

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
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The Environmental Law & Policy Center (ELPC) and Iowa Environmental Council (IEC) file these comments pursuant to the Iowa Utilities Board’s Order Commencing Rule Making issued on January 23, 2019 and the Iowa Administrative Bulletin published February 14, 2019.

Introduction

The Iowa Utilities Board (Board) began a process to explore the Chapter 35 Energy Efficiency rules on August 8, 2016 with an Order Requesting Stakeholder Comment on Potential Rule Changes related to the 199 Iowa Administrative Code Chapter 35 rules on energy efficiency. The review process included a workshop and multiple rounds of comments. During the course of the Board’s review of its energy efficiency rules, the legislature passed and the Governor signed SF 2311 that made changes to Iowa Code chapter 476. The Board intends this Rule Making to address both its review and the recent legislative changes.

Iowa has had a long tradition of robust energy efficiency programs. During her tenure as Lt. Governor, Governor Reynolds led the development of the Iowa Energy Plan that made

energy efficiency and conservation a pillar of the plan and path forward in Iowa.¹ SF 2311 undoubtedly changes the policy framework for energy efficiency, but to reconcile SF 2311 with the Iowa Energy Plan, it should be viewed as adding accountability and transparency to the energy efficiency framework rather than an abandonment of energy efficiency as an energy resource and policy priority.

The proposed rules go well beyond what is necessary to implement SF 2311 and rather than take steps to enhance and improve accountability and transparency, the proposed rules weaken and undermine accountability and transparency in the energy efficiency framework. The Board should revisit the proposed rules in order to make sure that energy efficiency maintains its position as a policy priority consistent with the Iowa Energy Plan and to strengthen accountability and transparency rather than weaken them.

Proposed New Rule 35.1 – Authority and Purpose

The proposed rule eliminates existing language that the implementation of energy efficiency plans and customers’ opportunities for participation in and benefits from efficiency is “the highest priority.” 199 IAC 35.1. The proposed rule also eliminates the Board’s essential role in developing “capacity and energy savings performance standards for each utility” and evaluating each plan given those standards. *Id.* Cost-effective efficiency is a priority because it is a low cost resource that lowers costs not just for participants, but for all utility customers. When efficiency becomes a low priority and is not pursued by utilities or customers, more expensive resources will be procured and costs for all customers will rise. Eliminating this language sets the tone for the overall proposed rule, which appears to take every opportunity to make efficiency

¹ Iowa Energy Plan (Dec. 2016), available at <http://iowaenergyplan.org/docs/IowaEnergyPlan.pdf>.

programs less effective, less robust, and less accountable. The rules should acknowledge the Governor's Iowa Energy Plan energy efficiency pillar and maintain the language that makes efficiency "the highest priority."

The rules should also maintain a framework for accountability and transparency and that necessitates clear and robust performance standards. The rules should preserve the Board's role in setting energy and capacity performance standards, as required by Iowa law. Iowa Code states that after receiving the assessment of potential, "the board shall consult with the economic development authority to develop specific capacity and energy savings performance standards for each utility." Iowa Code § 476.15(b).

Proposed New Rule 35.2 – Definitions

The proposed rule eliminates over 30 definitions from existing rules, modifies several others, and adds seven new definitions. While we have stated that some definitions can be eliminated to simplify and streamline the rules, the proposed rule goes well beyond this purpose and eliminates terms and definitions critical to the development and implementation of energy efficiency and demand response plans and programs.

We are particularly concerned about the elimination of the following definitions: customer's side of the meter, economic potential, incremental cost, market barrier, off-peak period, peak day demand, peak period, saturation/market saturation, and technical potential. Economic and technical potential are key terms related to the assessment of potential, the Board's determination of capacity and energy savings performance standards, and the utility's proposed plan to achieve those standards. Each of these – the assessment, performance standards, and plan designed to achieve the standards – is required by Iowa Code. Iowa Code §

476.6(15)(b). The rules should clearly implement and relate to these statutory requirements rather than ignore them.

In addition, the different definitions related to peak are needed to evaluate proposed demand response plans, to calculate avoided costs, and to ensure transparency in information provided to the Board and stakeholders in the dockets. The Board's proposed definition of 'demand response' includes "times of high wholesale market prices or when system reliability is jeopardized." Proposed rule 35.2. Peak loads are directly related to high prices and system reliability issues. Historical information about peaks is important to projecting future system reliability and cost issues and, given that the plans are forward-looking plans, taking that information into account is critical. Terms related to peaks should be retained in the definitions to better understand and evaluate how demand response plans are proposed to reduce peaks.

The demand response definition also needs some minor clarification to be clear that on-site backup generation during demand response events is allowed. This is the practice of many large customers who currently use the demand response program and may not actually reduce electricity consumption but do reduce consumption from the utility system. This would also allow for future innovation with battery storage or other pilot programs as we have suggested in other dockets being part of a demand response program. We suggest the following language change to the proposed demand response definition:

"Demand response" means changes in a customer's normal consumption patterns in response to changes in the price of electricity over time, or to incentive payments designed to induce lower electricity use provided by the utility at times of high wholesale market prices or when system reliability is jeopardized.

In past comments in this docket, we suggested that the Board adopt a definition for 'achievable potential,' as assessment of potential studies typically identify technical, economic

and achievable potential. In addition to retaining the definitions of technical and economic potential, the Board should add the achievable potential definition to the rules.

Proposed New Rule 35.3 – Energy efficiency and demand response plan filing

This proposed rule eliminates any reference to the Board’s statutory role in developing capacity and energy performance standards as well as the need for utility efficiency and demand response plans to be designed to attain these standards. If the Board had retained this language in other key sections of the proposed rule, such as 35.1 and 35.5, then the elimination here may be less concerning, but the Board’s elimination of this language throughout the rules is a major concern. We address this in more detail in the discussion of 35.5 below.

Proposed New Rule 35.4 – Assessment of potential and collaboration

The proposed rule eliminates a significant amount of guidance and information regarding the assessment of potential study. The assessment of potential is required by Iowa Code and forms the basis for the capacity and energy performance standards and the resulting efficiency and demand response plans. Iowa Code § 476.6(15)(b). The quality and value of the potential study is important for identifying the full range of cost-effective energy efficiency potential, which is used to set appropriate performance standards and for designing a plan to achieve the potential. The studies can be expensive to complete and can range widely in content, value, and usefulness. By providing almost no guidance or requirements other than the completion of the study, the proposed rules signal that the study is of low importance and is more of a formality. The rules would be significantly improved by providing for a study that includes: an evaluation of technical and economic potential as well as a range of achievable potential; a comprehensive

range of both commercially available and emerging energy efficiency technologies and practices, given that the study covers a 10 year prospective time period; clearly identified use of codes and standards; and, load forecast scenarios and customer class load data.

In addition, the proposed rules have eliminated utility reporting about collaboration efforts. We appreciate that proposed rule 35.4(2) retains a requirement that the utilities offer opportunities for stakeholders to propose suggestions and to review and comment on drafts of the assessment and proposed plans. However, an important part of the accountability for utilities on collaboration is reporting on collaborative efforts. The provisions on reporting in the existing rules should be retained to ensure that the utilities are accountable. 199 IAC 35.8(9)(b). IBEC's recommendation that the utility file analysis of stakeholder input, the utility's response, and an explanation for rejection of stakeholder proposals would also add accountability and transparency to the collaborative process and would be a welcome addition to the language in the existing rules. Comments of the Iowa Business Energy Coalition (filed Feb. 5, 2019).

Proposed New Rule 35.5 – Energy efficiency and demand response requirements

We have identified several concerns in this section, including changes to the treatment of cost-effectiveness tests and changes to avoided cost calculations.

The proposed rule eliminates the Board's longstanding precedent of using the societal test as the primary cost-effectiveness test for screening measures, programs and the overall plan. The Board's precedent is based on the value of the information provided by the societal test given the costs and benefits it includes:

The critical cost-effectiveness test is the Societal Test ... because it combines the perspectives of the utility, the program participants and all utility customers in general. If a program or plan passes this test, it means the benefits of the energy efficiency savings in future utility avoided costs are greater than the extra costs of

energy efficient equipment ... All customers benefit from lower future utility costs, even if they do not participate in a program in a particular year.²

Utilities have been provided the option of using the other accepted cost-effectiveness tests as the primary screen, but only if they can “describe and justify” the use of the different test. 199 IAC 35.8(1)(e)(1). Senate File 2311 did not change this approach. The legislation added the total resource cost test to the list of acceptable tests and required an analysis of the ratepayer impact measure test for the purposes of determining whether customers could request an exemption. The Board’s previous reasoning for using the societal cost test as the primary test is still applicable today, and the Board should clearly retain the societal test as the primary cost-effectiveness test in the rules.

The rule should also be clear about the programs not required to meet the cost effectiveness tests. SF 2311 exempted educational programs and assessments of consumers’ needs for information to make effective choices regarding energy use and energy efficiency as well as low-income and tree-planting programs. The proposed rule is narrower only exempting low-income and tree-planting programs. The rule should be consistent with the code and exempt educational and assessment programs.

We agree with OCA’s recommendation to maintain the pilot program rule that currently exists and that an additional subsection in 35.5 would be a logical location. OCA Comments (filed Feb. 22, 2019). Pilot programs are an important part of innovation, adopting best practices, and maximizing energy efficiency opportunities.

Finally, we strongly object to the Board’s proposed use of electric energy and capacity avoided costs from the utilities’ board-approved tariff for cogeneration and small power

² Iowa Utilities Board, *The Status of Energy Efficiency Programs in Iowa*, Report to the Iowa General Assembly (2008) at 21.

production facilities. The Board recently made changes in the methodologies used to derive the PURPA avoided costs both for facilities above 100 kW and below 100 kW. During that process, the Board was clear that the scope for these avoided costs was limited to certain qualifying facilities (QFs): “the Board clarifies the proposed method’s scope of application. The method would be mandatory for determination of utility rates for purchase of QF output provided on an ‘as-available’ basis; it would not be required for purchases under a legally enforceable obligation between a QF and a utility.”³ The Board’s development of this methodology was in the context of FERC regulations implementing PURPA and the cash-out for the new net metering pilots. The Board proceedings in SPU-2017-0003, TF-2016-0321 and TF-2016-0290 examined a range of issues relate to wind and solar net metering or QF facilities, avoided cost methodologies, and PURPA regulations.

There was no comparable discussion about avoided costs related to energy efficiency, given that the Board clearly identified the scope for avoided costs as related only to QFs and net metered renewable energy facilities. In fact, the Board’s only reference to energy efficiency in its final orders fully distinguishes QFs from energy efficiency: “For the same reasons, a QF’s output provided to a utility ‘as available’ cannot form the basis for utility planning to meet system peak demand. Neither does it bear *any relation to* long-term utility resource or *energy efficiency planning.*”⁴ (emphasis added).

The Board’s application of a limited avoided cost decision to energy efficiency plans would further undervalue energy efficiency as a resource. IPL recommended the Board maintain the existing avoided cost methodology to better capture the long-term value of energy efficiency

³ Iowa Utilities Board, Order Adopting Method for Determining Standard Rates, Requiring Filing of Compliance Tariffs, and Closing Docket, Docket Nos. SPU-2017-0003, TF-2016-0294, TF-2016-090 (August 18, 2017) at 5.

⁴ *Id.* at 13.

benefits. IPL Comments at 4 (filed Feb. 5, 2019). MidAmerican provided a more detailed reasoning for maintaining the existing rule. In particular, MidAmerican noted that “[t]he capacity prices resulting from the MISO capacity auction have not been consistent with the long-term cost for new capacity.” MidAmerican Comments at 4 (filed Feb. 5, 2019). The OCA also supported the utilities position. OCA Comments at 6 (filed Feb. 22, 2019). By undervaluing the energy efficiency resource, the proposed rule will likely eliminate currently cost-effective energy efficiency measures while also increasing the chance of triggering the opt-out provisions of the code. The impact of this rule would be further reduction in energy efficiency programs, which is inconsistent with the Iowa Energy Plan.

The Board’s proposal to use the cogeneration and small power production tariff costs as energy efficiency avoided costs for both electric energy and capacity is unreasonable and without basis. The Board should remove this provision and retain the existing approach to determination of avoided costs in the rules.

Proposed New Rule 35.6 – Contested case proceeding

This proposed rule eliminates the purpose of the Board’s review from the existing rules and simply says that the Board will “review” the proposed energy efficiency and demand response plans. The Board’s review has a clear statutory purpose, which is “to develop specific capacity and energy savings performance standards for each utility” that is based in the assessment of potential. Iowa Code § 476.6(15)(b). Once these performance standards are set, the utility “shall submit an energy efficiency plan ... designed to attain these energy and capacity performance standards.” *Id.* This provision was not impacted by SF 2311, and in fact, the bill as

originally introduced converted the standards into goals.⁵ That change was ultimately rejected by the legislature, leaving the standards solidly in place. Chapter 35 rules should implement this statutory requirement clearly. The proposed rules ignore it.

In the existing rules, this purpose is clearly stated with “The board will conduct a contested case proceeding for the purpose of (1) developing specific capacity and energy savings performance standards for each utility and (2) reviewing energy efficiency plans and budgets designed to achieve those savings.” Without strong oversight of savings standards, accountability for effective programs that maximize benefits to customers will be significantly weaker.

We strongly encourage the Board to retain this language from the existing rules and to maintain a framework for accountability and transparency in the final rules. 199 IAC 35.3.

Proposed New Rule 35.11 – Prudence review

We have two significant concerns related to the proposed rule on prudence review. First, the proposed rule eliminates the provision in the existing rules that the “burden is on the utility to prove it has taken all reasonable actions to cost-effectively implement an energy efficiency plan.” 199 IAC 35.13. The proposed rule is silent on the utility’s burden and states that the review is to “evaluate the reasonableness and prudence of the utility’s implementation.” Proposed rule 35.11(1). By eliminating the utility’s burden of proof and by replacing ‘all reasonable actions’ with ‘reasonableness’, the role of the prudence review is significantly weakened.

Second, the proposed rule appears to unreasonably limit the record for the prudence review by stating that it “shall be based upon the information filed by a utility in the annual

⁵ SSB 3093, 2018 Legislative Session, <https://www.legis.iowa.gov/docs/publications/LGI/87/SSB3093.pdf>, p. 7.

report.” Proposed rule 35.11(1). The proposed rule also states that requests for a prudence review are “based on information filed by a utility in the annual report.” Proposed rule 35.11(2). The utilities control what information is included in or excluded from the annual report. By limiting prudence review requests and prudence reviews themselves to these annual reports, the Board is largely or entirely deferring its prudence review to the utilities themselves. The approach in the proposed rule drastically reduces accountability for how efficiency dollars are spent and what is achieved with those dollars.

The Board has a statutory obligation to periodically conduct prudence reviews using a contested case proceeding. Iowa Code § 476.6(15)(e)(2). The Board’s rules for contested cases in Chapter 7 should fully apply to the prudence review, without threshold limits on the development of the record.

This issue was discussed at the stakeholder workshop held on March 9, 2017. The workshop discussion focused on intervenors and stakeholders providing comments on annual reports each year and using those comments as part of the prudence review record. The proposed rule ignores this concept. The proposed rule instead unreasonably weakens prudence reviews, which erodes the oversight and accountability needed to ensure utilities are acquiring cost-effective efficiency resources and spending substantial sums of ratepayer dollars effectively.

Elimination of Additional Sections From Existing Rules

In addition to comments above on the proposed rule sections, we are concerned about the elimination of significant sections of existing rules in the proposed rule. The elimination is not about streamlining or simplifying the rules while still maintaining the same basic set of

requirements. Rather, the Board has proposed to eliminate critical information needed for the review of proposed energy efficiency and demand response plans.

Load Forecast and Class Load Data

The proposed rules eliminate significant sections in the existing rules regarding information filed by electric and gas utilities on load forecasts, class load data, resource options available to utilities, and more. In the existing rules, these sections include 199 IAC 35.9, 35.10, and 35.11.

We have significant concerns about the elimination of these sections, which we raised in previous comments in this docket. First, the information regarding load forecasts and class load data is essential to reviewing a utility's proposed energy efficiency and demand response plan. For example, the information includes peak demand by customer class. The demand response plan is intended to reduce these peaks with different programs targeting residential and industrial customer classes. If data regarding customer class load is not filed with the proposed demand response plan, that plan's effectiveness at reducing peaks, costs, incentive levels, and other components will be difficult or impossible to understand.

Second, the Board has a specific statutory obligation to require utilities to file the data currently required by existing rule 35.9, 35.10, and 35.11. Iowa Code § 476.6(16) states that "The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast." The statute further specifies certain requirements for the forecast filings, including "a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs." *Id.* The

statute is clear that the Board can require more in the filings, but that the items listed are the minimum statutory requirements. The filing requirements in the existing rules effectively carry out this provision of Iowa Code while the proposed rule does not provide for compliance with this code section. The Board should retain these sections in the final rules.

Utility Coordination

The proposed rules eliminate brief sections from the existing rules regarding coordination of efficiency programs among utilities as well as pilot projects (addressed above). Utility coordination has proven to be effective, such as with the coordination of the upstream lighting program between both rate-regulated and consumer-owned utilities for over a decade. Iowa has over 175 electric utilities, each with exclusive service territory. Coordination in the delivery of efficiency products and services reduces costs and improves the participation of retailers, contractors, and other businesses and market participants. A notable example of the success of coordination is the upstream lighting program, where coordination resulted in better participation from lighting retailers across the state. The existing rules simply require the utilities to file a report on the results of any coordination. 199 IAC 35.8(9)(a). Requiring this report has kept at least some attention and focus on coordination, and eliminating this report is likely to result in less or no coordination. We encourage the Board to retain the utility coordination reporting requirement in the final rules.

Exterior Flood Lighting

The proposed rules eliminate the existing rule section on exterior flood lighting, found at 199 IAC 35.15. Again, the existing rule has a statutory basis, which states that “public utility-

owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced ... with equivalent or better energy efficiency as approved in rules adopted by the board.” Iowa Code § 476.62. The existing rule section implements this statutory provision with specific efficiency standards and was updated in 2010 to reflect advances in solid state or LED lighting technologies. Iowa Utilities Board, Docket No. RMU-2010-0002. Rate-regulated utilities own a significant amount of street and security lighting. While utilities have been replacing streetlights with LEDs, there is no reason to eliminate this rule section, which ensure continued improvement in exterior lighting efficiency over time. The annual reporting requirements on the status of existing exterior light types also helps ensure and track progress over time. Given the statutory requirements for both utility replacement of exterior lighting and Board rules to approve such replacement, we encourage the Board to retain this section in the final rules.

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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/ Kerri Johannsen

Kerri Johannsen
Nathaniel Baer
Iowa Environmental Council
505 5th Avenue, Suite 850
Des Moines, Iowa 50309
P: (515) 244-1194 x208
johannsen@iaenvironment.org