

CHAPTER 8
CIVIL PENALTIES

[Prior to 10/8/86, Commerce Commission[250]]

199—8.1(476) Civil penalty for willful violation. The board may assess a penalty against a public utility upon finding that the utility willfully violated a provision of Iowa Code chapter 476, a board rule, or a provision of an order lawfully issued by the board.

A willful violation exists where the evidence shows that the utility intentionally or knowingly violated a board rule, a provision of an order lawfully issued by the board in a proceeding involving the same utility, or a provision of Iowa Code chapter 476.

This rule is intended to implement Iowa Code sections 476.20 and 476.51.

199—8.2(476) Procedure. A request for imposition of civil penalties must be made within 180 days of the date the party filing the request knew or should have known of the alleged violation. The request shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The request shall be in writing and must be delivered by United States Postal Service or personal service. The 180-day limit is tolled by commencing an informal complaint proceeding in accordance with Iowa Administrative Code 199—Chapter 6.

8.2(1) Request by nonboard party. As a part of a request for a formal proceeding in accordance with Iowa Administrative Code 199—6.5(476) or as part of any other contested case proceeding, the consumer advocate or any other person may request the board to impose civil penalties against a utility for a willful violation of a provision of Iowa Code chapter 476, a board rule, or an order lawfully issued by the board in a proceeding involving the same utility.

In a complaint proceeding, the request for imposition of civil penalties must appear on the face of a request for formal proceeding filed in accordance with the provisions of Iowa Administrative Code 199—Chapter 6. Upon receiving approval from the board, a party may amend its request for a formal proceeding to request the board to impose civil penalties at any time prior to the close of the submission of evidence. In any other contested case proceeding, the request must be made by written motion prior to the close of the submission of evidence.

8.2(2) Board request. On its own motion, the board may raise the issue of imposing civil penalties against a utility for a willful violation of Iowa Code chapter 476, a board rule, or a provision of an order lawfully issued by the board in a proceeding involving the same utility, as part of a contested case proceeding with adequate notice or by commencing a formal complaint proceeding in accordance with the provisions of Iowa Administrative Code 199—Chapter 6.

8.2(3) Hearing. If necessary, a hearing shall be held in accordance with the provisions of Iowa Administrative Code 199—Chapter 6 where there is an issue of adjudicative fact. The utility may waive its right to a hearing. A separate hearing on an adjudicative fact is not required if the same issue of adjudicative fact has been fully litigated by the identical parties with adequate notice as part of a contested case proceeding.

This rule is intended to implement Iowa Code sections 476.20 and 476.51.

199—8.3(476) Penalties assessed. The board, in its discretion, may levy penalties of not more than \$100 per violation or \$1000 per day of a continuing violation, whichever is greater.

In determining the amount of penalty to be imposed for a willful violation, the board may consider the following factors in exercising its statutory discretion to impose civil penalties up to the maximum amount:

1. Gravity of the offense;
2. The utility's prior record of Code, rule, and order violations;
3. The actual or potential harm or injury to an individual or the public resulting from the violation.

This rule is intended to implement Iowa Code sections 476.20 and 476.51.

199—8.4(476) Payment of penalty. The remittance shall be made payable to the Iowa Utilities Board and forwarded to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. Remittance must be made within 35 days after final agency action.

This rule is intended to implement Iowa Code sections 476.20 and 476.51.

199—8.5(476) Rate-regulated utilities. A penalty assessed by the board pursuant to this rule against a utility must be recorded by the utility as a below-the-line, miscellaneous deduction from the income account and shall not be included directly or indirectly in the utility's rates or charges to customers.

This rule is intended to implement Iowa Code sections 476.20 and 476.51.

[Filed 6/1/84, Notice 2/15/84—published 6/20/84, effective 7/25/84]

[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]

[Filed 10/16/87, Notice 8/26/87—published 11/4/87, effective 12/9/87]

[Published 6/17/98 to update name and address of board]