

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 directly or indirectly 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. For utilities with more than one regulated line of business, the utility revenue limit shall be calculated using the revenue of the specific line of utility business involved in the transaction, not the combined utility revenues.

32.1(2) This chapter does not apply to transfers or removals of a public utility's assets that are made specifically pursuant to a commission deregulation order, as long as those transfers or removals occur within 12 months of the commission's approval of an accounting separation plan, or to transactions where commission approval is otherwise required in a contested case proceeding.

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

32.2(1) 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, without prior approval from the commission pursuant to Iowa Code section 476.77. For purposes of this subrule and subrule 32.2(2), "value" means the greater of market value or book value.

32.2(2) 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, without prior approval from the commission pursuant to Iowa Code section 476.77. 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) Commission approval of the following types of transactions is not necessary: fuel purchases, energy and capacity purchases and sales, gas purchases, sale of accounts receivables, sale of bonds, claim and litigation payments, tax payments and credit transfers, regulatory fees and assessments, insurance premiums, payroll, stock dividends, financings, routine financial transactions, operation and maintenance expense, construction expense, or similar transactions that occur in the ordinary course of business. 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, is not exempt under this subrule.

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199—32.3(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, including but not limited to the following information:

32.3(1) General information.

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

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

32.3(2) Reorganization details.

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

b. The situs of the books and records of the public utility after reorganization and their availability to the commission.

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

- d. The proposed method for:
 - (1) Accounting for and allocating officers' time between the public utility and any affiliates, and
 - (2) Compliance with the commission's rules on affiliate transactions and relationships.
- e. Copies of all contracts that directly relate to the reorganization and a summary of any unwritten contracts or arrangements verified by an officer of the operating company.
- f. Before and after organizational charts for the affected public utility and affiliates, including staffing changes.
- g. A statement of any proposed physical removal of assets from the commission's jurisdiction to another jurisdiction or removal or transfer of assets from a regulated to a nonregulated environment.

32.3(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.
- d. Current and proposed reorganization balance sheets and capital structures.
- e. Stockholder annual reports 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 will be filed, followed by the final statement when available.

32.3(4) Impact of reorganization.

- a. A cost-benefit analysis that describes the projected benefits and costs of reorganizing, including identification of source data. The benefits and costs should be quantified in terms of present value.
- 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, an analysis shall be submitted for all public utilities involved.

32.3(5) Effect on service and reliability.

- a. 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. A detailed statement on how the proposed reorganized entity will maintain or enhance service and reliability, including any investment or operational plans that are available.

32.3(6) If any information required by these subrules is not applicable to the type of reorganization being proposed, the applicant shall state the reason(s) why the particular information is not applicable to the proposal.

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199—32.4(476) Insufficient filing. The commission may reject within 30 days any proposal for reorganization that does not contain sufficient information for the commission to evaluate the proposal for reorganization. The commission shall fully describe any deficiencies in a reorganization plan that is rejected.

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199—32.5(476) Procedural matters. Because of statutory time limitations set forth in Iowa Code section 476.77(2), an expedited procedural schedule shall be utilized for proposals for reorganization. The commission may order additional specific procedures as needed for the expedited hearing process.

32.5(1) Within 40 days after a proposal for reorganization and supporting testimony is filed, the consumer advocate and any intervenors may file any written testimony and exhibits. This will allow the commission an opportunity to consider the testimony and exhibits prior to the 50-day deadline for issuing a notice of hearing.

32.5(2) Responses to data requests shall be made within five days from the date of service.

32.5(3) When a hearing on the proposed reorganization is scheduled, the applicant, consumer advocate, and any intervenors file a joint statement of the issues at least ten days prior to the date of hearing.

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199—32.6(388) Approval of appraiser for municipal utilities. The procedures for requesting commission approval of an appraiser are as follows:

32.6(1) *Making a request.* To request commission approval of an appraiser to appraise a city utility, the governing body of the city utility shall file a request in the commission's electronic filing system. The request shall contain the following information:

- a. The name of the city and of the utility;
- b. The type of utility service provided by the utility;
- c. The total number of customers served by the utility and the number of customers served by class, if applicable;
- d. A general description of the assets owned by the utility; and
- e. The name and contact information for the city or utility.

32.6(2) *Consideration of request.* When a request for approval of an appraiser is received by the commission, commission staff reviews the request and provides the commission with a recommendation or a list of appraisers for the commission to consider approving. The commission may delegate approval authority to the commission chair.

32.6(3) *Notice of approved appraiser.* Within 30 calendar days following the city's or city utility's filing to request commission approval of an appraiser, the commission shall notify the city and governing body of the city utility of an approved appraiser. If the city and governing body of the city utility are unable to agree to terms with an approved appraiser, the city and governing body of the city utility may file a letter with the commission requesting approval of another appraiser and identifying the reasons they are requesting the commission to approve another appraiser.

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These rules are intended to implement Iowa Code sections 388.2A(2) "a"(1), 476.76, and 476.77.

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