

**STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD**

IN RE:)	
)	DOCKET NO. RMU-2016-0018
REVIEW OF ENERGY EFFICIENCY)	
PLANNING AND COST REVIEW)	
RULES [199 IAC CHAPTER 35])	COMMENTS
)	
)	
)	

The Environmental Law & Policy Center (ELPC) and Iowa Environmental Council (IEC) file these comments regarding the potential amendments to 199 IAC Chapter 35 pursuant to the Iowa Utilities Board’s Order on October 24, 2017.

On August 8, 2016, the Iowa Utilities Board issued an Order Requesting Stakeholder Comment on Potential Rule Changes related to the 199 Iowa Administrative Code Chapter 35 rules on energy efficiency. On September 7, 2016, ELPC and IEC, the Office of Consumer Advocate (OCA), MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company (IPL), and Black Hills Energy submitted initial comments on the proposed rulemaking. IPL, Black Hills, OCA, and ELPC and IEC filed reply comments in the docket. On January 26, 2017, the Board issued an Order Scheduling Workshop that set March 9, 2017, to further discuss the comments in the docket. The workshop included participants from ELPC, IEC, OCA, MidAmerican, IPL, and Black Hills. ELPC and IEC, OCA, MidAmerican, IPL, and Black Hills submitted post-workshop comments on March 23, 2017.

Well run energy efficiency programs provide significant benefits to Iowa customers, the environment, and the economy. The successes of Iowa’s energy efficiency programs are built on the strong framework for energy efficiency in the Iowa statute and administrative rules. We think

that the feedback that the Board has collected as part of this rulemaking and the minor changes to the energy efficiency rules as proposed will improve Iowa's energy efficiency rules.

We have significant concern with the Board's proposal to create ongoing energy efficiency plans and believe that will undermine energy efficiency in Iowa and weaken both programs and accountability. Energy efficiency technologies and best practices change over time, and the Board needs to protect customers by ensuring comprehensive reviews of programs for cost-effectiveness including program design, scope and implementation. A perpetual energy efficiency plan would weaken Board oversight and stakeholder opportunities to provide accountability leading to energy efficiency programs that fail to capture energy efficiency opportunities and are not continuously improved to more effectively use ratepayer investments.

I. The Board Should Not Implement a System of Perpetual Energy Efficiency Plans.

In the Order requesting comments on the most recent revisions to the Chapter 35 rules, the Board requested stakeholder comments on adopting a system of perpetual energy efficiency plans. The Board does not define what it means by a perpetual system of energy efficiency plans, but the Board seems to envision a process that would lead to less administrative burden while still allowing stakeholders to provide the same level of input.

As a preliminary matter, it is important to note that accomplishing a perpetual energy efficiency plan as suggested by the Board would require a significant rewrite of Chapter 35 that has not been contemplated in the rulemaking to date and is not reflected in any language currently proposed by this rulemaking. Without having specifics about what the Board is proposing, parties cannot address the actual impact of such a change. For example, perpetual energy efficiency plans in practice could be a process with more limited contested cases on a regular basis – every year – that focus on program modifications and new programs. The core

programs that would stay the same would not be litigated. On the other hand, a perpetual plan cycle that simply maintains existing programs, reduces oversight and does not evaluate new energy efficiency opportunities could significantly weaken existing energy efficiency programs and result in static and stale programs that miss significant energy efficiency opportunities.

The details of a policy change of this magnitude matter, and if the Board is contemplating such a change, we recommend a separate docket to explore the details and implications more effectively. The current rules simply are not set up for and do not contemplate a perpetual energy efficiency plan. We have identified a set of initial concerns with the concept of perpetual plans. Our concerns lead us to conclude that a change to a perpetual energy efficiency plan does not make sense. We recommend that the Board not move forward with the concept and the significant changes to Chapter 35 that are outside the scope of the current rulemaking that would be required.

For energy efficiency plans to be effective, the Board, stakeholders, and utilities must review and revise the programs often enough to account for changes in a variety of areas affecting the programs' capacity to save energy – including the economy, the regulatory landscape, and technology. These fast-changing areas have a profound effect on the efficacy of programs. While the current approach of five-year plans has been the practice, in previous comments in this docket, we supported a shorter three-year plan period that allows for faster and more efficient responses to changing technology, lessons learned from program evaluations, and regulatory changes at both the state and national level. We think that it is important that energy efficiency plans have the ability to be nimble and responsive while still maintaining the accountability and oversight necessary to ensure program dollars are spent wisely and programs are well-designed.

A poorly crafted perpetual energy efficiency plan rule would eliminate review without meaningful opportunities to add new programs or modify existing programs. This would lead to static energy efficiency plans that over time become less and less connected to the reality on the ground. The Board oversight and stakeholder engagement are necessary to ensure program dollars are spent effectively, programs are designed to maximize savings, and new energy efficiency opportunities are captured. Eliminating oversight and accountability would make it more difficult to accomplish all of these important roles. A perpetual energy efficiency plan would not provide an opportunity for a comprehensive assessment of energy efficiency opportunities and incorporating that information into the development of new programs and measures. A perpetual energy efficiency plan would make it more difficult for plans to respond immediately after a significant regulatory change such as new building and energy codes, implementation of EISA, or a new carbon regulation framework.

A perpetual energy efficiency plan would fail to protect customers from potentially paying for outdated programs that don't produce real benefits. Perpetual plans may not adjust to take advantage of technological changes that create significant opportunities for savings and innovation. It is unclear how a perpetual plan would require a utility to evaluate energy efficiency opportunities. A retroactive look at past savings alone means that the plans would contain a bias towards the status quo and, in addition, the plans would become dependent on stakeholders to identify new technologies and new opportunities. This type of approach would lead to missed opportunities and lower savings. It is important that energy efficiency plans evaluate potential for savings and incorporate that potential into the plans. It is unclear how a perpetual energy efficiency plan would address this.

It is unclear how a perpetual energy efficiency plan would address Evaluation, Measurement and Verification (EMV). As ELPC and IEC previously noted, there are significant gaps in the current EMV work of the utilities. For the past two five-year plan cycles, IPL has conducted EMV activities at the beginning of the plan cycle and completed evaluation activities in the second or third year of a plan cycle. This raises two concerns. First, the evaluation results are stale by the time the next plan is developed. Second, the final two or three years of the plan cycle have no evaluation activities, and there is no learning, adaptation or evidence-based improvement during that time. This is a major inefficiency and shortcoming with the current programs. MidAmerican currently does a better job staggering program evaluation over the current plan term, but even the staggered approach creates significant gaps in evaluation activities. The impact of a perpetual energy efficiency plan on a critical issue like EMV would depend on the details of how the new plan would work, and those changes could lead to better EMV that leads to more effective programs or it could lead to less frequent and effective EMV. If the Board continues to look at a perpetual energy efficiency plan, an independent or Board led EMV process would be critically important to ensure oversight of the programs and that program dollars were used on cost-effective energy efficiency opportunities. These issues would need to be addressed in any rules to implement a perpetual energy efficiency plan.

II. The Board should continue with the rulemaking process that makes changes that have been thoroughly vetted and incorporate stakeholder comments.

ELPC and IEC have previously submitted several rounds of comments in this rulemaking. If we have previously addressed an issue in comments in this rulemaking, and we have not subsequently modified our position in these or other comments, we incorporate our previous comments by reference. The limited changes addressed in the proposed rule language make modest changes that have been vetted by stakeholders and will improve the energy

efficiency rules. The Board should continue forward with this limited rulemaking, and we suggest some additional changes to improve the proposed language.

A. Revise the peak period definition for electric utility in 35.2.

We previously suggested that the Board add electric utilities to the definition of peak period. The proposal includes a peak period definition for electric utilities. However, the peak period definition for electric utility as proposed is problematic and would not help drive efficient electric consumption. There are several problems with this definition. It is defined by customer rather than a system peak. A customer's peak may or may not coincide with system peak and may or may not be what drives costs. It is possible that it was not meant to be customer based and the language is simply ambiguous in that regard. If that is the case, this can be easily fixed with drafting changes to more clearly reflect that it is meant to be the utility's system wide peak usage. A second concern is that peak period is defined as a single point in time rather than a period of time representing a number of hours. The section of the definition for electric utilities uses the word 'period,' and then the phrase 'highest point,' which is likely interpreted as a single hour or an even smaller increment of time. The gas utility section of the definition includes the language of 'days and weeks,' which can be used for the electric utility section as well. It is important that the definition of peak period capture the high load and high cost hours for the electric utility.

B. Add a definition of achievable potential.

There is no proposed definition of 'achievable potential.' We suggested this in our initial comments (pages 13-14). In our post-workshop comments, we provided the following more detailed definition for achievable potential:

An estimate of cost-effective annual and lifetime energy and capacity savings, costs, benefits, net benefits, and environmental impacts attainable by programs,

operating over a defined multi-year timeframe, that encourage the adoption of energy efficiency and demand reduction measures.

We urge the Board to adopt the definition we proposed in our post-workshop comments in the final rule.

C. Plan modification requirements should capture substantial sustained changes to program savings that are below 20%.

We support adding a trigger to the current plan modification rule focused on whether the utility's plan is achieving the approved annual performance standard. The annual performance standard – the actual amount of energy being saved – is a key metric to evaluate plan performance, but it is not part of the plan modification rule. A utility that is well below its performance standard should modify its plan so as to better achieve the performance standard.

There is new language at 35.6(4)(a)(6) added regarding the trigger of a 20% variation from annual energy savings performance standards. The trigger includes a provision that the variation is expected to continue. In our post-workshop comments, we suggested a trigger of 20% in 1 year or 10% in two consecutive years. The proposed language combines the two and is likely overly restrictive. It is important that underlying factors causing the utility to miss savings targets will continue over time, and therefore should be addressed in a substantive manner in the plan in order to design programs to maximize cost-effective energy efficiency savings. These changes are not a natural fluctuation. They represent a flaw in program design, change in technology, or some other factor that should be addressed.

An expectation that a 20% variation continue over time creates several problems. It gives too much discretion to a utility's expectation. If the variance is 20% one year and is expected to continue but at 10 to 15% in future years that would not trigger modification. This would be the case even if the actual variation was 20% in one of the following years. It would also do nothing

to address a consistent situation of several years of a utility being 18% below savings. This new language is a positive step, but we would continue to support language that allows for a substantial and consistent change below 20% to be addressed. For example.

35.6(4)(a)(6) The actual or expected program savings impacts vary from approved annual energy savings performance standards by at least plus or minus 20 percent and the variance is expected to continue or the actual savings impacts are not met by 15% or more in two consecutive plan years.

D. Clarify the language adding distributed generation to the load forecast section in 35.9(1)(a).

We support inclusion of distributed generation language in the load forecast section, but we encourage a clarification to the proposed rule language here. The proposed rule could be interpreted to limit the inclusion of distributed generation to only the ‘effects to date’ of distributed generation. Because this is a forecast for the subsequent 20 years and distributed generation will change over that time, we suggested in past comments that the load forecast also include the ‘projected effects’ of distributed generation. This can be addressed with minor changes to language of the relevant subsection of the rules:

35.9(1)(a). A statement, in numerical terms, of the utility’s current 20-year forecasts including reserve margin for summer and winter peak demand and for annual energy requirements. The forecast shall not include the effects of the proposed programs in subrule 35.8(8), but shall include the effects to date of current ongoing utility energy efficiency programs and the effects to date and projected effects of distributed generation as defined in 199 chapter 45.

E. The Board should not change the prudence review as proposed.

There was discussion at the workshop on connecting prudence review to the filing of annual reports. In our post-workshop comments, we briefly addressed this, including an interest in further exploring the suggestion at the workshop that would allow parties to file formal comments on the utilities’ energy efficiency annual reports and include these comments in the

future prudence review record. The proposed rule goes in a different direction and establishes a process related to the final annual report filing that raises significant concerns.

The proposed rule limits a petition for prudence review for the 90 day window after a utility files the last annual report of its plan. This is a significant new limit that constrains the timing for prudence review during a five-year plan cycle. The proposed rule further limits the prudence review by establishing an unclear or ambiguous standard for the Board to open the review with the language “[i]f the Board receives a petition for a prudence review that merits a contested case review.” Finally, the proposed rule states that if no parties request prudence review, the utility’s implementation will be deemed reasonable. This could essentially force parties to file the petition to preserve the option of prudence review during the small 90 day window after the final annual report is filed.

Taken together, these proposed rule changes would significantly limit or even eliminate prudence reviews during five-year plan cycles. Limiting or eliminating prudence review erodes the oversight and scrutiny needed to ensure the utilities are capturing significant cost-effective efficiency opportunities, spending ratepayer dollars effectively, and producing real benefits for customers. We do not support changes to the prudence review as proposed.

DATE: November 27, 2017

Respectfully submitted,

/s/ Joshua T. Mandelbaum
Joshua T. Mandelbaum (AT0010151)
Environmental Law & Policy Center
505 5th Avenue, Suite 333
Des Moines, Iowa 50309
P: (515) 244-0253
jmandelbaum@elpc.org

/s/ Nathaniel Baer
Nathaniel Baer
Iowa Environmental Council
521 East Locust, Suite 220
Des Moines, Iowa 50309
P: (515) 244-1194 x206
baer@iaenvironment.org