

CHAPTER 32
REORGANIZATION

199—32.1(476) Applicability and definition of terms.

32.1(1) This chapter applies to any person who intends to acquire, sell, lease, or otherwise dispose indirectly or directly of the whole or any substantial part of a public utility's assets; or purchase, acquire, sell, or otherwise dispose of the controlling capital stock of any public utility, either directly or indirectly. Either individually or on a joint basis, a proposal for reorganization shall be filed by the person(s) to whom this chapter applies. All terms used in this chapter not otherwise defined shall be defined as the terms are defined in Iowa Code section 476.72. "Proposal for reorganization" means the application for approval of a reorganization including the supporting testimony, evidence, and filing requirements identified in rule 32.4(476).

32.1(2) This chapter does not apply to transfers or removals of a public utility's assets which are made specifically pursuant to a board deregulation order, as long as those transfers or removals occur within 12 months of the board's approval of an accounting separation plan.

199—32.2(476) Substantial part of a public utility's assets.

32.2(1) Unless an application pursuant to Iowa Code section 476.77 and this chapter has been filed or a waiver obtained pursuant to 199 IAC 1.3(17A,474,476,78GA, HF2206), no public utility shall acquire or lease assets, directly or indirectly, with a value in excess of 3 percent of the utility's Iowa jurisdictional utility revenue during the immediately preceding calendar year or \$5 million, whichever is greater. For purposes of this subrule and subrule 32.2(2), "value" means the greater of market or book value.

32.2(2) Unless an application pursuant to Iowa Code section 476.77 and this chapter has been filed or a waiver obtained pursuant to rule 32.8(476), no public utility shall sell or otherwise dispose of assets, directly or indirectly, with a value in excess of 3 percent of the utility's Iowa jurisdictional utility revenue during the immediately preceding calendar year or \$5 million, whichever is greater. However, for utilities for which the 3 percent limit is greater than \$5 million, if the assets being sold or otherwise disposed of are used in the generation or delivery of utility services to Iowa consumers, an application or a waiver is required if the assets have a value in excess of \$10 million.

32.2(3) Notwithstanding the provisions of subrules 32.2(1) and 32.2(2), board approval of the following types of transactions is not necessary in the public interest and such transactions are exempt from the filing requirements of Iowa Code section 476.77 and this chapter: fuel purchases, energy and capacity purchases and sales, gas purchases, sale of accounts receivables, sale of bonds, claim and litigation payments, tax payments, regulatory fees and assessments, insurance premiums, payroll, stock dividends, financings, routine financial transactions, operation and maintenance expense, construction expense, or similar transactions which occur in the ordinary course of business; provided, however, that any transaction involving more than 10 percent of a public utility's gross utility assets less depreciation, or any transaction outside the ordinary course of business, shall not be exempt under this subrule. In addition, transactions where board approval is otherwise required in a contested case proceeding are exempt from the filing requirements of Iowa Code section 476.76 and this chapter.

32.2(4) Rescinded IAB 5/26/04, effective 6/30/04.

199—32.3(476) Declaratory rulings. Any person may request a determination as to whether the action it proposes would constitute a reorganization or whether the assets involved would constitute a substantial part of a public utility's assets, as defined in Iowa Code section 476.72 and these rules, by filing a petition for declaratory ruling, as set out in 199—Chapter 4.

199—32.4(476) Proposal for reorganization—filing requirements. Any person who intends to accomplish a reorganization shall file supporting testimony and evidence with its proposal for reorganization, which shall include, but not be limited to, the following information:

32.4(1) General information.

a. A statement of the purposes of the reorganization and a description of the events which led to the reorganization.

b. An analysis of the alternatives to the proposed reorganization which were considered and their impact on rates and services, if any.

32.4(2) Reorganization details.

a. Written accounting policies and procedures for the subsequent operation, including the type of system of accounts to be used.

b. Staffing changes due to the proposed reorganization.

c. The situs of the books and records of the public utility after reorganization and their availability to the board.

d. A description of the proposed accounting to be utilized in any transfer of assets necessary to accomplish reorganization.

e. The proposed method for:

(1) Accounting for and allocating officer's time between the public utility and any affiliates, and

(2) Compliance with the board's rules on affiliate transactions and relationships.

f. Copies of all contracts which directly relate to the reorganization. If there are any unwritten contracts or arrangements, a summary of the unwritten contracts or arrangements verified by an officer of the operating company shall be provided.

g. Before and after organizational charts for the affected public utility and affiliates.

h. A statement of any proposed physical removal of assets from the board's jurisdiction to another jurisdiction or removal or transfer of assets from a regulated to a nonregulated environment.

32.4(3) Financial details.

a. An analysis of whether the affected public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure and corporate financial integrity, is impaired.

b. A description of the financing components of the proposed reorganization.

c. Information concerning the funding provided to any new entity created by the proposed reorganization.

d. Current and proposed reorganization balance sheets and capital structures.

e. Stockholder annual report for two years preceding the year of filing for all affected companies.

f. Stockholder quarterly reports for the two quarters just prior to the date of the filing and any subsequent reports as they become available during the proceeding, for all affected companies.

g. The major credit rating agencies' reports for two years preceding the filing date of the merger and updates as they become available during the proceeding, for all affected companies.

h. Any proxy statement to the stockholders regarding the proposed reorganization. If such is not available at time of filing, a preliminary statement shall be filed followed by the final statement when available.

32.4(4) Impact of reorganization.

a. A cost-benefit analysis which describes the projected benefits and costs of reorganizing. The benefits and costs should be quantified in terms of present value. The sources of such benefits and costs shall be identified.

b. An analysis of the projected financial impact of the proposed reorganization on the ratepayers of the affected public utilities for the first five years after reorganization.

c. An analysis of the effect on the public interest. Public interest means the interest of the public at large, separate and distinct from the interest of the public utility's ratepayers. The analysis should include a discussion of the reorganization's impact on the economy of the state and the communities where the utility is located.

If more than one public utility is involved in a reorganization, the information shall be submitted for all public utilities involved.

32.4(5) If any information required by subrules 32.4(1) through 32.4(4) is not applicable to the type of reorganization being proposed, the applicant shall, in lieu of providing the information, state the reason(s) why the particular information is not applicable to the proposal.

32.4(6) Effect on service and reliability.

a. Report on quality of service and reliability levels of utility services for each of the five years prior to the year of filing, for all affected companies.

b. Detailed statement on how the proposed reorganized entity will maintain or enhance service and reliability. Provide any investment or operational plans for this purpose that are available.

199—32.5(476) Effective date. A proposed reorganization shall not become effective until at least 90 days after the date the proposal for reorganization has been submitted to the board unless the board issues an order affirmatively approving the proposed reorganization.

199—32.6(476) Insufficient filing. The board may reject for filing within 30 days any proposal for reorganization that does not contain sufficient information for the board to evaluate the proposal for reorganization. The board shall fully describe any deficiencies in a reorganization plan which is rejected for filing.

199—32.7(476) Additional information authorized. The board may require an applicant to file information in addition to the information required by rule 32.4(476).

199—32.8(476) Waivers. Any public utility or applicant may file an application for waiver of the provisions of this chapter. The application shall include a detailed statement of why review of a proposed reorganization is not necessary or in the public interest.

199—32.9(476) Procedural matters. Because of statutory time limitations, an expedited procedural schedule shall be utilized for proposals for reorganization. The board may order additional specific procedures as needed for the expedited hearing process.

32.9(1) Within 40 days after a proposal for reorganization and supporting testimony is filed, the consumer advocate and any intervenors shall file any written testimony and exhibits. This will allow the board an opportunity to consider the testimony and exhibits prior to the 50-day deadline for issuing a notice of hearing. However, failure to file written testimony and exhibits within 40 days shall not preclude the consumer advocate and any intervenors from presenting witness testimony and exhibits at any hearing ordered by the board to be held with respect to the proposed reorganization.

32.9(2) Responses to data requests shall be made within five days from the date of service.

32.9(3) When a hearing on the proposed reorganization is scheduled, the applicant, consumer advocate, and any intervenors shall file a joint statement of the issues at least ten days prior to the date of hearing.

32.9(4) Intervention. Notwithstanding the provisions of 199—subrule 7.13(1) regarding the time to petition to intervene, a party may petition to intervene subsequent to the filing of an application for reorganization, but no later than a date for intervention established by the board in a notice of hearing.

These rules are intended to implement Iowa Code sections 476.76 and 476.77.

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