated, pursuant to section 476.46.

3. The Iowa energy center and the center for global and regional environmental research shall each provide a written annual report to the utilities board that describes each center's activities and the results that each center has accomplished. Each report shall include an explanation of initiatives and projects of importance to the state of Iowa.

90 Acts, ch 1252, §30; 91 Acts, ch 253, §23; 96 Acts, ch 1196, § 10; 2002 Acts, ch 1109, §3

#### **476.11 Telephone toll connections.**

Whenever toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

The board may resolve complaints, upon notice and hearing, that a utility, operating under section 476.29, has failed to provide just, reasonable, and nondiscriminatory arrangements for interconnection of its telecommunications services with another telecommunications provider.

[C66, 71, 73, 75, § 490A.11; C77, 79, 81, § 476.11]

95 Acts, ch 199, § 4

#### **476.12 Rehearings before board.**

Notwithstanding the Iowa administrative procedure Act, chapter 17A, any party, as defined in the rules and regulations promulgated by the board as provided in section 476.2, to a contested case before the board may within twenty days after the issuance of the final decision apply for a rehearing. The board shall either grant or refuse an application for rehearing within thirty days after the filing of the application, or may after giving the interested parties notice and opportunity to be heard and after consideration of all the facts, including those arising since the making of the order, abrogate or modify its order. A failure by the board to act upon the application for rehearing within the above period shall be deemed a refusal of the application. Neither the filing of an application for rehearing nor the granting of the application shall stay the effectiveness of an order unless the board so directs.

[C66, 71, 73, 75, § 490A.12; C77, 79, 81, § 476.12]

88 Acts, ch 1100, §2; 2003 Acts, ch 44, §114

#### **476.13 Judicial review.**

1. Notwithstanding the Iowa administrative procedure Act, chapter 17A, the district court for Polk county or for the county in which a public utility maintains its principal place of business has exclusive venue for the judicial review under chapter 17A of actions of the board pursuant to rate-regulatory powers over that public utility.

2. Upon the filing of a petition for judicial review in an action referred to in subsection 1, the clerk of the district court shall notify the chief justice of the supreme court for purposes of assignment of a district judge under section 602.1212. The judicial review proceeding shall be heard by the district judge appointed by the supreme court under section 602.1212, but in the county of venue under subsection 1.

3. Notwithstanding the Iowa administrative procedure Act, chapter 17A, if a public utility seeks judicial review of an order approving rates for the public utility, the level of rates that may be collected, under bond and subject to refund, while the appeal is pending shall be limited to the level of the temporary rates set by

the board, or the level of the final rates set by the board, whichever is greater. During the period the judicial review proceeding is pending, the board shall retain jurisdiction to determine the rate of interest to be paid on any refunds eventually required on rates collected during judicial review.

[C66, 71, 73, 75, § 490A.13; C77, 79, 81, § 476.13]

83 Acts, ch 127, § 29; 2003 Acts, ch 44, §114

## **Footnotes**

See § 478.32, 479.32

### **476.14 Violations stopped.**

Whenever the board shall be of the opinion that any public utility or any other person is violating this chapter or any order of the board, the board may commence an action in the district court for the county in which such violation is alleged to have occurred, to have such violation stopped and prevented by injunction, mandamus or other appropriate remedy.

[C66, 71, 73, 75, § 490A.20; C77, 79, 81, § 476.14]

### **476.15 Extent of jurisdiction.**

The jurisdiction and powers of the board shall extend as hereinbefore provided to the utility business of public utilities operating within this state to the full extent permitted by the Constitution and laws of the United States.

[C66, 71, 73, 75, § 490A.21; C77, 79, 81, § 476.15]

### **476.16 Annual report.**

The board shall include in its annual report required under sections 7A.1 and 7A.10 among other matters, to the extent such regulation is conferred upon the board by this chapter, the following:

1. A complete financial report of receipts and expenditures, including list of public utilities and separately the amount of total fees and assessments paid by each.
2. A list of the applications, subject and disposition of each docket number under this chapter, including board fees for such docket assessed by the board.

[C66, 71, 73, 75, § 490A.22; C77, 79, 81, § 476.16]

### **476.17 Peak-load energy conservation.**

1. The board may promulgate rules pursuant to chapter 17A which require or authorize a public utility to establish peak-load management procedures.
2. Rules of the board shall relate to reducing or limiting the peak-load period consumption.
3. In promulgating rules under this section, the board is not bound by decisions, rulings or orders which relate to the definitions of types or classes of customers and which were issued by the Iowa state commerce commission prior to July 1, 1980.

[C81, § 476.17]

#### **476.18 Impermissible charges.**

1. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of lobbying.
2. Legal costs and attorney fees incurred by a public utility subject to rate regulation in an appeal in state or federal court involving the validity of any action of the board shall not be included either directly or indirectly in the public utility's charges or rates to customers except to the extent that recovery of legal costs and attorney fees is allowed by the board. The board shall allow a public utility to recover reasonable legal costs and attorney fees incurred in the appeal. The board may consider the degree of success of the legal arguments of the public utility in determining the reasonable legal costs and attorney fees to be allowed.
3. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of advertising other than advertising which is required by the board or by other state or federal regulation. However, this subsection does not apply to a utility's advertising which is deemed by the board to be necessary for the utility's customers and which is approved by the board.

Every ad which is published, broadcast, or otherwise displayed or disseminated to the public by a public utility which is to be charged to the customers of the public utility and which is not required by the board or by other state or federal regulation shall include a statement in the ad that the costs of the ad are being charged to the customers of the public utility. This paragraph does not apply to a utility's product or service that is or becomes subject to competition as determined by the board.

4. This section does not apply to a rural electric cooperative.

83 Acts, ch 127, § 30; 84 Acts, ch 1225, § 1

#### **476.19 Construction of statutes.**

Nothing herein contained shall be construed to invalidate any proceedings under statutes existing prior to the enactment of this chapter; nor shall any action, litigation or appeal pending prior to the effective date of rate regulation of this chapter be affected hereby.

[C66, 71, 73, 75, § 490A.25; C77, 79, 81, § 476.19]

#### **476.20 Disconnection limited notice moratorium deposits.**

1. A utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until permission to do so is obtained from the board.
2. The board shall establish rules requiring a regulated public utility furnishing gas or electricity to include in the utility's notice of pending disconnection of service a written statement advising the customer that the customer may be eligible to participate in the low income home energy assistance program or weatherization assistance program administered by the division of community action agencies of the department of human rights. The written statement shall list the address and telephone number of the local agency which is administering the customer's low income home energy assistance program and the weatherization assistance program. The written statement shall also state that the customer is advised to contact the public utility to settle any of the customer's complaints with the public utility, but if a complaint is not settled to the customer's satisfaction, the customer may file the complaint with the board. The written statement shall include the address and phone number of the board. If the notice of pending disconnection of service applies

to a residence, the written statement shall advise that the disconnection does not apply from November 1 through April 1 for a resident who is a "head of household", as defined by law, and who has been certified to the public utility by the local agency which is administering the low income home energy assistance program and weatherization assistance program as being eligible for either the low income home energy assistance program or weatherization assistance program, and that if such a resident resides within the serviced residence, the customer should promptly have the qualifying resident notify the local agency which is administering the low income home energy assistance program and weatherization assistance program. The board shall establish rules requiring that the written notice contain additional information as it deems necessary and appropriate.

3. The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service. This subsection applies both to regulated utilities and to municipally owned utilities and unincorporated villages which own their own distribution systems, and violations of this subsection subject the utilities to civil penalties under section 476.51.

A qualified applicant for the low income home energy assistance program or the weatherization assistance program who is also a "head of household", as defined in section 422.4, subsection 7, shall be promptly certified by the local agency administering the applicant's program to the applicant's public utility that the resident is a "head of household" as defined in section 422.4, subsection 7, and is qualified for the low income home energy assistance program or weatherization assistance program. Notwithstanding subsection 1, a public utility furnishing gas or electricity shall not disconnect service from November 1 through April 1 to a residence which has a resident that has been certified under this paragraph.

4. A public utility which violates a provision of this section relating to the disconnection of service or which violates a rule of the board relating to disconnection of service is subject to civil penalties imposed by the board under section 476.51.

5. The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to deposits which may be required by the public utility for the initiation or reinstatement of service.

a. The deposit for a residential or commercial customer for a place which has previously received service shall not be greater than the highest billing of service for one month for the place in the previous twelve-month period.

b. The deposit for a residential or a commercial customer for a place which has not previously received service or for an industrial customer shall be the customer's projected one month's usage for the place to be serviced as determined by the public utility according to rules established by the board.

This subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service.

The rules shall allow a person other than the customer to pay the customer's deposit. Upon termination of service to such a customer, the deposit plus accumulated interest less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

[C66, 71, 73, 75, § 490A.26; C77, 79, 81, § 476.20]

83 Acts, ch 127, § 31; 84 Acts, ch 1131, § 1; 84 Acts, ch 1273, § 1

#### **476.21 Discrimination prohibited.**

A municipality, corporation or co-operative association providing electrical or gas service shall not consider

the use of renewable energy sources by a customer as a basis for establishing discriminatory rates or charges for any service or commodity sold to the customer or discontinue services or subject the customer to any other prejudice or disadvantage based on the customer's use or intended use of renewable energy sources. As used in this section, "*renewable energy sources*" includes but is not limited to, solar heating, wind power and the conversion of urban and agricultural organic wastes into methane gas and liquid fuels.

[C79, 81, § 476.21]

#### **476.22 Definition.**

As used in sections 476.23 to 476.26, unless the context otherwise requires, "*electric utility*" includes a public utility furnishing electricity as defined in section 476.1 and a city utility as defined in section 390.1.

[C77, 79, 81, § 476.22]

#### **476.23 Electric service conflicts certificates of authority.**

1. An electric utility shall not construct or extend facilities or furnish or offer to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility without having first filed with the board the express written agreement of the electric utility presently serving this customer, except as otherwise provided in this section. Any municipal corporation, after being authorized by a vote of the people, or any electric utility may file a petition with the board requesting a certificate of authority to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility. If, after notice by the board to the electric utility currently serving the customer, objection to the petition is not filed and investigation is not deemed necessary, the board shall issue a certificate within thirty days of the filing of the petition. When an objection is filed, if the board, after notice and opportunity for hearing, determines that service to the customer by the petitioner is in the public interest, including consideration of any unnecessary duplication of facilities, it shall grant this certificate in whole or in part, upon such terms, conditions, and restrictions as may be justified. Whether or not an objection is filed, any certificate issued shall require that the petitioner pay to the electric utility presently serving the customer, the reasonable price for facilities serving the customer. This price determination by the board shall include due consideration of the cost of the facilities being acquired; any necessary generating capacity and transmission capacity dedicated to the customer, including, but not limited to, electric power generating facilities and alternate energy production facilities not yet in service but for which the board has issued an order pursuant to section 476.53, and electric power generating facility emissions plan budgets approved by the board pursuant to section 476.6, subsection 22; depreciation; loss of revenue; and the cost of facilities necessary to reintegrate the system of the utility after detaching the portion sold.

2. An electric utility shall not construct or extend facilities or furnish electric service to a prospective customer not presently being served, unless its existing service facilities are nearer the proposed point of delivery than the service facilities of any other utility. However, an electric utility may extend electric service and transmission lines if the electric utility closest to the delivery point consents to this extension in writing and a copy of the agreement is filed with the board or, if the board, after notice and opportunity for hearing and after giving due consideration to the prevention of unnecessary duplication of facilities, finds that service from an electric utility, other than the closest utility, is in the public interest. This subsection shall not apply if the prospective customers are within an exclusive service area assigned to an electric utility as provided in this division.

3. Notwithstanding subsections 1 and 2 of this section, any electric utility may extend electric service and transmission lines to its own utility property and facilities.

4. If not inconsistent with the provisions of this division:

*a.* All rights of municipal corporations under chapter 364 to grant a person a franchise to erect, maintain, and operate plants and systems for electric light and power within the corporate boundaries, and rights acquired by franchise or agreement shall be preserved in these municipal corporations;

*b.* All rights of city utilities under the city code shall be preserved in these city utilities;

*c.* All rights of city utilities and joint electric utilities under chapter 390 shall be preserved in these city utilities and joint electric utilities; and

*d.* All rights of cities under chapter 6B are preserved. However, prior to the institution of condemnation proceedings, the city shall obtain a certificate of authority from the board in accordance with this division and the board's determination of price under this division shall be conclusive evidence of damages in these condemnation proceedings.

[C66, 71, 73, 75, § 490A.23, 490A.24; C77, 79, 81, § 476.23]

2003 Acts, ch 29, §1, 6

#### **476.24 Electric utility service area maps.**

1. On or before July 1, 1977, and subsequently whenever requested by the board, electric utilities furnishing electricity to the public for compensation in this state shall file, jointly or severally, with the board detailed maps of their service area drawn to a scale of not less than one inch per mile or drawn to a larger scale if required for clarity showing all of the following:

*a.* The locations of an electric utility's generation, franchised transmission lines, distribution lines, and related facilities as of January 1, 1976.

*b.* All state and federal highways and other public roads within the electric utility's service area.

*c.* All section lines and numbers and township and range numbers within the electric utility's service area.

*d.* The corporate boundaries of all cities within the electric utility's service area.

*e.* All lakes and rivers within the electric utility's service area.

*f.* All railroads within the electric utility's service area.

*g.* Any additional information requested by the board.

2. On or before July 1, 1978, and subsequently when deemed by the board to be necessary, the board shall prepare or cause to have prepared a composite map of this state showing the service areas of electric utilities as submitted by the electric utilities. The form and detail of all maps shall be determined by the board.

[C77, 79, 81, § 476.24]

#### **476.25 Assigned service areas electric utilities legislative policy.**

It is declared to be in the public interest to encourage the development of co-ordinated 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. In order to effect that public interest, the board may establish service areas within which specified electric utilities shall provide electric service to customers on an exclusive basis. Except for good cause expressed through formal public statement, the board

shall establish these exclusive service areas on or before July 1, 1979. These exclusive service area boundaries shall be established by the board upon the following basis:

1. The service area boundaries shall be in a line approximately equidistant between the electric distribution lines of adjacent electric utilities as they existed on January 1, 1976, and as shown by the maps filed in accordance with this division. However, those boundaries may be modified by the board to promote the public interest, to preserve existing service areas and electric utilities' rights to serve existing customers, and to prevent unnecessary duplication of facilities, to take account of natural and physical barriers which would make electric service beyond these barriers uneconomic and impractical and those boundaries shall be modified by the board to take account of the contracts between electric utilities which have been approved by the board pursuant to subsection 2 of this section. When an electric utility's exclusive service area is established by the board to include existing customers presently served by the facilities of another electric utility, unless a voluntary exchange of facilities is agreed upon by the electric utilities involved and approved by the board, the board after notice and opportunity for hearing, shall require the purchase of those facilities presently serving these customers at a reasonable price to be determined by the board. The board, on its own motion or at the request of an electric utility or municipal corporation, after notice and opportunity for hearing, may modify the boundaries of an electric utility exclusive service area which it has previously established if this modification, including consideration of the factors noted in this subsection, is found to be in the public interest.

2. Contracts between electric utilities to designate service areas and customers to be served by the electric utilities or for the exchange of customers between electric utilities, when approved by the board, shall be valid and enforceable and shall be incorporated into the appropriate exclusive service areas established pursuant to subsection 1 of this section. The board shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected, will promote the efficient and economical use and development of the electric systems of the contracting electric utilities, and is in the public interest.

3. An electric utility shall not serve or offer to serve electric customers in an exclusive service area assigned to another electric utility, nor shall an electric utility construct facilities to serve electric customers in an exclusive service area assigned to another electric utility. The state, an electric utility, or any other person who is injured or threatened with injury by conduct prohibited by this section may initiate a contested case proceeding with the board under chapter 17A. Upon finding a violation of this section the board shall order appropriate corrective action including discontinuance of the unlawful service to electric customers, removal of the unlawful facility, or other disposition the board deems just and reasonable.

[C77, 79, 81, § 476.25]

84 Acts, ch 1101, § 1

#### **476.26 Effect of incorporation, annexation or consolidation.**

The inclusion by incorporation, consolidation, or annexation of any facilities or service area of an electric utility within the boundaries of any city shall not by such inclusion impair or affect in any respect the rights of the electric utility to continue to provide electric utility service and to extend service to prospective customers in accordance with the provisions of this division.

[C66, 71, 73, 75, § 490A.23; C77, 79, 81, § 476.26]

#### **476.27 Public utility crossing railroad rights-of-way.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. *"Board"* means the Iowa utilities board.

b. *"Crossing"* means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right-of-way by a public utility.

c. *"Direct expenses"* includes, but is not limited to, any or all of the following:

(1) The cost of inspecting and monitoring the crossing site.

(2) Administrative and engineering costs for review of specifications; for entering a crossing on the railroad's books, maps, and property records; and other reasonable administrative and engineering costs incurred as a result of the crossing.

(3) Document and preparation fees associated with a crossing, and any engineering specifications related to the crossing.

(4) Damages assessed in connection with the rights granted to a public utility with respect to a crossing.

d. *"Facility"* means any cable, conduit, wire, pipe, casing pipe, supporting poles and guys, manhole, or other material and equipment, that is used by a public utility to furnish any of the following:

(1) Communications services.

(2) Electricity.

(3) Gas by piped system.

(4) Sanitary and storm sewer service.

(5) Water by piped system.

e. *"Public utility"* means a public utility as defined in section 476.1, except that, for purposes of this section, *"public utility"* also includes all mutual telephone companies, municipally owned facilities, unincorporated villages, waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under chapter 357A, 504, or 504A, cooperative water associations, franchise cable television operators, and persons furnishing electricity to five or fewer persons.

f. *"Railroad"* or *"railroad corporation"* means a railroad corporation as defined in section 321.1, which is the owner, operator, occupant, manager, or agent of a railroad right-of-way or the railroad corporation's successor in interest. *"Railroad"* and *"railroad corporation"* include an interurban railway.

g. *"Railroad right-of-way"* means one or more of the following:

(1) A right-of-way or other interest in real estate that is owned or operated by a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation.

(2) A right-of-way or other interest in real estate that is occupied or managed by or on behalf of a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation, including an abandoned railroad right-of-way that has not otherwise reverted pursuant to chapter 327G.

(3) Another interest in a former railroad right-of-way that has been acquired or is operated by a land management company or similar entity.

*h. "Special circumstances"* means either or both of the following:

(1) The existence of characteristics of a segment of railroad right-of-way or of a proposed utility facility that increase the direct expenses associated with a proposed crossing.

(2) A proposed crossing that involves a significant and imminent likelihood of danger to the public health or safety, or that is a serious threat to the safe operations of the railroad, or to the current use of the railroad right-of-way, necessitating additional terms and conditions associated with the crossing.

2. *Rulemaking and standard crossing fee.* The board, in consultation with the state department of transportation, shall adopt rules pursuant to chapter 17A prescribing the terms and conditions for a crossing. The rules shall provide that any crossing be consistent with the public convenience and necessity and reasonable service to the public. The rules, at a minimum, shall address the following:

*a.* The terms and conditions applicable to a crossing including, but not limited to, the following:

(1) Notification required prior to the commencement of any crossing activity.

(2) A requirement that the railroad and the public utility each maintain and repair the person's own property within the railroad right-of-way, and bear responsibility for each person's own acts and omissions; except that the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

(3) The amount and scope of insurance or self-insurance required to cover risks associated with a crossing.

(4) A procedure to address the payment of costs associated with the relocation of public utility facilities within the railroad right-of-way necessary to accommodate railroad operations.

(5) Terms and conditions for securing the payment of any damages by the public utility before it proceeds with a crossing.

(6) Immediate access to a crossing for repair and maintenance of existing facilities in case of emergency.

(7) Engineering standards for utility facilities crossing railroad rights-of-way.

(8) Provision for expedited crossing, absent a claim of special circumstances, after payment by the public utility of the standard crossing fee, if applicable, and submission of completed engineering specifications to the railroad.

(9) Other terms and conditions necessary to provide for the safe and reasonable use of a railroad right-of-way by a public utility, and consistent with rules adopted by the board, including any complaint procedures adopted by the board to enforce the rules.

*b.* Unless otherwise agreed by the parties and subject to subsection 4, a public utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along the public roads of the state pursuant to chapter 477, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee shall be in lieu of any license or any other fees or charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing. The public utility shall also reimburse the railroad for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

3. *Powers not limited.* *a.* Notwithstanding subsection 2, rules adopted by the board shall not prevent a railroad and a public utility from otherwise negotiating the terms and conditions applicable to a crossing or

the resolution of any disputes relating to such crossing.

*b.* Notwithstanding paragraph "a", neither this subsection nor this section shall impair the authority of a public utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

4. *Special circumstances.* *a.* A railroad or public utility that believes special circumstances exist for a particular crossing may petition the board for relief.

(1) If a petition for relief is filed, the board shall determine whether special circumstances exist that necessitate either a modification of the direct expenses to be paid, or the need for additional terms and conditions.

(2) The board may make any necessary findings of fact and determinations related to the existence of special circumstances, as well as any relief to be granted.

(3) A determination of the board, except for a determination on the issue of damages for the rights granted to a public utility with respect to a crossing, shall be considered final agency action subject to judicial review under chapter 17A.

(4) The board shall assess the costs associated with a petition for relief equitably against the parties.

*b.* A railroad or public utility that claims to be aggrieved by a determination of the board on the issue of damages for the rights granted to a public utility with respect to a crossing may seek judicial review as provided in subsection 5.

5. *Appeals.* *a.* A railroad or public utility that claims to be aggrieved by the board's determination of damages for rights granted to a public utility may appeal the board's determination to the district court in the same manner as provided in section 6B.18 and sections 6B.21 through 6B.23. In any appeal of the determination of damages, the public utility shall be considered the applicant, and the railroad shall be considered the condemnee. References in sections 6B.18 and 6B.21 to "*compensation commission*" mean the board as defined in this section, or appointees of the board.

*b.* An appeal of any determination of the board other than the issues of damages for rights granted to a public utility shall be pursuant to chapter 17A.

6. *Authority to cross emergency relief.* Pending board resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages, and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the board, unless the board, upon application for emergency relief, determines that there is a reasonable likelihood that either of the following conditions exist:

*a.* That the proposed crossing involves a significant and imminent likelihood of danger to the public health or safety.

*b.* That the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

If the board determines that there is a reasonable likelihood that the proposed crossing meets either condition, then the board shall immediately intervene to prevent the crossing until a factual determination is made.

7. *Conflicting provisions.* Notwithstanding any provision of the Code to the contrary, this section shall apply in all crossings of railroad rights-of-way involving a public utility as defined in this section, and shall govern in the event of any conflict with any other provision of law.

2001 Acts, ch 138, §1, 2; 2002 Acts, ch 1119, §62; 2004 Acts, ch 1175, § 393

Applicability to crossings commenced prior to, on, or after July 1, 2001; 2001 Acts, ch 138, §2

Reference to chapter 504A in subsection 1, paragraph e, to be deleted editorially upon repeal of that chapter; 2004 Acts, ch 1049, § 191

**476.28** Reserved.

**476.29 Certificates for providing local telecommunications services.**

1. After September 30, 1992, a utility must have a certificate of public convenience and necessity issued by the board before furnishing land-line local telephone service in this state. No lines or equipment shall be constructed, installed, or operated for the purpose of furnishing the service before a certificate has been issued.
2. Except as provided in subsection 12, a certificate shall be issued by the board, after notice and opportunity for hearing, if the board determines that the service proposed to be rendered will promote the public convenience and necessity, provided that an applicant other than a local exchange carrier, as defined in section 476.96, shall not be denied a certificate if the board finds that the applicant possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest. The board shall make a determination within ninety days of the submission by the applicant of evidence of its technical, financial, and managerial ability, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance.
3. A certificate is transferable, subject to approval of the board pursuant to section 476.20, subsection 1, and for purposes of a rate-regulated local exchange utility shall be treated by the board in the same manner as a reorganization pursuant to sections 476.76 and 476.77.
4. Each certificate shall define the service territory in which land-line local telephone service will be provided. The service territory shall be shown on maps and other documentation as the board may require to be filed with the board. The board shall, by rule, specify the style, size, and kind of map or other documentation, and the information to be shown.
5. Each local exchange utility has an obligation to serve all eligible customers within the utility's service territory, unless explicitly excepted from this requirement by the board.
6. The certificate and tariffs approved by the board are the only authority required for the utility to furnish land- line local telephone service. However, to the extent not inconsistent with this section, the power to regulate the conditions required and manner of use of the highways, streets, rights-of-way, and public grounds remains in the appropriate public authority.
7. The inclusion of any facilities or service territory of a local exchange utility within the boundaries of a city does not impair or affect the rights of the utility to provide land-line local telephone service in the utility's service territory.
8. An agreement between local exchange utilities to designate service territory boundaries and customers to be served by the utilities, or for exchange of customers between utilities, when approved by the board after notice to affected persons and opportunity for hearing, is valid and enforceable and shall be incorporated into the appropriate certificates. The board shall approve an agreement if the board finds the agreement will result in adequate service to all areas and customers affected and is in the public interest.

9. A certificate may, after notice and opportunity for hearing, be revoked by the board for failure of a utility to furnish reasonably adequate telephone service and facilities. The board may also order a revocation affecting less than the entire service territory, or may place appropriate conditions on a utility to ensure reasonably adequate telephone service. Prior to revocation proceedings, the board shall notify the utility of any inadequacies in its service and facilities and allow the utility a reasonable time to eliminate the inadequacies.

10. In the event that eighty percent or more of the subscribers in a community served by a local exchange utility sign a petition indicating they are adversely affected by school reorganization or economic dislocation and prefer to have their local telephone service provided by a different local exchange utility and file that petition with the board, the board, after notice and opportunity for hearing, shall determine whether the certificate held by the local exchange utility shall be revoked or conditioned as provided in subsection 9.

11. The board shall assure that all territory in the state is served by a local exchange utility. If at any time due to certificate revocation proceedings, discontinuance of service proceedings, or any other reason, it appears that a particular territory may not be served by any local exchange utility, the board may, after notice to interested persons and opportunity for hearing, include all or part of the territory in the certificate of another local exchange utility or utilities. In determining the local exchange utility or utilities to be authorized or required to serve, the board shall consider the willingness and ability of the utilities to serve, the location of existing service facilities, the community of interest of the customers involved, and any other factors deemed relevant to the public interest.

12. The board, on or prior to September 30, 1992, shall issue to each local exchange utility in the state, without a contested case proceeding, a nonexclusive certificate to serve the area included within the utility's service territory boundaries as shown by the service territory boundary maps on record with the board on January 1, 1992. The board shall adopt rules pursuant to chapter 17A to implement the issuance of certificates.

*a.* A customer served by a local exchange utility, but outside the service territory of that utility when the utility's certificate is issued, shall continue to be served by that utility for as long as that customer remains eligible to receive and requests service.

*b.* If more than one utility has on file maps indicating service in the same territory, the board shall request the involved utilities to resolve the overlap. If the overlap is not resolved in a reasonable time, the board, after notice to interested persons and opportunity for hearing, shall determine the boundary, taking into consideration the criteria listed in subsection 11.

13. Notwithstanding other provisions of this section, approval by the voters of a city pursuant to section 388.2 of a proposal to establish or acquire a public utility providing communications services is conclusive evidence of the fact that the city has the technical, financial, and managerial ability to provide such service. Following the notice and opportunity for hearing in subsection 2, an applicant shall not be denied a certificate if the board finds the proposed service is consistent with the public interest.

14. This section does not prevent the board from adopting rules requiring or allowing local exchange utilities to provide extended area service or adjacent exchange service.

15. The board shall provide a written report to the general assembly no later than January 20, 2005, describing the current status of local telephone service in this state. The report shall include at a minimum the number of certificates of convenience issued, the number of current providers of local telephone service, and any other information deemed appropriate by the board.

Section repealed effective July 1, 2007; 92 Acts, ch 1058, § 3

**476.30** Reserved.

**476.31 Continuing audit of operation.**

The board shall adopt not later than July 1, 1983, rules and policies to implement a program for the continuous review of operations of rate-regulated public utilities with respect to all matters that affect rates or charges for utility service.

[81 Acts, ch 156, § 1]

**476.32 Review of annual reports.**

The board shall review annual reports submitted by rate-regulated public utilities. The board shall commence rate-review proceedings under this chapter if an annual report indicates that the earnings of the public utility are excessive.

[81 Acts, ch 156, § 2]

**476.33 Rules governing hearings.**

1. The board shall adopt rules pursuant to chapter 17A to provide for the completion of proceedings under section 476.3 within ten months after the date of the filing of a petition under section 476.3, subsection 2, and to provide for the completion of proceedings under section 476.6 within ten months after the date of filing of the new or changed rates, charges, schedules, or regulations under that section. These rules shall include reasonable time limitations for the submission or completion of comments and testimony, and exhibits, briefs, and hearings, and may provide for the granting of additional time upon the request of a party to the proceeding for good cause shown.
2. Additional time granted to a party under subsection 1 shall not extend the amount of time for which a utility is required to file a bond or other undertaking conditioned upon refund under section 476.3, subsection 2.
3. If in a proceeding under section 476.6 additional time is granted to a party under subsection 1, the board may extend the ten-month period during which a utility is prohibited from placing its entire rate increase request into effect under section 476.6, but an extension shall not exceed the aggregate amount of all additional time granted under subsection 1.
4. The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition, to consider verifiable data that exists within nine months after the conclusion of the test year, respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. Parties proposing adjustments that are not verifiable at the commencement of the proceedings shall include projected data related to the adjustments in their initial substantive filing with the board. For purposes of this subsection, a proceeding commences under section 476.6 upon the filing date of new or changed rates, charges, schedules, or regulations. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.
5. *a.* The board shall adopt rules that require the board, in a rate regulatory proceeding under sections 476.3

and 476.6, to consider both of the following for inclusion in rates:

(1) Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.

(2) Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to section 476.53.

*b.* This subsection is repealed effective July 1, 2007. However, any utilities board proceeding that is pending on July 1, 2007, that is being conducted pursuant to section 476.3 or 476.6 shall be completed as if this section had not been repealed. Upon repeal, the board may still consider the adjustments addressed in this subsection, but shall not be required to consider them.

[81 Acts, ch 156, § 3]

83 Acts, ch 127, § 32, 33; 89 Acts, ch 97, § 2; 90 Acts, ch 1168, §52; 2003 Acts, ch 179, §134; 2004 Acts, ch 1006, §2

**476.34 to 476.40** Reserved.

**476.41 Purpose.**

It is the policy of this state to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use.

83 Acts, ch 182, § 2

**476.42 Definitions.**

As used in this division, unless the context otherwise requires:

1. "*Alternate energy production facility*" means any or all of the following:

*a.* A solar, wind turbine, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or woodburning facility.

*b.* Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

*c.* Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

A facility which is a qualifying facility under 18 C.F.R. part 292, subpart B is not precluded from being an alternate energy production facility under this division.

2. "*Electric utility*" means a public utility that furnishes electricity to the public for compensation.

3. "*Next generating plant*" means an electric utility's assumed next coal-fired base load electric generating plant, whether planned or not, based on current technology and undiscounted current cost.

4. "*Small hydro facility*" means any or all of the following:

*a.* A hydroelectric facility at a dam.

*b.* Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

*c.* Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

A facility which is a qualifying facility under 18 C.F.R. part 292, subpart B is not precluded from being a small hydro facility under this division.

83 Acts, ch 182, § 3; 90 Acts, ch 1252, § 3133; 92 Acts, ch 1017, § 1

**476.43 Rates for alternate energy production facilities.**

1. Subject to section 476.44, the board shall require electric utilities to do both of the following under terms and conditions that the board finds are just and economically reasonable for the electric utilities' customers, are nondiscriminatory to alternate energy producers and small hydro producers, and will further the policy stated in section 476.41:

*a.* At least one of the following:

(1) Own alternate energy production facilities or small hydro facilities located in this state.

(2) Enter into long-term contracts to purchase or wheel electricity from alternate energy production facilities or small hydro facilities located in the utility's service area.

*b.* Provide for the availability of supplemental or backup power to alternate energy production facilities or small hydro facilities on a nondiscriminatory basis and at just and reasonable rates.

2. Upon application by the owner or operator of an alternate energy production facility or small hydro facility or any interested party, the board shall establish for the affected public utility just and economically reasonable rates for electricity purchased under subsection 1, paragraph "*a*". The rates shall be established at levels sufficient to stimulate the development of alternate energy production and small hydro facilities in Iowa and to encourage the continuation of existing capacity from those facilities.

3. The board may adopt individual utility or uniform statewide facility rates. The board shall consider the following factors in setting individual or uniform rates:

*a.* The estimated capital cost of the next generating plant, including related transmission facilities, to be placed in service by the electric utility serving the area.

*b.* The term of the contract between the electric utility and the seller.

*c.* A levelized annual carrying charge based upon the term of the contract and determined in a manner consistent with both the methods and the current interest or return requirements associated with the electric utility's new construction program.

*d.* The electric utility's annual energy costs, including current fuel costs, related operation and maintenance costs, and other energy-related costs considered appropriate by the board.

*e.* External factors, including but not limited to, environmental and economic factors.

*f.* Other relevant factors.

*g.* If the board adopts uniform statewide rates, the board shall use representative data in lieu of utility specific information in applying the factors listed in paragraphs "*a*" through "*f*".

4. In the case of a utility that purchases all or substantially all of its electricity requirements, the rates established under this section must be based on the electric utility's current purchased power costs.

5. In lieu of the other procedures provided by this section, an electric utility and an owner or operator of an alternate energy production facility or small hydro facility may enter into a long-term contract in accordance with subsection 1 and may agree to rates for purchase and sale transactions. A contract entered into under this subsection must be filed with the board in the manner provided for tariffs under section 476.4.

6. This section does not require an electric utility to construct additional facilities unless those facilities are paid for by the owner or operator of the affected alternate energy production facility or small hydro facility.

83 Acts, ch 182, § 4, 7; 90 Acts, ch 1252, §3437; 2003 Acts, ch 29, §2, 6

#### **476.44 Exceptions.**

1. The board shall not require an electric utility to purchase or wheel electricity from an alternate energy production facility or small hydro facility unless the facility is owned or operated by an individual, firm, copartnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following:

*a.* Is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from alternate energy production facilities or small hydro facilities.

*b.* Does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

2. An electric utility subject to this division, except a utility that elects rate regulation pursuant to section 476.1A, shall not be required to own or purchase, at any one time, more than its share of one hundred five megawatts of power from alternative energy production facilities or small hydro facilities at the rates established pursuant to section 476.43. The board shall allocate the one hundred five megawatts based upon each utility's percentage of the total Iowa retail peak demand, for the year beginning January 1, 1990, of all utilities subject to this section. If a utility undergoes reorganization as defined in section 476.76, the board shall combine the allocated purchases of power for each utility involved in the reorganization.

Notwithstanding the one hundred five megawatt maximum, the board may increase the amount of power that a utility is required to own or purchase at the rates established pursuant to section 476.43 if the board finds that a utility, including a reorganized utility, exceeds its 1990 Iowa retail peak demand by twenty percent and the additional power the utility is required to purchase will encourage the development of alternate energy production facilities and small hydro facilities. The increase shall not exceed the utility's increase in peak demand multiplied by the ratio of the utility's share of the one hundred five megawatt maximum to its 1990 Iowa retail peak demand.

83 Acts, ch 182, § 5; 90 Acts, ch 1252, § 38; 92 Acts, ch 1163, § 97; 92 Acts, ch 1166, § 1; 2003 Acts, ch 29, §3, 6

#### **476.45 Exemption from excess capacity.**

Capacity of an alternate energy production facility or small hydro facility, that is owned or purchased by an electric utility, shall not be included in a calculation of an electric utility's excess generating capacity for ratemaking purposes.

83 Acts, ch 182, § 6; 2003 Acts, ch 29, §4, 6

#### **476.46 Alternate energy revolving loan program.**

1. The Iowa energy center created under section 266.39C shall establish and administer an alternate energy revolving loan program to encourage the development of alternate energy production facilities and small hydro facilities within the state.

2. *a.* An alternate energy revolving loan fund is created in the office of the treasurer of state to be administered by the Iowa energy center.

*b.* The fund shall include moneys remitted to the fund pursuant to subsection 3 and any other moneys appropriated or otherwise directed to the fund.

*c.* Moneys in the fund shall be used to provide loans for the construction of alternate energy production facilities or small hydro facilities as defined in section 476.42.

*d.* (1) A gas or electric utility that is not required to be rate-regulated shall not be eligible for a loan under this section.

(2) A facility shall be eligible for no more than two hundred fifty thousand dollars in loans outstanding at any time under this program.

*e.* (1) Each loan shall be for a period not to exceed twenty years, shall bear no interest, and shall be repayable to the fund created under this section in installments as determined by the Iowa energy center. The interest rate upon delinquent payments shall accelerate immediately to the current legal usury limit.

(2) Any loan made pursuant to this program shall become due for payment upon sale of the facility for which the loan was made.

(3) Interest on the fund shall be deposited in the fund. A portion of the interest on the fund, not to exceed fifty percent of the total interest accrued, shall be used for promotion and administration of the fund.

*f.* Section 8.33 shall not apply to the moneys in the fund.

3. The board shall direct all gas and electric utilities required to be rate-regulated to remit to the treasurer of state by July 1, 1996, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1995 derived from their intrastate public utility operations, by July 1, 1997, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1996 derived from their intrastate public utility operations and by July 1, 1998, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1997 derived from their intrastate public utility operations. The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10 and the amounts assessed pursuant to section 476.10A. The board shall allow inclusion of these amounts in the budgets approved by the board pursuant to section 476.6, subsection 16, paragraph "c".

96 Acts, ch 1196, §11; 2002 Acts, ch 1109, §4

#### **476.47 Alternate energy purchase programs.**

1. Beginning January 1, 2004, an electric utility, whether or not rate-regulated under this chapter, shall offer an alternate energy purchase program to customers, based on energy produced by alternate energy production facilities in Iowa.
2. The board shall require electric utilities to file plans for alternate energy purchase programs offered pursuant to this section.
  - a. Rate-regulated electric utilities shall file plans for alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa, and shall file tariffs as required by the board by rule.
  - b. Electric utilities that are not rate-regulated shall offer alternate energy purchase programs at rates determined by their governing authority, and shall file tariffs with the board for informational purposes only.
3. The electric utility shall notify consumers of its alternate energy purchase program and any proposed modifications to such program at least sixty days prior to implementation of the program or any modification.
4. For purposes of this section, an electric utility may base its program on energy produced by alternate energy production facilities located outside of Iowa under any of the following circumstances:
  - a. The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.
  - b. The electric utility has a financial interest, as of July 1, 2001, in the alternate energy production facility that is located outside of Iowa, or in an entity that has a financial interest in an alternate energy production facility located outside of Iowa.
  - c. The energy is purchased by an electric utility that is not rate-regulated and that is required to purchase all of its electric power requirements from a single supplier that is physically located outside of Iowa.
5. This section shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.
6. Any consumer-owned utility may apply to the board for a waiver under this section, and the board, for good cause, may grant the waiver.

2001 Acts, 1st Ex, ch 4, §11, 36

**476.48 through 476.50** Reserved.

**476.51 Civil penalty.**

1. A public utility which, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.
2. A public utility which willfully, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one thousand dollars nor more than ten thousand dollars per violation. For the purposes of this section, "*willful*" means knowing and deliberate, with a specific intent to violate.

3. Each violation is a separate offense. In the case of a continuing violation, each day a violation continues, after the time specified for compliance in the written notice by the board, is a separate and distinct offense. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the appropriateness of the penalty in relation to the size of the public utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of a violation, and any other relevant factors.

4. The written notice given by the board to a public utility under this section shall specify an appropriate time for compliance.

5. Civil penalties collected pursuant to this section from utilities providing water, electric, or gas service shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community action agencies of the department of human rights. Civil penalties collected pursuant to this section from utilities providing telecommunications service shall be forwarded to the treasurer of state to be credited to the general fund of the state to be used only for consumer education programs administered by the board. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

83 Acts, ch 127, § 34; 88 Acts, ch 1134, § 92; 91 Acts, ch 260, § 1238; 92 Acts, ch 1084, § 1; 94 Acts, ch 1107, §81; 2003 Acts, ch 126, §4

#### **476.52 Management efficiency.**

It is the policy of this state that a public utility shall operate in an efficient manner. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in an inefficient manner, or is not exercising ordinary, prudent management, or in comparison with other utilities in the state the board determines that the utility is performing in a less beneficial manner than other utilities, the board may reduce the level of profit or adjust the revenue requirement for the utility to the extent the board believes appropriate to provide incentives to the utility to correct its inefficient operation. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in such an extraordinarily efficient manner that tangible financial benefits result to the ratepayer, the board may increase the level of profit or adjust the revenue requirement for the utility. In making its determination under this section, the board may also consider a public utility's pursuit of energy efficiency programs. The board shall adopt rules for determining the level of profit or the revenue requirement adjustment that would be appropriate.

The board shall also adopt rules establishing a methodology for an analysis of a utility's management efficiency.

83 Acts, ch 127, § 35; 89 Acts, ch 297, § 11

#### **476.53 Electric generating and transmission facilities.**

1. It is the intent of the general assembly to attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state.

2. The general assembly's intent with regard to the development of electric power generating and transmission facilities, as provided in subsection 1, shall be implemented in a manner that is cost-effective and compatible with the environmental policies of the state, as expressed in Title XI.

3. For purposes of this section, unless the context otherwise requires, the terms "*cogeneration pilot project facility*", "*energy sales agreement*", "*qualified cogeneration pilot project facility*", and "*utility-owned cogeneration pilot project facility*" mean the same as defined in section 15.269.

4. *a.* The board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the electric power generating facility, alternate energy production facility, cogeneration pilot project facility, or energy sales agreement are included in regulated electric rates whenever a rate-regulated public utility does any of the following:

(1) Files an application pursuant to section 476A.3 to construct in Iowa a baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or an alternate energy production facility as defined in section 476.42.

(2) Leases or owns in Iowa, in whole or in part, a new baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or a new alternate energy production facility as defined in section 476.42.

(3) Enters into an agreement for the purchase of the electric power output of a qualified cogeneration pilot project facility or constructs a utility-owned cogeneration pilot project facility pursuant to section 15.269.

*b.* In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms. Among the principles and mechanisms the board may consider, the board has the authority to approve ratemaking principles proposed by a rate-regulated public utility that provide for reasonable restrictions upon the ability of the public utility to seek a general increase in electric rates under section 476.6 for at least three years after the generating facility begins providing service to Iowa customers.

*c.* In determining the applicable ratemaking principles, the board shall make the following findings:

(1) The rate-regulated public utility has in effect a board-approved energy efficiency plan as required under section 476.6, subsection 16.

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility, lease, or cogeneration pilot project facility is reasonable when compared to other feasible alternative sources of supply. The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility, energy sales agreement, or lease is a reasonable alternative to meet its electric supply needs.

*d.* The applicable ratemaking principles shall be determined in a contested case proceeding, which proceeding may be combined with the proceeding for issuance of a certificate conducted pursuant to chapter 476A.

*e.* The order setting forth the applicable ratemaking principles shall be issued prior to the commencement of construction or lease of the facility, or execution of an energy sales agreement related to the cogeneration pilot project facility.

*f.* Following issuance of the order, the rate-regulated public utility shall have the option of proceeding according to either of the following:

(1) Withdrawing its application for a certificate pursuant to chapter 476A.

(2) Proceeding with the construction or lease of the facility or implementation of an energy sales agreement related to a cogeneration pilot project facility.

g. Notwithstanding any provision of this chapter to the contrary, the ratemaking principles established by the order issued pursuant to paragraph "e" shall be binding with regard to the specific electric power generating facility or cogeneration pilot project facility in any subsequent rate proceeding.

5. The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this section, including but not limited to review of power purchase contracts, review of emission plans and budgets, and review of ratemaking principles proposed for construction or lease of a new generating facility or a cogeneration pilot project facility. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the utilities pursuant to the procedure in section 476.10 and section 475A.6.

6. *a.* A qualified cogeneration pilot project facility may file a petition with the board for a determination of the avoided cost of an electric utility as provided in the federal Public Utility Regulatory Policies Act of 1978 and related federal regulations, if such a determination has not been made within the last twenty-four months or if there is reason to believe the avoided cost has changed.

*b.* The board shall issue its determination of the electric utility's avoided cost within one hundred twenty days after the petition is filed.

*c.* The board, for good cause shown, may extend the deadline for issuing the decision for an additional period not to exceed one hundred twenty days.

*d.* The board shall not issue a decision under this subsection without providing notice and an opportunity for hearing.

*e.* The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this subsection. There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the electric utility pursuant to the procedure in sections 476.10 and 475A.6.

83 Acts, ch 127, § 36, 50; 2001 Acts, 1st Ex, ch 4, §12, 36; 2002 Acts, 2nd Ex, ch 1003, §31, 35; 2003 Acts, ch 29, §5, 6; 2003 Acts, ch 159, §24; 2004 Acts, ch 1101, §67

#### **476.54 Delayed payment charges.**

A public utility shall not apply delayed payment charges on a customer's account if the scheduled payment was made by the customer within twenty days from the date the billing was sent to the customer. Delayed payment charges on a customer's account shall not exceed one and one-half percent per month of the past-due amount.

83 Acts, ch 127, § 37

#### **476.55 Complaint of antitrust activities.**

An application for new or changed rates, charges, schedules or regulations filed under this chapter, or an application for a certificate or an amendment to a certificate submitted under chapter 476A, by an electric transmission line utility or a gas pipeline utility or a subsidiary of either shall not be approved by the board if, upon complaint by an Iowa electric or gas utility, the board finds activities which create or maintain a situation inconsistent with antitrust laws and the policies which underlie them. The board may grant the rate or facility certification request once it determines that those activities which led to the antitrust complaint have been eliminated. However, this subsection does not apply to an application for new or changed rates, charges, schedules or regulations after the expiration of the ten-month limitation and applicable extensions.

83 Acts, ch 127, § 38

#### **476.56 Energy costs provided.**

A gas or electric public utility shall provide, upon the request of a person who states in writing that the person is an owner of real property, or an interested prospective purchaser or renter of the property, which is or has been receiving gas or electric service from the public utility, the annual gas or electric energy costs for the property.

88 Acts, ch 1174, §3

#### **476.57 Limitations on use of ADAD equipment penalty.**

1. *Definition.* As used in this section, "ADAD equipment" means automatic dialing-announcing device equipment which is a device or system of devices used, either alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers without the use of a live operator to disseminate prerecorded messages to the numbers selected or dialed.

2. *Prohibition.*

a. Except as provided in paragraph "b", a person shall not use, employ, or direct another person to use, or contract for the use of ADAD equipment.

b. Except for ADAD equipment which randomly or sequentially selects the telephone numbers for calling, the prohibition in paragraph "a" does not apply to any of the following:

(1) Calls made with ADAD equipment by a nonprofit organization or by an individual using the calls other than for commercial profit-making purposes or fund-raising, if the calls do not involve the advertisement or offering for sale, lease, or rental of goods, services, or property.

(2) Calls made with ADAD equipment relating to payment for, service of, or warranty coverage of previously ordered or purchased goods or services or to persons or organizations with a prior business relationship with the persons or organizations using the calls.

(3) Calls made with ADAD equipment relating to the collection of lawful debts.

(4) Calls made with ADAD equipment to members or employees of the organization making the calls.

(5) Calls made with ADAD equipment which use an initial prerecorded message of a duration no greater than seven seconds prior to a live operator intercept, or calls which involve an initial message from a live operator.

3. *Termination.* Calls made with ADAD equipment must terminate the connection with any call within ten seconds after the person receiving the call acts to disconnect the call.

4. *Penalty.* A violation of this section is a serious misdemeanor.

91 Acts, ch 141, §1

**476.58 through 476.60** Reserved.

**476.61 Energy conservation improvements pilot programs.** Repealed by 86 Acts, ch 1134, § 1. For termination procedures see 86 Acts, ch 1134, § 2.

**476.62 Energy efficient lighting required.**

All public utility-owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced when worn-out exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the board.

89 Acts, ch 297, § 12

**476.63 Energy efficiency programs.**

The division shall consult with the department of natural resources in the development and implementation of public utility energy efficiency programs.

89 Acts, ch 297, § 13; 90 Acts, ch 1252, §39

**476.64** Reserved.

**476.65 Energy audits.** Repealed by 96 Acts, ch 1196, § 14.

**476.66 Customer contribution fund.**

1. The utilities board shall adopt rules which shall require each electric and gas public utility to establish a fund whose purposes shall include the receiving of contributions to assist the utility's low-income customers with weatherization measures to improve energy efficiency related to winter heating and summer cooling, and to supplement the energy assistance received under the federal low-income home energy assistance program for the payment of winter heating electric or gas utility bills.

2. The rules shall require each utility to periodically notify its customers of the availability and purpose of the fund and to provide them with forms on which they can authorize the utility to bill their contribution to the fund on a monthly basis.

3. The rules shall permit the fund to accept matching funds from persons or organizations who wish to provide assistance for customers of the utility.

4. The utility may be reimbursed by the fund for the administrative costs of the billings, disbursements, notices to customers, and financial recordkeeping. However, such reimbursement shall not exceed five percent of the total revenues collected.

5. The utility shall establish a board or committee to determine the appropriate distribution of the funds. The board or committee shall include representatives from community or regional organizations which are active in assisting citizens with payment of their winter heating bills.

6. The rules established by the utilities board shall require an annual report to be filed for each fund. The utilities board shall compile an annual statewide report of the fund results. The division of community action

agencies of the department of human rights shall prepare an annual report of the unmet need for energy assistance and weatherization. Both reports shall be submitted to the appropriations committees of the general assembly on the first day of the following session.

7. Existing programs to receive customer contributions established by public utilities shall be construed to meet the requirements of this section. Such plans shall be subject to review by the utilities board.

88 Acts, ch 1175, § 3; 92 Acts, ch 1155, § 1; 2002 Acts, ch 1119, §177

**476.67 through 476.70** Reserved.

**476.71 Purpose.**

It is the intent of the general assembly that a public utility should not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate engaged in any business other than that of utility business unless the affiliate provides goods or services to the public utility. The costs that are included should be reasonably necessary and appropriate for utility business. It is also the intent of the general assembly that a public utility should only provide nonutility services in a manner that minimizes the possibility of cross-subsidization or unfair competitive advantage.

89 Acts, ch 103, § 2

**476.72 Definitions.**

As used in this division, unless the context otherwise requires:

1. "*Affiliate*" means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.
2. "*Control*" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.
3. "*Nonutility service*" includes the sale, lease, or other conveyance of commercial and residential gas or electric appliances, interior lighting systems and fixtures, or heating, ventilating, or air conditioning systems and component parts or the servicing, repair, or maintenance of such equipment.
4. "*Public utility*" includes only gas or electric rate- regulated public utilities and rate-regulated telephone utilities providing local exchange telecommunication service.
5. "*Utility business*" means the generation or transmission of electricity or furnishing of gas or furnishing electricity or furnishing rate-regulated communications services to the public for compensation.

89 Acts, ch 103, § 3

**476.73 Affiliate records.**

1. *Access to records.* Every public utility and affiliate through the public utility shall provide the board with access to books, records, accounts, documents, and other data and information which the board finds necessary to effectively implement and effectuate the provisions of this chapter.
2. *Separate records.* The board may require affiliates of a public utility to keep separate records and the board may provide for the examination and inspection of the books, accounts, papers, and records, as may be necessary to enforce this chapter.

3. *Allocation permitted.* The board may inquire as to and prescribe, for ratemaking purposes, the allocation of capitalization, earnings, debts, and expenses related to ownership, operation, or management of affiliates.

89 Acts, ch 103, § 4

**476.74 Affiliate information required to be filed.**

1. *Goods and services.* All contracts or arrangements providing for the furnishing or receiving of goods and services including but not limited to the furnishing or receiving of management, supervisory, construction, engineering, accounting, legal, financial, marketing, data processing, or similar services made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

2. *Sales, purchases, and leases.* All contracts or arrangements for the purchase, sale, lease, or exchange of any property, right, or thing made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

3. *Loans.* All contracts or arrangements providing for any loan of money or an extension or renewal of any loan of money or any similar transaction made or entered into on or after July 1, 1989, between a public utility and any affiliate, whether as guarantor, endorser, surety, or otherwise, shall be filed annually with the board.

4. *Verified copies required.* Every public utility shall file with the board a verified copy of the contract or arrangement referred to in this section, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements or a verified summary of the unwritten contracts or arrangements, whether written or unwritten, entered into prior to July 1, 1989, and in force and effect at that time. Any contract or agreement determined by the board to be a confidential record pursuant to section 22.7 shall be returned to the public utility filing the confidential record within sixty days after the contract or agreement is filed.

5. *Exemption.* The provisions of this section requiring filing of contracts or agreements with the board shall not apply to transactions with an affiliate where the amount of consideration involved is not in excess of fifty thousand dollars or five percent of the capital equity of the utility, whichever is smaller. However, regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. In any proceeding involving the rates, charges or practices of the public utility, the board may exclude from the accounts of the public utility any unreasonable payment or compensation made pursuant to any contract or arrangement which is not required to be filed under this subsection.

6. *Continuing jurisdiction.* The board shall have the same jurisdiction over modifications or amendments of contracts or arrangements in this section as it has over the original contracts or arrangements. Any modification or amendment of contracts or arrangements shall also be filed annually with the board.

7. *Sanction.* For ratemaking purposes, the board may exclude the payment or compensation to an affiliate or adjust the revenue received from an affiliate associated with any contract or arrangement required to be filed with the board if the contract or arrangement is not so filed.

8. *Alternative information.* The board shall consult with other state and federal regulatory agencies for the purpose of eliminating duplicate or conflicting filing requirements and may adopt rules which provide that comparable information required to be filed with other state or federal regulatory agencies may be accepted by the board in lieu of information required by this section.

9. *Reasonableness required.* In any proceeding, whether upon the board's own motion or upon application or complaint involving the rates, charges, or practices of any public utility, the board, for ratemaking purposes

may exclude from the accounts of the public utility or adjust any payment or compensation related to any transaction with an affiliate for any services rendered or for any property or service furnished or received, as described in this section, under contracts or arrangements with an affiliate unless and upon inquiry the public utility shall establish the reasonableness of the payment or compensation.

10. *Exemption by rule or waiver.* The board may adopt rules which exempt any public utility or class of public utility or class of contracts or arrangements from this section or waive the requirements of this section if the board finds that the exemption or waiver is in the public interest.

89 Acts, ch 103, § 5

#### **476.75 Audits required.**

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the transactions between a public utility and its affiliates. An affiliate transaction audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, § 6

#### **476.76 Reorganization defined.**

For purposes of this division unless the context otherwise requires, "*reorganization*" means either of the following:

1. The acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets.
2. The purchase or other acquisition or sale or other disposition of the controlling capital stock of any public utility, either directly or indirectly.

89 Acts, ch 103, § 7

#### **476.77 Time and standards for review.**

1. A reorganization shall not take place if the board disapproves. Prior to reorganization, the applicant shall file with the board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest.
2. A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within ninety days after its filing. The board, for good cause shown, may extend the deadline for acting on an application for an additional period not to exceed ninety days. However, the board shall not disapprove a proposal for reorganization without providing for notice and opportunity for hearing. The notice of hearing shall be provided no later than fifty days after the proposal for reorganization has been filed.
3. In its review of a proposal for reorganization, the board may consider all of the following:
  - a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.
  - b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a

reasonable capital structure, is impaired.

c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.

d. Whether ratepayers are detrimentally affected.

e. Whether the public interest is detrimentally affected.

4. The board may adopt rules which exempt a public utility or class of public utility or class of reorganization from this section if the board finds that with respect to the public utility or class of public utility or class of reorganization review is not necessary in the public interest. The board may adopt rules necessary to protect the interest of the customers of the exempt public utility. These rules may include, but are not limited to, notification of a proposed sale or transfer of assets or stock. The board may waive the requirements of this section, if the board finds that board review is not necessary in the public interest.

89 Acts, ch 103, § 8; 91 Acts, ch 68, §1; 98 Acts, ch 1097, §1, 2

#### **476.78 Cross-subsidization prohibited.**

A rate-regulated gas or electric public utility shall not directly or indirectly include any costs or expenses attributable to providing nonutility service in regulated rates or charges. Except for contracts existing as of July 1, 1996, a rate-regulated gas or electric public utility or its affiliates shall not use vehicles, service tools and instruments, or employees, the costs, salaries, or benefits of which are recoverable in the regulated rates for electric service or gas service to install, service, or repair residential or commercial gas or electric heating, ventilating, or air conditioning systems, or interior lighting systems and fixtures; or to sell at retail heating, ventilating, air conditioning, or interior lighting equipment. For the purpose of this section, "*commercial*" means a place of business primarily used for the storage or sale, at wholesale or retail, of goods, wares, services, or merchandise. Nothing in this section shall be construed to prohibit a rate-regulated gas or electric public utility from using its utility vehicles, service tools and instruments, and employees to market systems, services, and equipment, to light pilots, or to eliminate a customer emergency or threat to public safety.

89 Acts, ch 103, § 9; 96 Acts, ch 1196, § 12

#### **476.79 Provision of nonutility service.**

1. A rate-regulated gas or electric public utility providing any nonutility service to its customers shall keep and render to the board separate records of the nonutility service. The board may provide for the examination and inspection of the books, accounts, papers, and records of the nonutility service, as may be necessary, to enforce any provisions of this chapter.

2. The board shall adopt rules which specify the manner and form of the accounts relating to providing nonutility services which the rate-regulated gas or electric utility shall maintain.

89 Acts, ch 103, § 10

#### **476.80 Additional requirements.**

A rate-regulated gas or electric public utility which engages in a systematic marketing effort as defined by the board, other than on an incidental or casual basis, to promote the availability of nonutility service from the public utility shall make available at reasonable compensation on a nondiscriminatory basis to all persons engaged primarily in providing the same competitive nonutility services in that area all of the following services to the same extent utilized by the public utility in connection with its nonutility services:

1. Access to and use of the public utility's customer lists.
2. Access to and use of the public utility's billing and collection system.
3. Access to and use of the public utility's mailing system.

89 Acts, ch 103, § 11

#### **476.81 Audit required.**

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the nonutility services provided by a rate-regulated gas or electric public utility subject to the provisions of section 476.80. A nonutility service audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, § 12

#### **476.82 Exemption energy efficiency.**

Notwithstanding any language to the contrary, nothing in this division shall prohibit a public utility from participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute. A public utility participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute shall not be subject to the provisions of sections 476.80 and 476.81 for those energy efficiency projects or programs.

89 Acts, ch 103, § 13

#### **476.83 Complaints.**

Any person may file a written complaint with the board requesting that the board determine compliance by a rate-regulated gas or electric public utility with the provisions of section 476.78, 476.79, or 476.80, or any validly adopted rules to implement these sections. Upon the filing of a complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed, unless additional time is requested by the complainant.

89 Acts, ch 103, § 14; 96 Acts, ch 1196, § 13

#### **476.84 and 476.85 Reserved.**

#### **476.86 Definitions.**

As used in this section and section 476.87, unless the context otherwise requires:

1. "*Aggregator*" means a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.
2. "*Competitive natural gas provider*" means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa. "*Competitive natural gas provider*" includes an affiliate

of an Iowa gas utility.

"Competitive natural gas provider" does not include the following:

- a. A public utility which is subject to rate regulation under this chapter.
- b. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in section 437A.3, subsection 22, paragraph "a", subparagraph (1), in which the municipally owned utility is located.

99 Acts, ch 20, §2, 6; 99 Acts, ch 208, §57, 74

#### **476.87 Certification of competitive natural gas providers.**

1. The board shall certify all competitive natural gas providers and aggregators providing natural gas services in this state. In an application for certification, a competitive natural gas provider or aggregator must reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance. The board shall adopt rules to establish specific criteria for certification. The board shall make a determination on an application for certification within ninety days of its submission, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days.
2. The board may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.
3. The board shall allocate the costs and expenses reasonably attributable to certification and dispute resolution in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and the expenses of certification and dispute resolution shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

99 Acts, ch 20, §3, 6

**476.88 through 476.90** Reserved.

#### **476.91 Alternative operator services.**

1. *Definitions.* As used in this section, unless the context otherwise requires:
  - a. "*Alternative operator services company*" means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. The definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.
  - b. "*Contracting entity*" means an entity providing telephones other than ordinary residence or business telephones for use by end-user customers which has contracted with an alternative operator services company to provide telecommunications services to those telephones.
  - c. "*End-user customer*" means a person who places a local or toll call.

*d. "Other than ordinary residence or business telephones"* means telephones other than the residence or business telephones of the customary users of the telephones, including but not limited to pay telephones and telephones in motel, hotel, hospital, and college dormitory rooms.

2. *Jurisdiction.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, all intrastate telecommunications services provided by alternative operator services companies to end-user customers, using other than ordinary residence or business telephones, are subject to the jurisdiction of the board and shall be rendered pursuant to tariffs approved by the board. Alternative operator services companies shall be subject to all requirements and sanctions provided in this chapter. Contracting entities shall be subject to the requirements of any board regulations concerning telecommunications services provided by alternative operator services companies.

3. *Requirements.* The board shall adopt and enforce requirements for the provision of services by alternative operator services companies and contracting entities.

4. *Billing by local exchange utilities.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, a regulated local exchange utility shall not perform billing and collection functions relating to regulated telecommunications services provided by an alternative operator services company, unless the alternative operator services company has filed a statement with the local exchange utility signed by a corporate officer, or other authorized person having personal knowledge, that all regulated telecommunications services to be billed shall be rendered pursuant to tariffs approved by the board.

89 Acts, ch 95, § 1

**476.92 through 476.94** Reserved.

**476.95 Findings statement of policy.**

The general assembly finds all of the following:

1. Communications services should be available throughout the state at just, reasonable, and affordable rates from a variety of providers.
2. In rendering decisions with respect to regulation of telecommunications companies, the board shall consider the effects of its decisions on competition in telecommunications markets and, to the extent reasonable and lawful, shall act to further the development of competition in those markets.
3. In order to encourage competition for all telecommunications services, the board should address issues relating to the movement of prices toward cost and the removal of subsidies in the existing price structure of the incumbent local exchange carrier.
4. Regulatory flexibility is appropriate when competition provides customers with competitive choices in the variety, quality, and pricing of communications services, and when consistent with consumer protection and other relevant public interests.
5. The board should respond with speed and flexibility to changes in the communications industry.
6. Economic development can be fostered by the existence of advanced communications networks.

95 Acts, ch 199, §6

**476.96 Definitions.**

As used in section 476.95, this section, and sections 476.97 through 476.102, unless the context otherwise requires:

1. *"Basic communications service"* includes at a minimum, basic local telephone service, switched access, 911 and E-911 services, and dual party relay service. The board is authorized to classify by rule at any time, any other two-way switched communications services as basic communications services consistent with community expectations and the public interest.

2. *"Basic local telephone service"* means the provision of dial tone access and usage, for the transmission of two-way switched communications within a local exchange area, including, but not limited to, the following:

a. Residence service and business services, including flat rate or local measured service, private branch exchange trunks, trunk type hunting services, direct inward dialing, and the network access portion of central office switched exchange service.

b. Extended area service.

c. Touch tone service when provided separately.

d. Call tracing.

e. Calling number blocking on either a per call or a per line basis.

f. Local exchange white pages directories.

g. Installation and repair of local network access.

h. Local operator services, excluding directory assistance.

i. Toll service blocking and 1-900 and 1-976 access blocking.

3. *"Competitive local exchange service provider"* means any person, including a municipal utility, that provides local exchange services, other than a local exchange carrier or a nonrate-regulated wireline provider of local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

4. *"Interim number portability"* means one or more mechanisms by which a local exchange customer at a particular location may change the customer's local exchange services provider without any change in the local exchange customer's telephone number, while experiencing as little loss of functionality as is feasible using available technology.

5. *"Local exchange carrier"* means any person that was the incumbent and historical rate-regulated wireline provider of local exchange services or any successor to such person that provides local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

6. *"Nonbasic communications services"* means all communications services subject to the board's jurisdiction which are not deemed either by statute or by rule to be basic communications services, including any service offered by the local exchange carrier for the first time after July 1, 1995. A service is not considered new if it constitutes the bundling, unbundling, or repricing of an already existing service. Consistent with community expectations and the public interest, the board may reclassify by rule as nonbasic those two-way switched communications services previously classified by rule as basic.

7. *"Provider number portability"* means the capability of a local exchange customer to change the customer's local exchange services provider at the customer's same location without any change in the local exchange customer's telephone number, while preserving the full range of functionality that the customer currently experiences. *"Provider number portability"* includes the equal availability of information concerning the local exchange provider serving the number to all carriers, and the ability to deliver traffic directly to that provider without having first to route traffic to the local exchange carrier or otherwise use the services, facilities, or capabilities of the local exchange carrier to complete the call, and without the dialing of additional digits or access codes.

95 Acts, ch 199, §7; 97 Acts, ch 81, §4, 6

#### **476.97 Price regulation.**

1. Notwithstanding contrary provisions of this chapter relating to rate regulation, the board may approve a plan for price regulation submitted by a rate-regulated local exchange carrier. The plan for price regulation is not effective until the approval by the board of tariffs implementing the unbundling of essential facilities pursuant to section 476.101, subsection 4, except for a local exchange carrier with less than seventy-five thousand access lines whose plan for price regulation will be effective concurrent with the approval of its plan. The board may approve a plan for price regulation prior to the adoption of rules related to the unbundling of essential facilities or concurrent with a rate proceeding under section 476.3, 476.6, or 476.7. During the term of the plan, the board shall regulate the prices of the local exchange carrier's basic and nonbasic communications services pursuant to the requirements of the price regulation plan approved by the board. The local exchange carrier shall not be subject to rate of return regulation during the term of the plan.

2. The board, after notice and opportunity for hearing, may approve, modify, or reject the plan. The board shall approve, modify, or reject the plan by no later than ninety days after the date the plan is filed. The local exchange carrier shall have ten days to accept or reject any board modifications to its plan. If the local exchange carrier rejects a modification to its plan, the board shall reject the plan without prejudice to the local exchange carrier to submit another plan.

3. A price regulation plan, at a minimum, shall include provisions, consistent with the provisions of this section and any rules adopted by the board, for the following:

a. (1) Establishing and changing prices, terms, and conditions for basic communications services. The initial plan for price regulation must include a proposal, which the board shall approve, for reducing the local exchange carrier's average intrastate access service rates to the local exchange carrier's average interstate access service rates in effect as of the last day of the calendar year immediately preceding the date of filing of the plan, as follows:

(a) A local exchange carrier with five hundred thousand or more access lines in this state shall reduce its average intrastate access service rates by at least one hundred percent of the difference between average intrastate access service rates and average interstate access service rates as of the date that the plan becomes effective.

(b) A local exchange carrier with fewer than five hundred thousand but seventy-five thousand or more access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates in increments of at least twenty-five percent, with the initial reduction to take effect on approval of the plan and equal annual reductions on each anniversary of the approval during the first three years that its plan is in effect.

(c) A local exchange carrier with fewer than seventy-five thousand access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates with equal annual reductions during a period beginning no more than two years and ending no more than five years from the

plan's inception.

(2) The board, during the term of the plan for a local exchange carrier with five hundred thousand or more access lines in this state, may consider further reductions toward economic costs in the local exchange carrier's average intrastate access service rates. The board may consider offsetting such reductions by an explicit subsidy replacement to the extent that such offsets are competitively neutral. In determining economic costs of access service the board shall consider all relevant costs of the service including shared and common costs of the local exchange carrier.

(3) This section shall not be construed to do either of the following:

(a) Prohibit an additional decrease in a carrier's average intrastate access service rate during the term of the plan.

(b) Permit any increase in a carrier's average intrastate access service rates during the term of the plan.

(4) The plan shall also provide that the initial prices for basic communications services shall be three percent less than the rates approved and in effect at the time the local exchange carrier files its plan. A local exchange carrier which elects to reduce its rates by three percent shall not, at a later time, increase its rates for basic communications services as a result of the carrier's compliance with the board's rules relating to unbundling. In lieu of the three percent reduction, and prior to the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier may request and the board may establish a regulated revenue requirement in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995. After the determination of the local exchange carrier's regulated revenue requirement pursuant to the rate proceeding, the local exchange carrier shall not immediately implement rates designed to recover that regulated revenue requirement. Following the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier shall commence a tariff proceeding for the approval of tariffs implementing such unbundling. The board has six months to complete this tariff proceeding and determine the local exchange carrier's final unbundled rates. The local exchange carrier shall carry forward the regulated revenue requirement determined by the board pursuant to the rate proceeding and design rates that comply with the board's rules relating to unbundling that recover the regulated revenue requirement, and that implement the board's approved rate design established in the tariff proceeding.

In lieu of taking the three percent reduction, a local exchange carrier that submits a plan for price regulation after the board adopts rules relating to unbundling may file a rate proceeding under section 476.3 or 476.6 and the board may approve rates designed to comply with those rules which allow the carrier to recover the established regulated revenue requirement and that implement the board's approved rate design established in the tariff proceeding.

(5) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation. Initially, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure. The board by rule may adopt a more current measure of inflation. Any plan in effect as of July 1, 2003, that contains a productivity factor shall strike the productivity factor on a prospective basis.

(6) The plan may provide that price increases for basic communications services which are permitted under this section may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this section shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price

decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier.

*b.* Establishing and changing prices, terms, and conditions for nonbasic communications services.

*c.* Reporting new service offerings to the board.

*d.* Reflecting in rates any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier.

*e.* Providing notice to customers, the board, and the consumer advocate of changes in prices, terms, or conditions for basic and nonbasic communications services.

4. The board shall consider the extent to which a proposed plan complies with the requirements of subsection 3 and achieves the following:

*a.* Just, nondiscriminatory, and reasonable rates.

*b.* High quality, universally available communications services.

*c.* Encouragement of investment in communications infrastructure, efficiency improvements, and technological innovation.

*d.* The introduction of new communications products and services from a variety of sources.

*e.* Regulatory efficiency including reduction of regulatory costs and delays. A plan shall not provide for waiver of, release from, or delay in implementing the provisions of this section, section 476.101 or 476.102 or any rules adopted by the board pursuant to those sections.

5. Notwithstanding an approved plan for price regulation, the board shall continue to have regulatory authority over the following:

*a.* The level, extent, and timing of the unbundling of essential facilities offered by a local exchange carrier.

*b.* Ensuring against cross-subsidization between nonbasic communications services and basic communications services.

6. Any person, including the consumer advocate, a body politic, or the board on its own motion, may file a written complaint pursuant to section 476.3, subsection 1, regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan.

7. The consumer advocate may represent consumers before the board regarding any rule, order, or proceeding pertaining to price regulation. The consumer advocate may act as attorney for and represent consumers generally before any state or federal court concerning a board rule, order, or proceeding pertaining to price regulation.

8. In implementing price regulation, the board shall consider competitively neutral methods to assist lower-income Iowans to secure and retain telephone services.

9. The board shall determine the duration of any plan. The board shall review a local exchange carrier's operation under its plan, with notice and an opportunity for hearing, within four years of the initiation of the plan and prior to the termination of the plan. The local exchange carrier, consumer advocate, or any person

may propose, and the board may approve, any reasonable modifications to a local exchange carrier's plan as a result of the review, except that such modifications shall not require a reduction in the rates for any basic communications service.

10. The board, in determining whether to file a written complaint pursuant to subsection 6 or prior to reviewing a local exchange carrier's operation pursuant to subsection 9, may request that such carrier provide any information which the board deems necessary to make such determination or conduct such review. The carrier shall provide the requested information upon receipt of the request from the board.

11. *a.* Notwithstanding subsections 1 through 10, a local exchange carrier with fewer than five hundred thousand access lines in this state shall have the option to be regulated pursuant to subsections 1 through 10 or pursuant to this subsection. A local exchange carrier which elects to become price regulated under this subsection shall also be subject to subsections 5 through 8 and subsection 10 in the same manner as a local exchange carrier which operates under an approved plan of price regulation submitted pursuant to subsection 1.

*b.* A local exchange carrier which elects to become price regulated under this subsection shall give written notice to the board of such election not less than thirty days prior to the date such regulation is to commence.

*c.* Upon election of a local exchange carrier to become price-regulated under this subsection, the carrier shall reduce its rates for basic local telephone service an average of three percent. In lieu of the three percent reduction, the local exchange carrier may establish its rates for basic local telephone service in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995.

*d.* Initial prices for basic communications services, other than basic local telephone service, shall be set at the rates in effect as of the first of July prior to the date such regulation is to commence.

*e.* (1) A price-regulated local exchange carrier shall not increase its rates for basic communications services for a period of twelve months after electing to become price regulated. To the extent necessary, rates for basic services may be increased to carry out the purpose of any rules that may be adopted by the board relating to the terms and conditions of unbundled services and interconnection. A price-regulated local exchange carrier may increase its rates for basic communications services following the initial twelve-month period to the extent that the change in its aggregate revenue weighted prices does not exceed the most recent annual change in the gross domestic product price index, as published by the federal government. If application of that formula achieves a negative result, prices shall be reduced so that the cumulative price change for basic services, including prior price reductions in these services, achieves the negative result. The board by rule may adopt different measures of inflation if they are found to be more reflective of the individual price-regulated carriers.

(2) Price increases for basic communications services which are permitted under this subsection may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this subsection shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier. A rate change pursuant to this subsection may take effect thirty days after the notification of the board and consumers.

(3) A price-regulated local exchange carrier shall not increase its aggregate revenue weighted prices for nonbasic communications services more than six percent in any twelve-month period.

(4) A price-regulated local exchange carrier may reduce the price for any basic communications service, to an

amount not less than the total service long-run incremental cost for such service on one day's notice filed with the board. For purposes of this subsection, "*total service long-run incremental costs*" means the difference between the company's total cost and the total cost of the company less the applicable service, feature, or function.

(5) A price-regulated local exchange carrier may offer new service alternatives for any basic communications services on thirty days prior notice to the board, provided that the preexisting basic communications service rate structure continues to be offered to customers. New telecommunications services shall be considered nonbasic communications services as defined in section 476.96, subsection 6.

(6) A price-regulated local exchange carrier must reduce the average intrastate access service rates to the carrier's average interstate access service rates. Such carrier shall reduce the average intrastate access service rates by at least twenty-five percent of the difference of such rates within ninety days of the election to be price-regulated and twenty-five percent each of the next three years.

*f.* A local exchange carrier shall notify customers of a rate change under this subsection at least thirty days prior to the effective date of the rate change.

*g.* A local exchange carrier which elects to become price regulated under this subsection shall also be subject to the following:

(1) The local exchange carrier shall not be subject to rate-of-return regulation while operating under price regulation.

(2) All regulated services shall be provided pursuant to board-approved tariffs.

(3) All new regulated service offerings shall be reported to the board.

(4) Rates may be adjusted by the board to reflect any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier, including, but not limited to, the effects of local competition. The board shall have one hundred eighty days to consider rate changes proposed under this subparagraph, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days.

*h.* The board may review a local exchange carrier's operation under this subsection, with notice and an opportunity for hearing, after four years of the carrier's election to be price-regulated. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to the price regulation requirements in this subsection as a result of the specific carrier review, with the following limitations:

(1) Such modifications shall not require a reduction in the rates for any basic communications service or a return to rate-base, rate-of-return regulation.

(2) Such proposals for modifications under this paragraph "*h*" are limited to no more than one every three years.

The board shall approve, or approve subject to modification, a proposal for modification within one hundred eighty days of filing, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days. Reasonable modifications may include increases without offsetting decreases in any rate for basic and nonbasic communications service of the carrier. In reviewing the carrier's proposal, the board shall consider, but not be limited to, potential rate consolidations, the impact of competition or other external factors since election of price regulation, the impact of the proposal on the carrier's ability to attract capital, and the impact of the proposal on the ability of the carrier to deploy advanced telecommunications services.

*i.* This subsection shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation.

*j.* Upon the request of a local exchange carrier, the board shall, when required by this subsection, grant the carrier temporary authority to place in effect seventy-five percent, or such lesser amount as the carrier may request, of the requested increases in rates, charges, schedules, or regulations by filing with the board a bond conditioned upon the refund in a manner to be prescribed by the board of any amounts collected from any customer class in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. The board shall approve a request for temporary authority within thirty days after the date of filing of the request. The decision shall be effective immediately.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is one percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

*k.* The board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and consumer advocate deem necessary to review a local exchange carrier's operations, proposal for modifications, rate change proposal, or proposed changes in aggregate revenue weighted prices pursuant to this subsection. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this subsection. The costs of the additional staff and services shall be assessed to the local exchange carrier pursuant to the procedures in sections 475A.6 and 476.10.

12. *a.* The Iowa broadband initiative is created to provide access to advanced telecommunications services to all customers in all exchanges served by rate-regulated local exchange carriers where advanced telecommunications services are not already available at affordable rates, to the extent consistent with technological limitations and the public interest as determined by the board. The general assembly specifically finds that regulatory flexibility is appropriate when fostering economic development through the increased availability of advanced telecommunications services.

*b.* For purposes of this section, "*advanced telecommunications services*" is defined as infrastructure capable of delivering a data transmission speed of at least two hundred kilobits per second in each direction.

*c.* Any rate-regulated local exchange carrier may implement a single increase in monthly rates for residential or business dial tone access service lines by an amount not to exceed two dollars per month. The increase shall be included in the customer's bill as an unidentified part of the overall rate for service. The revenue from this increase shall be used to provide advanced telecommunications services in each of the carrier's local exchange central office wire centers where advanced telecommunications services are not currently available at affordable rates in all or a substantial part of the exchange, subject to the requirements in subparagraphs (1) through (7). In addition, any increase or decrease required by an approved price regulation plan that, as of July 1, 2003, has been deferred pursuant to subsection 3, paragraph "a", subparagraph (6), shall not be implemented and the amount of any deferral shall also be used to provide advanced telecommunications services, subject to the following requirements:

(1) Any carrier electing to participate in the Iowa broadband initiative shall file for the board's review and approval a plan for using the revenue resulting from the rate increase. In reviewing the plan, the board shall consider investments and expenditures by the carrier that will best serve the public interest as described in this subsection, including upgrading the existing telecommunications infrastructure to permit improved data

services for customers who cannot be offered advanced telecommunications services because of their geographical location. The board shall adopt rules to implement its review process, including rules that specify the initial plan filing requirements, further define the public interest, and identify some of the factors the board will consider in reviewing plans.

(2) The carrier shall use the revenue resulting from the rate increase to implement its approved plan. Whenever the board is of the opinion that a carrier is not complying with its approved plan, the board may commence an action in the district court for any county in which such violation is alleged to have occurred to have such violation stopped and prevented by injunction, mandamus, or other appropriate remedy. The board may also, after notice and opportunity for hearing, require that the carrier refund any revenue resulting from the rate increase that has not been used to implement its approved plan. The board may also enforce the approved plan with civil penalties, pursuant to section 476.51.

(3) The carrier shall file annual reports with the board detailing its progress toward completion of its approved plan.

(4) The carrier, the board, or any other interested person may propose modifications to a carrier's plan at any time.

(5) By choosing to participate in the Iowa broadband initiative, the participating carrier agrees to make available to other carriers, on both a wholesale and an unbundled basis, the services and facilities that result from implementation of the participating carrier's plan. The wholesale rates and unbundled rates shall be set by the board, which shall consider, among other factors, the extent to which the service or facility was financed by the revenues generated by the rate increase allowed under this paragraph "c".

(6) Upon completion of its initial Iowa broadband initiative plan, a carrier shall do one or more of the following:

(a) File a plan for board review and approval for continued use of the revenue resulting from the rate increase for further deployment of advanced services.

(b) File a rate of return rate proceeding pursuant to section 476.6 to determine new rates.

(c) File proposed tariffs for board review and approval to reduce the monthly rates that were increased under this subsection by an amount equal to the increase.

(7) A carrier choosing to participate in the Iowa broadband initiative shall also apply a credit, in an amount equal to the amount of the residential service increase, to the monthly local exchange service rate for qualified applicants for low-income lifeline assistance programs. This credit shall continue for as long as the retail rate increase is in effect.

95 Acts, ch 199, §8; 98 Acts, ch 1151, §13; 2002 Acts, ch 1060, §15; 2002 Acts, ch 1175, §36; 2003 Acts, ch 126, §5, 6

#### **476.98 Earnings calculation and report.**

The consumer advocate shall calculate an estimate of the return of a local exchange carrier operating under price regulation pursuant to section 476.97 as if the carrier were subject to rate-of-return regulation. The calculation shall be based upon the annual report of such carrier and other information provided to the consumer advocate by the carrier. The calculation shall be made every two years beginning following the end of the second calendar year after the year in which the plan becomes effective. Notwithstanding section 476.1D, subsection 4, the consumer advocate shall make two calculations pursuant to this section with one calculation taking into account the investment, revenues, and expenses associated with the sale of classified

directory advertising, and one calculation not taking into account such investment, revenues, and expenses. The consumer advocate shall provide a written report to the general assembly including the results of this calculation on or before July 1 of the year immediately following the two-year period for which a calculation is made. If, after a review of the information used to make the calculation required in this section, the consumer advocate determines that the public interest would be better served by a different form of rate regulation, the consumer advocate shall provide a recommendation that the general assembly direct the utilities board to implement a different form of rate regulation.

95 Acts, ch 199, §9; 98 Acts, ch 1151, §4

#### **476.99 Additional price regulation plan provisions.**

In addition to the provisions required in section 476.97, a local exchange carrier, prior to operating under price regulation, shall make provision for the following:

1. Reflecting in rates any changes due to changes in the average cost of the local exchange carrier resulting from the sale of an exchange in this state.
2. Encouraging modernization of the local exchange carrier's telecommunications infrastructure. This provision shall include a requirement that the local exchange carrier develop and file with the board an increased modernization plan.

95 Acts, ch 199, §10

#### **476.100 Prohibited acts.**

A local exchange carrier shall not do any of the following:

1. Discriminate against another provider of communications services by refusing or delaying access to the local exchange carrier's services.
2. Discriminate against another provider of communications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the local exchange carrier's network is an essential facility if all of the following apply:
  - a. Competitors cannot practically or economically duplicate the facility, feature, function, or capability, or obtain the facility, feature, function, or capability from another source.
  - b. The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
  - c. Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
  - d. The facility, feature, function, or capability will enable competition.
3. Degrade the quality of access or service provided to another provider of communications services.
4. Fail to disclose in a timely manner, upon reasonable request and pursuant to a protective agreement concerning proprietary information, all information reasonably necessary for the design of network interface equipment, network interface services, or software that will meet the specifications of the local exchange carrier's local exchange network.

5. Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider.
6. Use basic exchange service rates, directly or indirectly, to subsidize or offset the costs of other products or services offered by the local exchange carrier.
7. Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

95 Acts, ch 199, §11

#### **476.101 Local exchange competition.**

1. A certificate of public convenience and necessity to provide local telephone service shall not be interpreted as conveying a monopoly, exclusive privilege, or franchise. A competitive local exchange service provider shall not be subject to the requirements of this chapter, except that a competitive local exchange service provider shall obtain a certificate of public convenience and necessity pursuant to section 476.29, file tariffs, notify affected customers prior to any rate increase, file reports, information, and pay assessments pursuant to section 476.2, subsection 4, and sections 476.9, 476.10, 476.16, 476.102, and 477C.7, and shall be subject to the board's authority with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints. If, after notice and opportunity for hearing, the board determines that a competitive local exchange service provider possesses market power in its local exchange market or markets, the board may apply such other provisions of this chapter to a competitive local exchange service provider as it deems appropriate.

2. The duty of a local exchange carrier includes the duty, in accordance with requirements prescribed by the board pursuant to subsection 3 and other laws, to provide equal access to, and interconnection with, its facilities so that its network is fully interoperable with the telecommunications services and information services of other providers, and to offer unbundled essential facilities.

3. A local exchange carrier shall provide reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier to which reasonable access is necessary to a competitive local exchange service provider in order for a competitive local exchange service provider to provide service and is feasible for the local exchange carrier.

Upon application of a local exchange carrier or a competitive local exchange service provider, the board shall determine any matters concerning reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier upon which agreement cannot be reached, including but not limited to, matters regarding valuation, space, and capacity restraints, and compensation for access.

4. *a.* Prior to September 1, 1995, the board shall initiate a rulemaking proceeding to adopt rules that satisfy the requirements enumerated in subparagraphs (1) through (4). The rulemaking proceeding shall be completed as promptly as possible. The board, upon petition or on its own motion, may conduct a separate evidentiary hearing on the same or related subjects. The evidence from a hearing may be considered by the board during the rulemaking proceeding, provided that the board announces its intention to do so prior to the oral presentation in the rulemaking proceeding. The rules shall do the following:

(1) Require a local exchange carrier to provide unbundled essential facilities of its network, and allow reasonable and nondiscriminatory equal access to, use of, and interconnection with, those unbundled essential facilities on reasonable, cost-based, and tariffed terms and conditions. The board's rules must require a local exchange carrier, including those operating under a plan of price regulation, to file tariffs implementing the unbundled essential facilities within ninety days of the board's final order adopting such rules, except for local exchange carriers with less than seventy-five thousand access lines which must file such tariffs within two years of July 1, 1995. Such access, use, and interconnection shall be on terms and conditions no less

favorable than those the local exchange carrier provides to itself and its affiliates for the provision of local exchange, access, and toll services. This subsection shall not be construed to establish a presumption as to the level of interconnection charges, if any, to be determined by the board pursuant to subparagraph (2).

(2) Establish reciprocal cost-based compensation for termination of telecommunications services between local exchange carriers and competitive local exchange service providers.

(3) Require local exchange carriers to make interim number portability available on request of a competitive local exchange service provider, and to implement provider number portability as soon as the availability of necessary technology makes provider number portability economically and technically feasible, as determined by the board. The rules shall also devise a reasonable and nondiscriminatory mechanism for the recovery of all recurring and nonrecurring costs of interim and provider number portability.

(4) Develop the cost methodology appropriate for a competitive telecommunications environment.

*b.* The rules adopted in paragraph "a", subparagraphs (2) and (3), do not apply to local exchange carriers with less than seventy-five thousand access lines until a competitive local exchange service provider has filed for a certificate to provide basic communications services in an exchange or exchanges of the local exchange carrier, or the board determines that competitive necessity requires the implementation of the rules in paragraph "a", subparagraphs (2) and (3), by the local exchange carrier.

5. Local exchange carriers shall file tariffs or price lists in accordance with board rules with respect to the services, features, functions, and capabilities offered to comply with board rules on unbundling of essential facilities and interconnection. Local exchange carriers shall submit with the tariffs or price lists for basic communications services and toll services supporting information that is sufficient for the board to determine the relationship between the proposed charges and the costs of providing such services, features, functions, or capabilities, including the imputed cost of intrastate access service rates in toll service rates pursuant to existing board orders. The board shall review the tariffs or price lists to ensure that the charges are cost-based and that the terms and conditions contained in the tariffs or price lists unbundle any essential facilities in accordance with the board's rules and any other applicable laws.

6. This section shall not be construed to prohibit the board from enforcing rules or orders entered in contested cases pending on July 1, 1995, to the extent that such rules and orders are consistent with the provisions of this section.

7. Except as provided under section 476.29, subsection 2, and this section, the board shall not impose or allow a local exchange carrier to impose restrictions on the resale of local exchange services, functions, or capabilities. The board may prohibit residential service from being resold as a different class of service.

8. Any person may file a written complaint with the board requesting the board to determine compliance by a local exchange carrier with the provisions of sections 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections. Upon the filing of such complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed.

9. A telecommunications carrier, as defined in the federal Telecommunications Act of 1996, shall not do any of the following:

*a.* Use customer information in a manner which is not in compliance with 47 U.S.C. § 222.

*b.* Disparage the services offered by another telecommunications carrier through false or misleading statements.

c. Take any action that disadvantages a customer who has chosen to receive services from another telecommunications carrier.

10. In a proceeding associated with the granting of a certificate under section 476.29, approving maps and tariffs for competitive local exchange providers provided for in this section, or in resolving a complaint filed pursuant to subsection 8 and proceedings under 47 U.S.C. § 251-254, the board shall allocate the costs and expenses of the proceedings to persons identified as parties in the proceeding who are engaged in or who seek to engage in providing telecommunications services or other persons identified as participants in the proceeding. The funds received for the costs and the expenses shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

95 Acts, ch 199, §12; 98 Acts, ch 1151, §5; 99 Acts, ch 20, §4, 6

#### **476.102 Universal service.**

1. The board shall initiate a proceeding to preserve universal service such that it shall be maintained in a competitively neutral fashion. As a part of this proceeding, the board shall determine the difference between the cost of providing universal service and the prices determined to be appropriate for such service.

2. The board shall base policies for the preservation of universal service on the following principles:

a. A plan adopted by the board should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

b. The plan should define the nature and extent of the service encompassed within any entities' universal service obligations.

c. The plan should establish specific and predictable mechanisms to provide competitively neutral support for universal service. Those mechanisms shall include a nondiscriminatory mechanism by which funds to support universal service shall be collected, and a mechanism for disbursement of support funds to eligible subscribers, either directly to those subscribers, or to the subscriber's provider of local exchange services chosen by the subscriber.

d. The plan should be based on other principles as the board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of sections 476.95 through 476.101 and this section.

95 Acts, ch 199, §13

#### **476.103 Unauthorized change in service civil penalty.**

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

2. As used in this section, unless the context otherwise requires:

a. "*Change in service*" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. "*Consumer*" means a person other than a service provider who uses a telecommunications service.

*c. "Executing service provider"* means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

*d. "Service provider"* means a person providing a telecommunications service.

*e. "Submitting service provider"* means a service provider who requests another service provider to execute a change in service.

*f. "Telecommunications service"* means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

*a. (1)* A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

*(2)* Verification appropriate under the circumstances for all other changes in service.

*(3)* The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

*(4)* The reasonable time period during which the verification is to be retained, as determined by the board.

*b.* A customer shall be notified of any change in service.

*c.* Appropriate compensation for a customer affected by an unauthorized change in service.

*d.* Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

*e.* A provision encouraging service providers to resolve customer complaints without involvement of the board.

*f.* The prompt reversal of unauthorized changes in service.

*g.* Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. *a.* In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

*b.* A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

*c.* A civil penalty collected pursuant to this subsection shall be forwarded by the executive secretary of the

board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

*d.* A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

*e.* The board shall not commence an administrative proceeding to impose a civil penalty under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

*a.* Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

*b.* Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

*c.* Limit the billing or access services prohibition under paragraph "*a*" or "*b*" to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

*d.* Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber's express consent.

99 Acts, ch 16, §1

#### **476.104 Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid or otherwise rendered ineffective by any entity, the invalidity or ineffectiveness shall not affect other provisions or applications of this chapter that can be given effect without the invalid or ineffective provision or application, and to this end the provisions of this chapter are severable.

2003 Acts, ch 126, §7