

Senate File 2311 - Enrolled

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AN ACT

MODIFYING VARIOUS PROVISIONS RELATING TO PUBLIC UTILITIES,
PROVIDING FOR A STUDY OF ELECTRIC VEHICLE INFRASTRUCTURE
SUPPORT, AND INCLUDING EFFECTIVE DATE PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 28F.1, subsection 1, Code 2018, is amended to read as follows:

1. **This chapter** provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, facilities used for the conversion of solid waste to energy, gasworks and facilities useful for the delivery of natural gas service, and also electric power facilities constructed within the state of Iowa, except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of

Iowa, water supply systems, swimming pools or golf courses. This chapter applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E or [chapter 389](#). When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under [chapter 358](#), or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the seal at pleasure, and execute all the powers conferred in this chapter.

Sec. 2. Section 28F.11, Code 2018, is amended to read as follows:

28F.11 Eminent domain.

Any public agency participating in an agreement authorizing the joint exercise of governmental powers pursuant to this chapter may exercise its power of eminent domain to acquire interests in property, under provisions of law then in effect and applicable to the public agency, for the use of the entity created to carry out the agreement, provided that the power of eminent domain is not used to acquire interests in property which is part of a system of facilities in existence, under construction, or planned, for the generation, transmission or sale of electric power, or for the transmission, transportation, or sale of natural gas. In the exercise of the power of eminent domain, the public agency shall proceed in the manner provided by [chapter 6B](#). Any interests in property acquired are acquired for a public purpose, as defined in [chapter 6A](#), of the condemning public agency, and the payment of the costs of the acquisition may be made pursuant to the agreement or to any separate agreement between the public agency and the entity or the other public agencies participating in the entity or any of them. Upon payment of

costs, any property acquired is the property of the entity.

Sec. 3. Section 476.1, subsection 7, Code 2018, is amended to read as follows:

7. 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 required to be rate-regulated.

Sec. 4. Section 476.1A, subsections 1, 2, and 4, Code 2018, are amended to read as follows:

1. 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,~~ except for regulatory action pertaining to all of the following:

a. Assessment of fees for the support of the division and the office of consumer advocate, pursuant to section 476.10.

b. Safety and engineering standards for equipment, operations, and procedures.

c. Assigned area of service.

d. Pilot projects of the board.

e. Assessment of fees for the support of the Iowa energy center created in [section 15.120](#) and the center for global and regional environmental research established by the state board of regents. This paragraph "e" is repealed July 1, 2022.

f. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

~~*g.* 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 shall periodically report the energy efficiency results including energy savings of each of these utilities to the general assembly. 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.~~

2. However, sections 476.20, subsections 1 through 4, 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.

4. 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 board of directors or the membership of the electric cooperative may elect to exempt the cooperative from the rate regulation authority of the board, provided, however, that if the membership elected to have the cooperative's rates regulated by the board, only the membership may elect to exempt the cooperative from the rate regulation authority of the board.

Sec. 5. Section 476.1B, subsection 1, paragraphs f and l, Code 2018, are amended by striking the paragraphs.

Sec. 6. Section 476.2, subsection 6, Code 2018, is amended by striking the subsection.

Sec. 7. Section 476.4, subsection 1, Code 2018, is amended to read as follows:

1. 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 and any other regulations, 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.

Sec. 8. Section 476.6, subsections 8 and 13, Code 2018, are amended to read as follows:

8. *Automatic adjustments permitted.*

a. 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 and approved by the board.

b. A public utility may automatically adjust rates and charges to recover costs related to transmission incurred by or charged to the public utility consistent with a tariff or agreement that is subject to the jurisdiction of the federal energy regulatory commission, provided that a schedule showing the automatic adjustment of rates and charges is first filed with and approved by the board. The board shall adopt rules regarding the reporting of transmission expenses and transmission-related activity pursuant to this paragraph.

13. *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, total resource cost test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs, educational programs, and assessments of consumers' needs for information to make effective choices regarding energy use and energy efficiency 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. Programs offered pursuant to this subsection by gas

and electric utilities that are required to be rate-regulated shall require board approval.

Sec. 9. Section 476.6, subsection 15, paragraph a, Code 2018, is amended to read as follows:

a. (1) (a) ~~Gas and electric~~ Electric utilities required to be rate-regulated under this chapter shall file five-year energy efficiency plans and demand response plans with the board. Gas utilities required to be rate-regulated under this chapter shall file five-year energy efficiency plans with the board. An energy efficiency plan and budget or a demand response plan and budget shall include a range of energy efficiency or demand response 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 or demand response plans filed with the board.

(b) The board shall allow a customer of an electric utility that is required to be rate-regulated to request an exemption from participation in any five-year energy efficiency plan offered by an electric utility if the energy efficiency plan and demand response plan, at the time of approval by the board, have a cumulative rate-payer impact test result of less than one. Upon receipt of a request for exemption submitted by a customer, the electric utility shall grant the exemption and, beginning January 1 of the following year, the customer shall no longer be assessed the costs of the plan and shall be prohibited from participating in any program included in such plan until the exemption no longer applies, as determined by the board.

(2) Gas and electric utilities required to be rate-regulated under this chapter may request an energy efficiency plan or demand response plan modification during the course of a five-year plan. A modification may be requested

due to changes in funding as a result of public utility customers requesting exemptions from the plan or for any other reason identified by the gas or electric utility. The board shall take action on a modification request made by a gas or electric utility within ninety days after the modification request is filed. If the board fails to take action within ninety days after a modification request is filed, the modification request shall be deemed approved.

(3) The board shall adopt rules pursuant to chapter 17A establishing reasonable processes and procedures for utility customers from any customer class to request exemptions from energy efficiency plans that meet the requirements of subparagraph (1), subparagraph division (b). The rules adopted by the board shall only apply to electric utilities that are required to be rate-regulated.

Sec. 10. Section 476.6, subsection 15, paragraphs c and d, Code 2018, are amended by striking the paragraphs.

Sec. 11. Section 476.6, subsection 15, paragraphs e, f, and g, Code 2018, are amended to read as follows:

e. (1) The board shall conduct contested case proceedings for review of energy efficiency plans, demand response plans, and budgets filed by gas and electric utilities required to be rate-regulated under [this chapter](#).

(2) Notwithstanding the goals developed pursuant to paragraph "b", the board shall not require a gas utility to adopt an energy efficiency plan that results in projected cumulative average annual costs that exceed one and one-half percent of the gas utility's expected annual Iowa retail rate revenue from retail customers in the state, shall not require an electric utility to adopt an energy efficiency plan that results in projected cumulative average annual costs that exceed two percent of the electric utility's expected annual Iowa retail rate revenue from retail customers in the state, and shall not require an electric utility to adopt a demand response plan that results in projected cumulative average annual costs that exceed two percent of the electric utility's expected annual Iowa retail rate revenue from retail customers in the state. For purposes of determining the two percent threshold amount, the board shall exclude from an electric

utility's expected annual Iowa retail rate revenue the revenues expected from customers that have received exemptions from energy efficiency plans pursuant to paragraph "a". This subparagraph shall apply to energy efficiency plans and demand response plans that are effective on or after January 1, 2019.

(3) 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.

(4) The board shall approve, reject, or modify a plan filed pursuant to this subsection no later than March 31, 2019. If the board fails to approve, reject, or modify a plan filed by a gas or electric utility on or before such date, any plan filed by the gas or electric utility that was approved by the board prior to the effective date of this Act shall be terminated. The board shall not require a gas or electric utility to implement an energy efficiency plan or demand response plan that does not meet the requirements of this subsection.

(5) 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.

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

g. (1) 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 or demand response 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 "e". Customers that have been granted exemptions from energy efficiency plans pursuant to paragraph "a", shall not be charged for recovery of energy efficiency costs beginning January 1 of the year following the year in which the customer was granted the exemption.

(2) 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 or demand response 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 Beginning January 1, 2019, a gas or electric utility shall not represent energy efficiency and demand response in customer billings as a separate cost or expense unless the board otherwise approves.

Sec. 12. Section 476.6, subsection 17, Code 2018, is amended by striking the subsection.

Sec. 13. Section 476.6, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 22. *Preapproval of cost recovery for natural gas extensions — rules.* The board may adopt rules which provide for a preapproval process for cost recovery for natural gas extensions.

Sec. 14. Section 476.6, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 23. *Federal tax reduction — customer benefits.* Customers of gas and electric utilities subject to rate regulation by the board shall receive the full benefits of the utilities' reduced federal corporate income taxes as provided in the federal Tax Cuts and Jobs Act of 2017, Pub.

L. No. 115-97, 131 Stat. 2054. Notwithstanding any other provision of law or rule to the contrary, the board shall, no later than June 1, 2018, approve any proposal filed by a rate-regulated gas or electric utility to pass such benefits on to customers. The board may approve rates with provision for adjustments to ensure that the rates are accurate and that customers receive the full benefits.

Sec. 15. Section 476.20, subsection 5, paragraph a, unnumbered paragraph 1, Code 2018, is amended to read as follows:

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. This subsection shall not apply to municipally owned utilities, which shall be governed by the provisions of [section 384.84](#) with respect to deposits and payment plans for delinquent amounts owed. Municipally owned utilities and electric utilities that are not required to be rate-regulated shall not be subject to the board's rules in regards to deposits and payment plans for delinquent amounts owed and repayment of past due debt. Municipally owned utilities and electric utilities that are not required to be rate-regulated shall be subject to the board's rules in regards to payment plans made prior to the disconnection of services.

Sec. 16. Section 476.21, Code 2018, is amended to read as follows:

476.21 Discrimination prohibited.

A ~~municipality~~, corporation or cooperative 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.

Sec. 17. Section 476.33, subsection 4, Code 2018, is amended to read as follows:

4. The board shall adopt rules that require the board, in rate regulatory proceedings under [sections 476.3](#) and [476.6](#), to utilize either a historic test year or a future test year at the rate-regulated public utility's discretion.

a. For a rate regulatory proceeding utilizing a historic test year, the rules shall require the board 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 paragraph](#), 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](#).~~

b. For a rate regulatory proceeding utilizing a future test year, the rules shall require the board to consider the use of any twelve-month period beginning no later than the date on which a proposed rate change is expected to take effect in determining just and reasonable rates. The rules shall also require the board to conduct a proceeding subsequent to the effective date of a rate resulting from a rate regulatory proceeding utilizing a future test year to determine whether the actual costs and revenues are reasonably consistent with those approved by the board. If the actual costs and revenues are not reasonably consistent with those approved by the board, the board shall adjust the rates accordingly. For a rate regulatory proceeding utilizing a future test year, the

board may adopt rules regarding evidence required, information to support forecasts, and any reporting obligations. The board may also adopt rules regarding the conditions under which a public utility that utilizes a future test year may subsequently utilize a historic test year. A public utility shall not be precluded from filing a rate regulatory proceeding utilizing a future test year prior to the adoption of any rules pursuant to this subsection.

c. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.

Sec. 18. Section 476.53, subsection 3, paragraph a, subparagraph (1), subparagraph division (a), Code 2018, is amended by adding the following new subparagraph subdivision:

NEW SUBPARAGRAPH SUBDIVISION. (v) Repowering of an alternate energy production facility. For purposes of this subparagraph subdivision, "repowering" shall mean either the complete dismantling and replacement of generation equipment at an existing project site, or the installation of new parts and equipment to an existing alternate energy production facility in order to increase energy production, reduce load, increase service capacity, improve project reliability, or extend the useful life of the facility.

Sec. 19. STUDY OF ELECTRIC VEHICLE INFRASTRUCTURE SUPPORT. The economic development authority, in collaboration with the department of transportation and the Iowa utility industry, shall conduct a study of electric vehicle infrastructure support for both commercial and noncommercial vehicles and make recommendations to the general assembly regarding electric vehicle charging infrastructure. The study shall evaluate the relative costs and benefits associated with various options for electric vehicle infrastructure support. The economic development authority shall submit a report to the general assembly containing the results of the study no later than June 30, 2019.

Sec. 20. EFFECTIVE DATE. The following, being deemed of immediate importance, takes effect upon enactment:

1. The section of this Act amending section 476.6, subsection 15, paragraphs "e", "f", and "g".

2. The section of this Act enacting section 476.6,
subsection 23.

CHARLES SCHNEIDER
President of the Senate

LINDA UPMEYER
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 2311, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2018

KIM REYNOLDS
Governor