

**UTILITIES DIVISION[199]**

**Adopted and Filed**

**Rulemaking related to declaratory orders**

The Utilities Board hereby rescinds Chapter 4, “Declaratory Orders,” Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.9 and 476.2.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 17A.9 and Executive Order 10 (January 10, 2023).

*Purpose and Summary*

The Board commenced this rulemaking under the provisions of Executive Order 10. This chapter is intended to inform members of the public of their right to file a petition for declaratory order under Iowa Code section 17A.9 and to describe the Board’s declaratory order practice as required by Iowa Code section 17A.3(1)“b.” The Board is rescinding the existing Chapter 4 and repromulgating a new version of Chapter 4 with the removal of unnecessary and unneeded language and the reduction of restrictive terms.

On March 13, 2024, the Board issued an order adopting amendments. The order is available on the Board’s electronic filing system, [efs.iowa.gov](https://efs.iowa.gov), under Docket No. RMU-2023-0004.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 7, 2024, as **ARC 7578C**. The first public hearing was held on February 27, 2024, at 9 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa, and the second public hearing was held on March 5, 2024, at 9 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The February 27, 2024, public hearing was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; and Interstate Power and Light Company. The March 5, 2024, public hearing was attended by OCA, MidAmerican Energy Company, and Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy. All oral comments received were supportive of the proposed rulemaking action set forth in the Notice.

The Board received written comments from OCA, which expressed support for the Board’s rescission of existing Chapter 4 and adoption of a new Chapter 4 as published and set forth in the Notice.

No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Board on March 13, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 4.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on May 8, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 199—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4  
DECLARATORY ORDERS

**199—4.1(17A) Petition for declaratory order.** Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. The petition shall conform with this chapter and with Iowa Code section 17A.9. A petition shall be dated and signed by the petitioner, include the petitioner's appropriate contact information, and include all of the following information (a sample form of a petition for a declaratory order is available on the board's website at [iub.iowa.gov](http://iub.iowa.gov)):

**4.1(1)** The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

**4.1(2)** A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner's interest in the issue;

**4.1(3)** A citation to and the relevant language of the statutes, rules, policies, decisions, or orders that are applicable or whose applicability is in question and any other relevant law;

**4.1(4)** The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;

**4.1(5)** A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity;

**4.1(6)** The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the questions presented in the petition; and

**4.1(7)** A statement indicating whether the petitioner requests a meeting as provided for by rule 199—4.5(17A).

**199—4.2(17A) Intervention.** A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to the "Intervention" rule contained in 199—Chapter 7 within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A petition for intervention in a proceeding on a petition for declaratory order shall be dated, be signed by the prospective intervenor with that person's appropriate contact information, include the information set forth in the "Intervention" rule contained in 199—Chapter 7, and include all of the following:

**4.2(1)** The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

**4.2(2)** A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any government entity;

**4.2(3)** The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by or interested in the questions presented in the petition; and

**4.2(4)** Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

**199—4.3(17A) Briefs.** The petitioner or any intervenor may file a brief in support of that party's position, and the board may order additional briefing.

**199—4.4(17A) Service and filing of petitions.** At the same time a petition for a declaratory order is filed, the petitioner shall serve the petition, in accordance with the "Service of documents" subrule in 199—Chapter 7 and the "Electronic service" rule in 199—Chapter 14, upon any person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law. The petitioner is to file with the board a list of all persons served.

**199—4.5(17A) Informal meeting.** Upon request by petitioner, the board will schedule an informal meeting between the petitioner, all intervenors, and the board, a member of the board, or a designated member of the staff of the board to discuss the questions identified in the petition. The board may solicit comments from any person on the questions raised.

**199—4.6(17A) Refusal to issue order.**

**4.6(1) Grounds.** The board will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

*a.* The petitioner requests that the board determine whether a statute is unconstitutional on its face.

*b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

*c.* The board does not have jurisdiction over the questions presented in the petition.

*d.* The questions presented by the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.

*e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

*f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

*g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

*h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

*i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

**4.6(2) Content and effect of refusal.**

*a.* The board’s refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.

*b.* Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.

**199—4.7(17A) Effect of a declaratory order.**

**4.7(1)** The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order is binding on the board, on the petitioner, on any intervenors who consent to be bound, and on any persons who would be necessary parties, who are served pursuant to rule 199—4.4(17A), and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.

**4.7(2)** A declaratory order is effective upon the date of issuance.

These rules are intended to implement Iowa Code sections 17A.3(1)“*b*,”17A.9 and 476.2.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/3/24.