

CHAPTER 7  
PRACTICE AND PROCEDURE  
[Previously ch 15, renumbered 10/20/75 Supp.]  
[Prior to 10/8/86, Commerce Commission[250]]

**199—7.1(17A,474,476) Scope and applicability.**

**7.1(1)** This chapter applies to contested case proceedings, investigations, and other proceedings conducted by the board or a presiding officer, unless the proceedings have specific procedures established in board rules. If there are no other applicable procedural rules, this chapter applies to other types of agency action, unless the board or presiding officer orders otherwise. The rules in this chapter regarding the content and format of pleadings, testimony, workpapers, and other supporting documents apply to both paper filings and electronic filings made pursuant to 199—Chapter 14. The rules in this chapter regarding filing, service, and number of copies required apply to paper filings. Electronically filed documents shall be filed and served according to 199—Chapter 14. The board has established additional procedural requirements in other chapters as described in subrules 7.1(2) through 7.1(5).

**7.1(2)** Additional rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives are contained in 199—Chapter 26.

**7.1(3)** Notice of inquiry dockets and investigations. The board may issue a notice of inquiry or open an investigation and establish a docket through which the inquiry or investigation can be processed. The procedural rules in this chapter shall apply to these dockets, unless otherwise ordered by the board or presiding officer.

**7.1(4)** Reorganizations. Procedural rules applicable to reorganizations are included in 199—32.9(476). In the event the requirements in 199—32.9(476) conflict with the requirements in this chapter, the 199—32.9(476) requirements are controlling.

**7.1(5)** Discontinuance of service incident to utility property transfer. This subrule does not apply to telecommunications service providers registered with the board pursuant to Iowa Code section 476.95A.

*a. Scope.* This rule applies to discontinuance of utility service pursuant to Iowa Code section 476.20(1), which includes the termination or transfer of the right and duty to provide utility service to a community or part of a community incident to the transfer, by sale or otherwise, except a stock transfer incident to corporate reorganization. This rule does not limit rights or obligations created by other applicable statutes or rules.

*b. Application.* A public utility shall obtain board approval prior to discontinuance of utility service. The public utility shall file an application for permission to discontinue service that includes a summary of the relevant facts and the grounds upon which the application should be granted. When the discontinuance of service is incident to the transfer of utility property, the transferor utility and the transferee shall file a joint application.

*c. Approval.* Within 30 days after an application is filed, the board shall approve the application or docket the application for further investigation. Failure to act on the application within 30 days will be deemed approval of the application.

*d. Contested cases.* Contested cases under paragraph “c” shall be completed within four months after date of docketing.

*e. Criteria.* The application will be granted if the board finds the utility service is no longer necessary, or if the board finds the transferee is ready, willing, and able to provide comparable utility service.

**7.1(6)** The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise required by law, may be waived by the board or presiding officer pursuant to 199—1.3(17A,474,476).

**7.1(7) Procedural orders.**

*a.* Authority to issue procedural orders in all proceedings, including contested case proceedings, investigations, and all other dockets and matters before the board when a majority of the board is not available due to emergency, or for the efficient and reasonable conduct of proceedings, is granted to a

single board member. If no member of the board is available to issue a procedural order due to emergency, or for the efficient and reasonable conduct of proceedings, the procedural order may be issued by a presiding officer designated by the board. If a presiding officer is not available to issue a procedural order due to an emergency, or for the efficient and reasonable conduct of proceedings, a procedural order may be issued by the general counsel of the board.

*b.* Procedural orders under this subrule shall be issued only upon the showing of good cause and when the prejudice to a nonmoving party is not great. The procedural order under this subrule shall state that it is issued pursuant to the delegation authority established in subrule 7.1(7) and that the procedural order so issued is subject to review by the board upon its own motion or upon motion by any party or other interested person.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.2(17A,476) Definitions.** Except where otherwise specifically defined by law:

“*Board*” means the Iowa utilities board or a majority thereof.

“*Complainants*” are persons who complain to the board of any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of Iowa Code chapters 476 through 479B, or of any order or rule of the board.

“*Consumer advocate*” means the office of consumer advocate, a division of the Iowa department of justice, referred to in Iowa Code chapter 475A.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a “no factual dispute” contested case under Iowa Code section 17A.10A.

“*Data request*” means a discovery procedure in which the requesting party asks another person for specified information or requests the production of documents.

“*Expedited proceeding*” means a proceeding before the board in which a statutory or other provision of law requires the board to render a decision in the proceeding in six months or less.

“*Filed*” means accepted for filing by the board as defined in rule 199—14.3(17A,476).

“*Intervenor*” means any person who, upon written petition, is permitted to intervene as a party in a specific proceeding before the board.

“*Issuance*” means the date on which an order is uploaded into the board’s electronic filing system.

“*Party*” means each person named or admitted as a party in a proceeding before the board.

“*Person*” means as defined in Iowa Code section 4.1(20) and includes individuals and all forms of legal entities.

“*Petitioner*” or “*applicant*” means any party who, by written petition, application, or other filing, applies for or seeks relief from the board.

“*Presiding officer*” means one board member or another person designated by the board with the authority to preside over a particular proceeding.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a proceeding that has been assigned by the board to the presiding officer.

“*Service*” means service as prescribed in 199—Chapter 14.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.3(17A,476) Presiding officers.** Presiding officers may be designated by the board to preside over contested cases or other proceedings and conduct hearings and shall have the following authority, unless otherwise ordered by the board:

1. To regulate the course of hearings;
2. To administer oaths and affirmations;
3. To rule upon the admissibility of evidence and offers of proof;
4. To take or cause depositions to be taken;
5. To dispose of procedural matters, discovery disputes, motions to dismiss, and other motions which may involve final determination of proceedings, subject to review by the board on its own motion or upon application by any party;
6. To certify any question to the board, in the discretion of the presiding officer or upon direction of the board;

7. To permit and schedule the filing of written briefs;
  8. To hold appropriate conferences before, during, or after hearings;
  9. To render a proposed decision and order in a contested case proceeding, or other proceeding, subject to review by the board on its own motion or upon appeal by any party; and
  10. To take any other action necessary or appropriate to the discharge of duties vested in the presiding officer, consistent with law and with the rules and orders of the board.
- [ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.4(17A,474,476) General information.**

**7.4(1) Orders.** All orders shall be issued and uploaded into the board's electronic filing system. Orders shall be deemed effective upon acceptance into the electronic filing system, unless otherwise provided in the order. Orders and other filings in dockets may be viewed in the specific docket accessed through the board's electronic filing system.

**7.4(2) Communications.**

*a. Electronic communications.* Pleadings and other documents required to be electronically filed with the board shall be filed within the time limit, if any, for such filing, in accordance with the board's electronic filing rules at 199—Chapter 14. Unless otherwise specifically provided, all electronic communications and documents are officially filed when they are accepted for filing as defined in 199—14.3(17A,476). Persons electronically filing a document with the board must comply with the service requirements in 199—14.16(17A,476).

*b. Paper filings.* Paper filings may only be made with board approval, except for filings made pursuant to the exceptions in rule 199—14.4(17A,476).

**7.4(3) Reference to docket number.** All filings made in any proceeding after the proceeding has been docketed by the board shall include on the first page a reference to the applicable docket number(s).

**7.4(4) Number of copies.**

*a.* Rule 199—7.23(17A,476) contains requirements regarding the required number of copies for evidence introduced at hearing.

*b.* 199—Chapter 26 contains additional requirements regarding the number of paper copies of minimum filing requirements required to be filed in rate and tariff proceedings.

**7.4(5) Defective filings.** Only applications, pleadings, documents, testimony, and other submissions that conform to the requirements of an applicable rule, statute, or order of the board or presiding officer will be accepted for filing. Applications, pleadings, documents, testimony, and other submissions that fail to substantially conform with applicable requirements will be considered defective and may be rejected unless waiver of the relevant requirement has been granted by the board or presiding officer prior to filing. The board or presiding officer may reject a filing even though board employees have file-stamped or otherwise acknowledged receipt of the filing.

**7.4(6) Service of documents.**

*a. Method of service.*

(1) Paper service. Paper service of filings is only required on those parties, or persons, whom the board has approved to receive paper service. All filings required to be served in paper shall also be served on the consumer advocate. All filings served by paper shall be filed electronically pursuant to rule 199—14.16(17A,476) in the appropriate docket in the electronic filing system and shall include a certificate of service.

(2) Electronic service. The board's rule regarding electronic service is at 199—14.16(17A,476).

*b. Date of service.*

(1) Paper service. Unless otherwise ordered by the board or presiding officer, the date of service shall be the day when the document served is deposited in the United States mail or overnight delivery, is delivered in person, or otherwise as the parties may agree. Although service is effective, the document is not deemed filed with the board until it is received by the board.

(2) Electronic service. The board's rule regarding the date of electronic service is at 199—14.16(17A,476).

*c. Parties entitled to service.*

(1) Paper service. If a party has been approved by the board to receive service of paper documents, the person filing the document shall serve that party as required by this subrule.

(2) Electronic service. The board's rule regarding electronic service is at 199—14.16(17A,476).

(3) Service of documents containing confidential information. Parties shall serve documents containing confidential information pursuant to a confidentiality agreement executed by the parties, if any. If the parties are unable to agree on a confidentiality agreement, they may ask the board or presiding officer to issue an appropriate order.

*d. Service upon attorneys.* When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

**7.4(7) Appearance.** Each party to a proceeding shall file in the docket in the board's electronic filing system a separate written appearance identifying one person upon whom the board may electronically serve all orders, correspondence, or other documents. If a party has previously designated a person to be served on the party's behalf in all matters, filing the appearance will not change this designation, unless the party directs that the designated person be changed in the appearance. If a party files an application, petition, or other initial pleading, or an answer or other responsive pleading, containing the information that would otherwise be required in an appearance, the filing of a separate appearance is not required. The appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed.

**7.4(8) Representation by attorney.**

*a.* Any party to a proceeding before the board or a presiding officer may appear and be heard through a licensed attorney. If the attorney is not licensed by the state of Iowa, the attorney shall apply for admission pro hac vice as required by Iowa Court Rule 31.14(2)(b).

*b.* A corporation or association may appear and present evidence by an officer or employee. However, only licensed attorneys shall represent a party before the board or a presiding officer in any matter involving the exercise of legal skill or knowledge, except with the consent of the board or presiding officer. All persons appearing in proceedings before the board or a presiding officer shall conform to the standard of ethical conduct required of attorneys before the courts of Iowa.

**7.4(9) Cross reference to public documents, confidential filings, and electronic filings.** The board's rule regarding public documents and confidential filings is at 199—1.9(22). The board's rule regarding electronic filing of documents containing confidential material is at 199—14.12(17A,476).

**7.4(10) Expedited proceedings.**

*a.* If a person claims that a statute or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall include the phrase "Expedited Proceedings Required" in the caption of the first pleading filed by the person in the proceeding. If the phrase is not so included in the caption, the board or presiding officer may find and order that the proceeding did not commence for purposes of the required time for decision until the date on which the first pleading containing the required phrase is filed or such other date that the board or presiding officer finds is just and reasonable under the circumstances.

*b.* If a person claims that a statute or other provision of law requires the board to render a decision in a contested case in six months or less, the person shall state the basis for the claim in the first pleading in which the claim is made.

*c.* Shortened time limits applicable to expedited proceedings are contained in rules 199—7.9(17A,476) (pleadings and answers), 199—7.12(17A,476) (motions), 199—7.13(17A,476) (intervention), 199—7.15(17A,476) (discovery), and 199—7.26(17A,476) (appeals from proposed decisions). An additional service requirement applicable to expedited proceedings is contained in subrule 7.4(6) (service of documents).

*d.* A party may file a motion that proceedings be expedited even though such treatment is not required by statute or other provision of law. Such voluntary expedited treatment may be granted at the board's or presiding officer's discretion in appropriate circumstances considering the needs of the parties and the interests of justice. In these voluntary expedited proceedings, the board or presiding officer may shorten the filing dates or other procedures established in this chapter. The shortened time limits and additional service requirement applicable to expedited proceedings established in this chapter and listed

in paragraph 7.4(10)“c” do not apply to voluntary expedited proceedings under this paragraph unless ordered by the board or presiding officer. If a party requests an expedited proceeding pursuant to this paragraph, the pleading in which the expedited decision is requested shall state in the title “Expedited Proceedings Requested.”

[Editorial change: IAC Supplement 12/29/10; ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.5(17A,476) Time requirements.**

**7.5(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**7.5(2)** In response to a request or on its own motion, for good cause, the board or presiding officer may extend or shorten the time to take any action, except as precluded by statute.

**199—7.6(17A,476) Electronic proceedings.** The board or presiding officer may hold proceedings by telephone conference call or other electronic means, such as a webinar service, in which all parties have an opportunity to participate. The board or presiding officer will determine the location of the parties and witnesses for electronic proceedings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when locations are determined.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.7(17A,476) Electronic information.** Filing of electronic information shall comply with the board’s rules on electronic filing at 199—Chapter 14 and the board’s published standards for electronic information, available on the board’s website at [iub.iowa.gov](http://iub.iowa.gov) or from the board’s customer service center.

[Editorial change: IAC Supplement 12/29/10; ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.8(17A,476) Delivery of notice of hearing.** When the board or presiding officer issues an order containing a notice of hearing, delivery of the order will be by electronic notice through the electronic filing system, and to those persons who have been approved to receive paper documents, unless otherwise ordered.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.9(17A,476) Pleadings and answers.**

**7.9(1) Pleadings.** Pleadings may be filed pursuant to statute, rule, or order or filed to initiate a docket and shall be filed in the board’s electronic filing system.

**7.9(2) Answers.**

*a.* Unless otherwise ordered by the board or presiding officer, answers to complaints, petitions, applications, or other pleadings shall be filed with the board within 20 days after the day on which the pleading being answered was filed in the board’s electronic filing system and served upon the respondent or other party. However, when a statute or other provision of law requires the board to issue a decision in the case in six months or less, the answer shall be filed with the board within 10 days of service of the pleading being answered, unless otherwise ordered by the board or presiding officer.

*b.* Each answer must specifically admit, deny, or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support each answer.

*c.* Any party who deems the complaint, petition, application, or other pleading insufficient to show a breach of legal duty or grounds for relief may move to dismiss instead of, or in addition to, answering.

*d.* A party may apply for a more definitive and detailed statement instead of, or in addition to, answering, if appropriate.

**7.9(3) Amendments to pleadings.** Amendments to pleadings may be allowed upon proper motion at any time during the pendency of the proceeding upon such terms as are just and reasonable.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.10(17A,476) Prefiled testimony and exhibits.**

**7.10(1)** The board or presiding officer may order the parties to file prefiled testimony and exhibits prior to the hearing. The use of prefiled testimony is the standard method for providing testimony in board

contested case and other proceedings. Parties shall file the prefiled testimony and exhibits according to the schedule in the procedural order.

**7.10(2)** Prefiled testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. If possible, each line should be separately numbered. When a witness who has submitted prefiled testimony takes the stand, the witness does not ordinarily repeat the written testimony or give new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. However, the witness may be permitted to correct or update prefiled testimony on the stand and, in appropriate circumstances and with the approval of the board or presiding officer, may give a summary of the prefiled testimony. If the witness has more than three corrections to make to the prefiled testimony or exhibits, then the corrected testimony or exhibits should be filed in the appropriate docket in the board's electronic filing system at least three days prior to the hearing. The prefiled testimony and any exhibits shall be marked and identified in conformance with the board's approved naming convention provided on the board's electronic filing system website or as directed in a board order.

**7.10(3)** Parties who wish to present a witness or other evidence in a proceeding shall comply with the board's or presiding officer's order concerning prefiled testimony and exhibits, unless otherwise ordered, or unless otherwise provided by statute or other provision of law.

**7.10(4)** Prefiled testimony and exhibits must be accompanied by an affidavit in substantially the following form: "I, [person's name], being first duly sworn on oath, state that I am the same [person's name] identified in the testimony being filed with this affidavit, that I have caused the testimony [and exhibits] to be prepared and am familiar with its contents, and that the testimony [and exhibits] is true and correct to the best of my knowledge and belief as of the date of this affidavit."

**7.10(5)** Prefiled testimony and exhibits shall be filed in the board's electronic filing system in conformance with subrule 7.10(2), and any supporting documents shall be filed as follows:

*a.* All supporting workpapers.

(1) Electronic workpapers in native electronic formats shall comply with the board's standards for electronic information, which are available on the board's website or from the board's customer service center.

(2) Workpapers' underlying analyses and data presented in exhibits shall be explicitly referenced within the exhibit, including the name and other identifiers (e.g., cell coordinates) for electronic workpapers, and volume, tab, and page numbers for other workpapers.

(3) The source of any number used in a workpaper that was not generated by that workpaper shall be identified.

*b.* The derivation or source of all numbers used in either testimony or exhibits that were not generated by workpapers.

*c.* Copies of any specific studies or financial literature relied upon or complete citations for them if publicly available.

*d.* Electronic copies, in native electronic format, of all computer-generated exhibits that comply with the board's standards for electronic information, which are available on the board's website or from the board's customer service center.

**7.10(6)** Any prefiled testimony and exhibits shall comply with the board's standards for electronic information, which are available on the board's website or in the board's customer service center, and the electronic filing rules in 199—Chapter 14.

**7.10(7)** If a party has filed part or all of its prefiled testimony and exhibits as confidential and then later withdraws the claim of confidentiality for part or all of the testimony and exhibits, or if the board denies the request to hold the testimony and exhibits confidential, the party shall refile the testimony and exhibits with the information made public.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.11(17A,476) Documentary evidence in books and materials.** When documentary evidence being offered is contained in a book, report, or other document, the offering party shall file only the material, relevant portions in an exhibit.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.12(17A,476) Motions.** Motions, unless made during hearing, shall be in writing, state the grounds for relief, and state the relief or order sought. Motions based on matters that do not appear of record shall be supported by affidavit. Motions shall be filed in compliance with 199—Chapter 14. Any party may file a written response to a motion no later than 14 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, written responses to a motion must be filed within seven days of the date the motion is filed, unless otherwise ordered by the board or presiding officer. Failure to file a timely response may be deemed a waiver of objection to the motion. Requirements regarding motions related to discovery are contained at subrules 7.15(4) and 7.15(5).

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.13(17A,476) Intervention.**

**7.13(1) Petition.** Unless otherwise ordered by the board or presiding officer, a request to intervene in a proceeding shall be by petition to intervene filed no later than 20 days following the order setting a procedural schedule. However, when a statutory or other provision of law requires the board to issue a decision in the case in six months or less, the petition to intervene must be filed no later than ten days following the order setting a procedural schedule, unless otherwise ordered by the board or presiding officer.

**7.13(2) Response.** Any party may file a response within seven days of service of the petition to intervene unless the time period is extended or shortened by the board or presiding officer.

**7.13(3) Grounds for intervention.** Any person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board or presiding officer. In determining whether to grant intervention, the board or presiding officer shall consider:

- a. The prospective intervenor's interest in the subject matter of the proceeding;
- b. The effect of a decision that may be rendered upon the prospective intervenor's interest;
- c. The extent to which the prospective intervenor's interest will be represented by other parties;
- d. The availability of other means by which the prospective intervenor's interest may be protected;
- e. The extent to which the prospective intervenor's participation may reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and
- f. Any other relevant factors.

**7.13(4)** In determining the extent to which the prospective intervenor's interest will be represented by other parties, the consumer advocate's role of representing the public interest shall not be interpreted as representing every potential interest in a proceeding.

**7.13(5)** The board or presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation in the proceeding. Leave to intervene shall generally be granted by the board or presiding officer to any person with a cognizable interest in the proceeding.

**7.13(6)** When two or more intervenors have substantially the same interest, the board or presiding officer, in the board's or presiding officer's discretion, may order consolidation of petitions and briefs and limit the number of attorneys allowed to participate actively in the proceedings to avoid a duplication of effort.

**7.13(7)** A person granted leave to intervene is a party to the proceeding. However, unless the board or presiding officer rules otherwise for good cause shown, an intervenor shall be bound by any agreement, arrangement, or order previously made or issued in the case.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.14(17A,476) Consolidation and severance.**

**7.14(1) Consolidation.** The board or presiding officer may consolidate in one docket any or all matters at issue in two or more dockets. When deciding whether to consolidate, the board or presiding officer shall consider:

- a. Whether the matters at issue involve common parties or common questions of fact or law;
- b. Whether consolidation is likely to expedite or simplify consideration of the issues involved;
- c. Whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and
- d. Any other relevant factors.

**7.14(2) Severance.** The board or presiding officer may order any contested case or portions thereof severed for good cause.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.15(17A,476) Discovery.**

**7.15(1)** Discovery procedures applicable in civil actions are available to parties in contested cases.

**7.15(2)** Unless otherwise ordered by the board or presiding officer or agreed to by the parties, data requests or interrogatories served by any party shall either be responded to or objected to, with concisely stated grounds for relief, within seven days of receipt. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, this time is reduced to five days. Data requests or interrogatories served on a day the board is closed or after 4:30 p.m. central time on a day the board is open shall be considered served on the next business day.

**7.15(3)** Unless otherwise ordered by the board or presiding officer, time periods for compliance with all forms of discovery other than those stated in subrule 7.15(2) shall be as provided in the Iowa Rules of Civil Procedure.

**7.15(4)** Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer.

**7.15(5)** Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 14 days of the filing of the motion unless the time is extended or shortened by order of the board or presiding officer. When a statutory or other provision of law requires the board to issue a decision in the case in six months or less, this time is reduced to seven days, unless otherwise ordered by the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response, or may order argument or other proceedings on the motion.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.16(17A,476) Subpoenas.**

**7.16(1) Issuance.**

a. An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In the absence of good cause for permitting later action, a request for a subpoena must be received at least seven days before the scheduled hearing. The board will issue subpoenas only on paper, not through the electronic filing system.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses. Subpoenas cannot be served electronically through the electronic filing system.

**7.16(2) Motion to quash or modify.** Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason.

**199—7.17(17A,476) Prehearing or scheduling conference.** The board or presiding officer may schedule a prehearing conference, scheduling conference, or other informal conference at the board's or presiding officer's discretion or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.18(17A,476) Settlements.** Parties to a contested case may propose to settle all or some of the issues in the case. The board or presiding officer will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

**7.18(1) Proposal of settlements.** Two or more parties may by written motion propose settlements for adoption by the board or presiding officer. The motion shall contain a statement adequate to advise the board or presiding officer and parties not expressly joining the proposal of its scope and of the grounds on which adoption is urged. Parties may propose a settlement for adoption by the board or presiding officer at any time.

**7.18(2) Conference.** After proposal of a settlement that is not supported by all parties, and prior to approval, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing the settlement proposal. Written notice of the date, time, and place shall be furnished at least seven days in advance to all parties to the proceeding. Attendance at any settlement conference shall be limited to the parties to a proceeding and their representatives. A party that has been given notice and opportunity to participate in the conference and does not do so shall be deemed to have waived its right to contest a proposed settlement, unless good cause is shown for the failure to participate.

**7.18(3) Comment period.** When a party to a proceeding does not join in a settlement proposed for adoption by the board or presiding officer, the party may file comments contesting all or part of the settlement with the board. Unless otherwise ordered by the board or presiding officer, the party shall file its comments within 14 days of filing of the motion proposing settlement, and shall serve such comments on all parties to the proceeding at the time of filing. Unless otherwise ordered by the board or presiding officer, parties shall file reply comments within 7 days of filing of the comments.

**7.18(4) Contents of comments.** A party contesting a proposed settlement must specify in its comments the portions of the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Any failure by a party to file comments may, at the board's or presiding officer's discretion, constitute waiver by that party of all objections to the settlement.

**7.18(5) Contested settlements.** If the proposed settlement is contested, in whole or in part, on any material issue of fact by any party, the board or presiding officer may schedule a hearing on the contested issue(s). The board or presiding officer may decline to schedule a hearing where the contested issue of fact is not material or where the contested issue is one of law.

**7.18(6) Unanimous proposed settlement.** In proceedings where all parties join in the proposed settlement, parties may propose a settlement for adoption by the board or presiding officer any time after docketing. Subrules 7.18(2) through 7.18(5) shall not apply to a proposed settlement filed concurrently by all parties to the proceeding. Settlements in general rate case proceedings shall comply with rule 199—26.3(17A,476).

**7.18(7) Inadmissibility.** Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law, including, but not limited to, Iowa R. Evid. 5.408.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.19(17A,476) Stipulations.** Parties to any proceeding or investigation may, by stipulation filed with the board, agree upon the facts or law or any portion thereof involved in the controversy, subject to approval by the board or presiding officer.

**199—7.20(17A,476) Investigations.** The availability of discovery pursuant to Iowa Code section 17A.13 or the Iowa Rules of Civil Procedure shall not be construed to limit the investigatory powers of the board, its representatives, or the consumer advocate.

**199—7.21(17A,476) Withdrawals.** A party requesting a contested case proceeding may, with the permission of the board or presiding officer, withdraw that request at any time prior to the issuance of a proposed or final decision in the case.

**199—7.22(17A,476) Ex parte communication.** Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives shall not communicate directly or indirectly with the board or presiding officer in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The board or presiding officer shall not communicate directly or indirectly with parties or their representatives in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate.

**199—7.23(17A,476) Hearings.**

**7.23(1) Board or presiding officer.** The board or presiding officer presides at the hearing and may rule on motions and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The board or presiding officer shall maintain the decorum of the hearing and may refuse to admit, may set limits on, or may expel from the hearing anyone whose conduct is disorderly.

**7.23(2) Witnesses.** Each witness shall be sworn or affirmed by the board, presiding officer, or the court reporter and be subject to examination and cross-examination. The board or presiding officer may limit questioning in a manner consistent with law. In appropriate circumstances, the board or presiding officer may order that witnesses testify as members of a witness panel.

**7.23(3) Order of presenting evidence.** The board or presiding officer shall determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice, taking into account the preferences of the parties. Normally, the petitioner shall open the presentation of evidence. In cases where testimony has been prefiled, each witness shall be available for cross-examination on all testimony prefiled by or on behalf of that witness when the witness takes the stand, either alone or as a member of a witness panel.

**7.23(4) Evidence.**

*a.* Subject to terms and conditions prescribed by the board or presiding officer, parties have the right to introduce evidence, cross-examine witnesses, and present evidence in rebuttal. Ordinarily, prefiled testimony is used in hearings pursuant to rule 199—7.10(17A,476). Nonsubstantive corrections to prefiled testimony may be made at the beginning of the testimony. However, if more than three corrections need to be made, the sponsoring party shall file corrected prefiled testimony prior to the hearing. The sponsoring party must provide one copy of prefiled testimony and included exhibits to the court reporter.

*b.* The board or presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with law.

*c.* Stipulation of facts is encouraged. The board or presiding officer may make a decision based on stipulated facts.

*d.* Unless the exhibit was previously included with prefiled testimony, the party seeking admission of an exhibit at a hearing must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence shall be marked in accordance with the board's approved naming convention and made part of the evidentiary record. If an exhibit is admitted, unless it was previously included with prefiled testimony, the sponsoring party must provide at least one copy of the exhibit to each opposing party, one copy for each board member or presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered. The sponsoring party shall file the hearing exhibit in the docket in the board's electronic filing system within three days of the close of the hearing.

*e.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with the permission of the board or presiding officer, present the testimony. The board or presiding officer may require the offering party to file a written statement of the excluded oral testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part

of an offer of proof and inserted in the record. Unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the document or exhibit to each opposing party, one copy for each board member or presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

**7.23(5) Objections.** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. All objections shall be timely made on the record and state the grounds relied on. The board or presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**7.23(6) Further evidence.** At any stage during or after the hearing, the board or presiding officer may order a party to present additional evidence and may conduct additional proceedings as appropriate.

**7.23(7) Participation at hearings by nonparties.** The board or presiding officer may permit any person to be heard at any hearing, but such person shall not be a party to the proceedings unless so designated. The testimony or statement of any person so appearing shall be given under oath and such person shall be subject to cross-examination by parties to the proceeding, unless the board or presiding officer orders otherwise. If a person who is not a party to a proceeding appears at a hearing and requests to examine or cross-examine witnesses, the board or presiding officer may grant the person intervention in the proceeding as a party for the limited purpose requested by the person and in compliance with subrule 7.4(8).

**7.23(8) Briefs.**

*a.* Unless waived by the parties with the consent of the board or presiding officer, the board or presiding officer shall set times for the filing and service of briefs. Unless otherwise ordered by the board or presiding officer, initial briefs shall be filed simultaneously by all parties and reply briefs shall be filed simultaneously.

*b.* Initial briefs shall contain a concise statement of the case. Arguments based on evidence introduced during the proceeding shall specify the portions of the record where the evidence is found. Initial briefs shall include all arguments the party intends to offer in support of its case and against the record case of the adverse party or parties. Unless otherwise ordered, a reply brief shall be confined to refuting arguments made in the brief of an adverse party. Unless specifically ordered to brief an issue, a party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the board or presiding officer from deciding the issue on the basis of evidence appearing in the record.

*c.* Every brief of more than 20 pages shall contain on its front leaves a table of contents with page references. Each party's initial brief shall not exceed 90 pages and each subsequent brief shall not exceed 40 pages, exclusive of the table of contents, unless otherwise ordered. Such orders may be issued *ex parte*. A brief that exceeds these page limits shall be deemed a defective filing and may be rejected as provided in subrule 7.4(5).

*d.* Briefs shall comply with the following requirements.

- (1) The size of pages shall be 8½ by 11 inches.
- (2) All printed matter must appear in at least 11-point type.
- (3) There shall be margins of at least one inch on the top, bottom, right, and left sides of the sheet.
- (4) The body of the brief shall be double-spaced.
- (5) Footnotes may be single-spaced but shall not exceed one-half page in length.
- (6) The printed matter may appear in any pitch, as long as the characters are spaced in a readable manner. Any readable font is acceptable.
- (7) Briefs filed electronically shall comply with the requirements in this paragraph and the standards for electronic information available on the board's website or in the board's records and information center.

**7.23(9) Oral arguments.** The board or presiding officer may set a time for oral argument to address issues raised by the parties during the proceeding or at the conclusion of the hearing or may set a separate date and time for oral argument. The board or presiding officer may set a time limit for argument. Oral argument may be either in addition to or in lieu of briefs. Unless specifically ordered to argue an issue, a party's failure to address an issue in oral argument shall not be deemed a waiver of the issue.

**7.23(10) Record.** The record of the case is maintained in the board's electronic filing system. Unless the record is held confidential pursuant to 199—1.9(22), parties and members of the public may examine the record and obtain copies of documents, including the transcript, when available.

**7.23(11) Default.**

*a.* If a party fails to appear at a hearing after proper service of notice, or fails to answer or otherwise respond to an appropriate pleading directed to and properly served upon that party, the board or presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

*b.* Default decisions or decisions rendered on the merits after a party has failed to appear at a hearing constitute final agency action unless otherwise ordered by the board or presiding officer. However, within 15 days after the date of electronic notification or mailing of the decision, a motion to vacate may be filed with the board. The motion to vacate must state all facts relied on by the moving party that show good cause existed for that party's failure to appear at the hearing or answer or otherwise respond to an appropriate pleading directed to and properly served upon that party. The stated facts must be substantiated by affidavit attached to the motion. Unless otherwise ordered, adverse parties shall have ten days to respond to a motion to vacate. If the decision is rendered by a presiding officer, the board may review it on the board's own motion within 15 days after the date of notification or mailing of the decision.

*c.* The time for appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

*d.* Properly substantiated and timely filed motions to vacate shall be granted for good cause shown. The burden of proof as to good cause is on the moving party. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*e.* A presiding officer's decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case. A presiding officer's decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 199—7.25(17A,476).

*f.* If a motion to vacate is granted and no timely interlocutory appeal has been taken, the board or presiding officer shall schedule another hearing and the contested case shall proceed accordingly.

*g.* A default decision may award any relief consistent with the record in the case. The default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a timely motion to vacate, an appeal pursuant to rule 199—7.26(17A,476), or a request for stay pursuant to rule 199—7.28(17A,476).

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.24(17A,476) Reopening record.** The board or presiding officer, on the board's or presiding officer's own motion or on the motion of a party, may reopen the record for the reception of further evidence. When the record was made before the board, a motion to reopen the record may be made any time prior to the issuance of a final decision. When the record was made before a presiding officer, a motion to reopen the record shall be made prior to issuance of the proposed decision. Affidavits of witnesses who will present new evidence shall be attached to the motion and shall include an explanation of the competence of the witness to sponsor the evidence and a description of the evidence to be included in the record.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

**199—7.25(17A,476) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board may consider the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision would provide an adequate remedy. Any request for interlocutory review must be filed within ten days of issuance of the challenged order, but no later than the time for compliance with the order or ten days prior to the date of hearing, whichever is first.

**199—7.26(17A,476) Appeals to board from a proposed decision of a presiding officer.**

**7.26(1)** Notification of proposed decision. Notice of the presiding officer's proposed decision and order in a contested case shall be sent through the electronic filing system, or by first-class mail if the board has granted a party approval to receive service in paper, on the date the order is issued. The decision shall normally include "Proposed Decision and Order" in the title and shall normally inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

**7.26(2)** Appeal from proposed decision. A proposed decision and order of the presiding officer in a contested case shall become the final decision of the board unless, within 15 days after the decision is issued, the board moves to review the decision or a party files an appeal of the decision with the board. The presiding officer may shorten the time for appeal. In determining whether a request for a shortened appeal period should be granted, the presiding officer may consider the needs of the parties for a shortened appeal period, relevant objections of the parties, the relevance of any written objections filed in the case, and whether there are any issues that indicate a need for the 15-day appeal period.

**7.26(3)** Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal. The notice of appeal shall be electronically filed unless the appellant has received permission from the board to submit paper filings.

**7.26(4)** On appeal of a proposed decision of a presiding officer that is based upon new evidence not introduced in the record before the presiding officer, the board shall determine whether the new evidence requires a new hearing. If the board determines that the new evidence is material to the proposed decision and a new hearing should be held, the board may remand the proposed decision to the presiding officer for the taking of the new evidence or may conduct a hearing and issue an order based upon the record before the presiding officer and the new evidence.

**7.26(5)** Contents of notice of appeal. The notice of appeal shall include the following in separately numbered paragraphs supported, where applicable, by controlling statutes and rules.

- a. A brief statement of the facts.
- b. A brief statement of the history of the proceeding, including the date and a description of any ruling claimed to be erroneous.
- c. A statement of each of the issues to be presented for review.
- d. A precise description of the error(s) upon which the appeal is based. If a claim of error is based on allegations that the presiding officer failed to correctly interpret the law governing the proceeding, exceeded the authority of a presiding officer, or otherwise failed to act in accordance with law, the appellant shall include a citation to briefs or other documents filed in the proceeding before the presiding officer where the legal points raised in the appeal were discussed. If a claim of error is based on allegations that the presiding officer failed to give adequate consideration to evidence introduced at hearing, the appellant shall include a citation to pages of the transcript or other documents where the evidence appears.
- e. A precise statement of the relief requested.
- f. A statement as to whether an opportunity to file a brief or make oral argument in support of the appeal is requested and, if an opportunity is sought, a statement explaining the manner in which briefs and arguments presented to the presiding officer are inadequate for purposes of appeal.
- g. If a party wishes to request a stay or other temporary remedy pending review of the proposed decision by the board, the request shall state the reasons justifying a stay or other temporary remedy and shall address the factors listed in Iowa Code section 17A.19(5) "c."
- h. Certification of service showing the names and addresses of all parties upon whom a copy of the notice of appeal was served.

**7.26(6)** Responsive filings and cross-appeals. If parties wish to respond to the notice of appeal, or file a cross-appeal, they must file the response or notice of cross-appeal within 14 days after the filing of the notice of appeal unless otherwise ordered by the board. If a request for a stay or other temporary remedy was included in the notice of appeal, any party wishing to respond to the request shall include the response to the request in the party's response to the notice of appeal or notice of cross-appeal. When a statutory or other provision of law requires the board to issue a decision in the case in less than six months, the response or cross-appeal must be filed within seven days of filing the notice of appeal.

*a.* Responses shall specifically respond to each of the substantive paragraphs of the notice of appeal and shall state whether an opportunity to file responsive briefs or to participate in oral argument is requested.

*b.* Parties who file a cross-appeal must comply with the requirements for filing a notice of appeal contained in this rule, other than the requirement to file notice of the cross-appeal within 15 days after the proposed decision is issued.

**7.26(7) Ruling on appeal.** After the filing of the last appeal, response, or cross-appeal, the board shall issue an order that may establish a procedural schedule for the appeal or may be the board's final decision on the merits of the appeal. If a request for a stay or other temporary remedy was included in the notice of appeal, the request shall be evaluated by the board using the factors stated in rule 199—7.28(17A,476). A stay or other temporary remedy may be vacated by the board upon application of any party or upon the board's own motion.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

### **199—7.27(17A,476) Rehearing and reconsideration.**

**7.27(1) Application for rehearing or reconsideration.** Any party to a contested case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the contested case is issued. This subrule shall not be construed as prohibiting reconsideration of board orders in other than contested cases. The board shall either grant or refuse an application for rehearing within 30 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.

**7.27(2) Contents of application.** Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

**7.27(3) Requirements for objections to applications for rehearing or reconsideration.** Notwithstanding the provisions of subrule 7.9(2), an answer or objection to an application for a rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board unless otherwise ordered by the board.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

### **199—7.28(17A,476) Stay of agency decision.**

**7.28(1)** Any party to a contested case proceeding may petition the board for a stay or other temporary remedy pending judicial review of the proceeding. The petition shall state the reasons justifying a stay or other temporary remedy and be served on all other parties pursuant to subrule 7.4(6).

**7.28(2)** In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)(c).

**7.28(3)** A stay or other temporary remedy may be vacated by the board upon application of any party or upon the board's own motion.

[ARC 4893C, IAB 1/29/20, effective 3/4/20]

### **199—7.29(17A,476) Emergency adjudicative proceedings.**

**7.29(1) Necessary emergency action.** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue an emergency adjudicative order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency adjudicative order, the board may consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to provide reasonably reliable information under the circumstances;
- b. Whether the specific circumstances that pose immediate danger to the public health, safety, or welfare are likely to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

**7.29(2) Issuance of order.**

- a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the board's discretion, to justify the determination of an immediate danger and the board's decision to take immediate action.
- b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by the most reasonably available method, which may include one or more of the following methods: notice through the electronic filing system; personal delivery; certified mail; first-class mail; fax; or email. To the degree practical, the board shall select the method or methods most likely to result in prompt, reliable delivery.
- c. Unless the written emergency adjudicative order is delivered by personal service on the day issued, the board shall make reasonable efforts to contact the persons who are required to comply with the order by telephone, in person, or otherwise.

**7.29(3) Completion of proceedings.** Issuance and delivery of a written emergency adjudicative order will normally include notification of a procedural schedule for completion of the proceedings.

These rules are intended to implement Iowa Code chapter 17A and sections 474.5 and 476.2.

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<sup>1</sup> Objection to emergency filing—filed 9/15/81

<sup>2</sup> Effective date of 7.4(1)“f”(2) delayed 70 days by Administrative Rules Review Committee.

<sup>3</sup> See Utilities Division, IAB 7/30/86

<sup>4</sup> Effective date of subrule 7.1(8) delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 2006.