

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

IN RE: RATE CASES, TARIFFS, AND RATE REGULATION ELECTION PRACTICE AND PROCEDURE [199 IAC CHAPTER 26]	DOCKET NO. RMU-2020-0026
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The Iowa Environmental Council (IEC), Environmental Law and Policy Center (ELPC), and Sierra Club provide the following comments to the Iowa Utilities Board (Board) in response to the Order Commencing Rule Making in Docket No. RMU-2020-0026 filed on July 10, 2020. In late March, the Board issued an order proposing new Chapter 26 rules, “Rate Cases, Tariffs, and Rate Regulation Election Practice and Procedure.” Stakeholders filed initial and reply comments, and the Board initiated the formal rulemaking process while expressing continued openness to further stakeholder input.

We recommend the rule making incorporate a requirement to provide analysis of cost-effectiveness of generation, which the Board has stated is an issue appropriate for rate cases. Recent events in Illinois and Ohio since the Board formally commenced this rulemaking in July also compel us to weigh in with recommendations on the reporting of utility lobbying expenses. In addition, we support the proposed timeline for intervenor testimony.

The Iowa Environmental Council (IEC) is a non-profit corporation organized under Iowa law. The IEC is a broad-based environmental policy organization with a mission to create a safe, healthy environment and sustainable future for Iowa. IEC works to create a just future for all people, regardless of race. The IEC represents a broad coalition of Iowans including over 70 diverse member and cooperator organizations and businesses ranging from agricultural,

conservation, and public health organizations, to educational institutions, businesses and business associations, and churches, along with hundreds of individual members. IEC's work focuses on clean water, clean air, conservation, and clean energy, including the promotion of policies that would facilitate the development of clean energy and clean energy jobs.

The Environmental Law & Policy Center (ELPC) is a non-profit corporation organized under Illinois law. ELPC has members who reside in the State of Iowa and an office in Des Moines. ELPC's goals include promoting energy efficiency and renewable energy and advocating for policies and practices that facilitate the use, development, and implementation of effective energy efficiency and renewable energy. ELPC has invested significant time and resources into promoting energy efficiency and renewable energy in Iowa and nine other states in the Midwest.

The Sierra Club is a nonprofit environmental advocacy organization with approximately 790,000 members nationwide and with over 7,000 members in the state of Iowa, many of whom are ratepayers of Iowa's investor-owned utilities. Sierra Club works to promote safe and healthy communities, protect and improve air and water quality, limit the adverse effects of climate change, and promote the transition to clean, renewable energy. Sierra Club's Beyond Coal Campaign advocates for a nationwide transition from coal to clean energy in the electric sector, and has a strong interest in advancing just and equitable climate solutions.

I. The rule should incorporate the Board's prior finding that rate cases are the appropriate venue for evaluating the cost-effectiveness of generating assets.

Iowa law requires utilities to demonstrate that their rates are reasonable and just. IOWA CODE § 476.8 ("The charge made by any public utility for any ... power produced, transmitted, delivered or furnished ... shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful."). In practice, this requires evaluating whether the expenditures that a utility seeks to include in its revenue requirements, including those associated

with generation assets, are reasonable and cost-effective. In a recent advance ratemaking procedures case, the Board held that “should a rate-regulated utility continue to utilize an uneconomic facility, the Board may disapprove the costs incurred as imprudent or unreasonable during a rate case.” *In re: MidAmerican Energy Company* (Wind XII), Docket No. RPU-2018-0003, Final Decision and Order (Filed Dec. 4, 2018). In its testimony in the Wind XII docket, MidAmerican agreed that the appropriate forum to evaluate the economics of a generation facility is in the utility’s rate case. Docket No. RPU-2018-0003, Hearing Transcript at 118-119 (filed Oct. 23, 2018) (testimony of Hammer: “Getting to the cost effectiveness really is in a rate case. That’s where that would happen.”).

To incorporate the Board’s finding, we recommend adding the following language to the draft rule:

Add to 26.4(4)(d):

(24) An analysis demonstrating that the costs for every generating facility included in rate base are cost-effective.

Add to 26.5(4)(d):

(12) An analysis demonstrating that the costs for every generating facility included in rate base are cost-effective.

Adding this language to the IUB rules regarding rate cases will clarify the information that utilities should include in their rate applications, streamlining the process by reducing the amount of burdensome discovery required. The Board should include this as a rule provision because utilities may not otherwise provide the information in the application, requiring extensive discovery. Based on the discovery conducted in its most recent electric rate case, Interstate Power & Light does not regularly conduct cost-effectiveness analyses for all its units. *See In Re: Interstate Power and Light Company*, Docket No. RPU-2019-00001, “Chernick Rebuttal Testimony” at 13 (filed Sept. 10, 2019) (“IPL has provided economic analyses for only two operating coal units.”).

Similarly, MidAmerican testified in the Wind XII docket that it has not studied whether its generating assets are uneconomic, and further stated that with respect to the cost effectiveness of its coal plants, “It’s something we haven’t evaluated. We don’t have any statutory requirements to do so, and we don’t have any plans to do so.” Docket No. RPU-2018-0003, Hearing Transcript at 92-93, 101 (filed Oct. 23, 2018) (questioning of Specketer by the Board). If the Board does not reinforce its finding with rule language requiring information on the cost-effectiveness of generating facilities be part of the rate case filing, it will likely have to address this issue repeatedly in future rate cases.

II. Transparency of lobbying expenses facilitates compliance with Iowa Code section 476.18.

We recommend the Board add the reporting of direct and indirect lobbying expenses as an item to be filed under rule 26.4(4)(d) and 26.4(5)(d) to provide increased transparency and streamline proceedings. We recommend adding the following language:

Add to 26.4(4)(d):

(25) The costs of all state and federal lobbying including indirect expenditures through other organizations and all efforts to verify the amounts used for lobbying by third parties.

Add to 26.4(5)(d):

(13) The costs of all state and federal lobbying including indirect expenditures through other organizations and all efforts to verify the amounts used for lobbying by third parties.

Iowa Code prohibits recovery of lobbying expenses from customers. IOWA CODE § 476.18(1). The prohibition includes indirect costs of lobbying. *Id.* This may include, for example, fees and expenses paid to third-party organizations that conduct lobbying. The Board’s current approach to lobbying expenses relies on the parties to ensure compliance with Iowa Code section 476.18(1). The parties, if interested, must request details on utility lobbying expenses through discovery, and those details may not ever be filed with the Board or be publicly accessible.

Iowa utilities actively engage in lobbying efforts related to energy legislation. MidAmerican lobbied to add a significant fee to solar customers and used a third-party lobbying organization as part of that effort. See Bettendorf.com, *No one at home at the REAL Coalition; MidAmerican admits to being part of 'solar tax' lobbying campaign*, available at <http://www.bettendorf.com/?q=content/no-one-home-real-coalition-midamerican-admits-being-part-solar-tax-lobbying-campaign-0> (last visited Aug. 31, 2020). IPL and other utilities lobbied on SF 2311, which included multiple items such as major changes to utility energy efficiency programs. Energy News Network, *Iowa lawmakers advance bill to limit efficiency funding allow solar fees* (March 19, 2018) available at <https://energynews.us/2018/03/19/midwest/iowa-lawmakers-advance-bill-to-limit-efficiency-funding-allow-solar-fees/> (last visited Aug. 31, 2020).

Numerous utility trade associations conduct lobbying efforts on behalf of their members, as well as permissible expenses to include in a rate case like research or education. See David Anderson et al., Energy & Policy Inst., *Paying for Utility Politics* at 4 (2017), <http://www.energyandpolicy.org/wp-content/uploads/2017/05/Ratepayers-funding-Edison-Electric-Institute-and-other-organizations.pdf>. Rate-regulated utilities have sought recovery of the non-lobbying portion of the expenses. See *In Re: Interstate Power and Light Company*, Docket No. RPU-2019-0001, “Rabago Direct Testimony” at 65 (filed Aug. 1, 2019). Verifying that the lobbying portions have been excluded requires knowing the amount of lobbying expense.

It is also appropriate for the Board to ensure that customers do not pay for lobbying conducted against their own interests. Lobbying by public utilities, or conducted on behalf of public utilities by other entities, may support investor interests rather than customer interests. Consistent with the statute, customers should not be required to pay those costs.

Furthermore, additional transparency of utility lobbying expenses will serve as an important check on utility lobbying practices. Justice Brandeis famously noted that “Sunlight is said to be the best of disinfectants.”¹ There have been several prominent recent examples of the excesses of utility lobbying practices spilling over into public corruption. In Ohio, federal agents arrested the Speaker of the House and several associates in a racketeering scheme tied to major energy bailout legislation. *See United States v. Larry Householder et al.*, Affidavit in Support of a Criminal Complaint (S.D. Ohio, filed July 21, 2020). In Illinois, Commonwealth Edison Company (ComEd) agreed to a \$200 million fine for payments and contracts to an associate of a high level elected official in exchange for efforts to pass legislation favorable to ComEd over several years. *See United States v. Commonwealth Edison Co.*, Deferred Prosecution Agreement (N.D. Ill., filed July 17, 2020). Greater transparency of utility lobbying expenses encourages greater scrutiny of those expenses and practices and serves as a check on them.

Disclosure of utility lobbying expenses is necessary to ensure compliance with Iowa Code §476.18(1), to increase transparency, and to discourage utility corruption that we are seeing with greater frequency in other parts of the country. The Board should add a requirement to report direct and indirect lobbying expenses to the rule.

III. We support the proposed intervenor testimony deadline.

The proposed rules would require the Board to adopt a procedural schedule that includes testimony by the Office of Consumer Advocate (OCA) and intervenors to be submitted approximately five months after the filing of a rate case. (Proposed Rule 26.8(1)(a).) This timing is consistent with the existing rule. 199 IAC 26.8(1). Interstate Power & Light and Black Hills Energy proposed in earlier comments to reduce the allowable time for intervenor testimony by one

¹ Louis Brandeis, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* (1914).

month. (IPL Initial Comments at 40-41 (filed May 26, 2020); Black Hills/Iowa Gas Utility Company, LLC Comments at 13-14 (filed May 26, 2020).) Shortening the deadline for testimony would limit the development of testimony, including information obtained through discovery, and would accordingly restrict the ability of intervenors to advocate for their distinct interests in the case.

Rate cases can present an overwhelming amount of highly complex data. Intervenors often need to find and engage with outside experts who are unfamiliar with a particular utility. The experts need time to analyze the filing and to identify missing information to be obtained through discovery. Counsel then conducts discovery, which by itself can take significant time if the responses raise additional questions. Witnesses then must analyze the responses and draft testimony.

Allowing four months for the entire process is not adequate. Therefore, we support the proposed rule language maintaining the five-month timeline for intervenors.

IV. Conclusion

Incorporating the Board's finding regarding the cost-effectiveness of generating assets into rule will streamline the rate case process and avoid having to repeatedly address the issue. Reporting lobbying data would provide greater transparency to the public and Board while ensuring that utilities comply with the statute. Retaining the five-month timeline for intervenor testimony would ensure parties' rights are protected and allows for a robust exchange of information. In combination, these will provide consistency with the statute and better outcomes.

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