

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

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<b>IN RE:</b>	)	
	)	<b>DOCKET NO. RMU-2016-0018</b>
<b>REVIEW OF ENERGY EFFICIENCY</b>	)	
<b>PLANNING AND COST REVIEW</b>	)	
<b>RULES [199 IAC CHAPTER 35]</b>	)	<b>POST-WORKSHOP COMMENTS</b>
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The Environmental Law & Policy Center (ELPC) and Iowa Environmental Council (IEC) file these post-workshop comments pursuant to the Iowa Utilities Board Order Scheduling Workshop issued on January 26, 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 and provided a deadline of March 23, 2017, for additional comments in response to the workshop discussion. The workshop included participants from ELPC, IEC, OCA, MidAmerican, IPL, and Black Hills.

If we have previously addressed an issue in comments in this rulemaking, and we have not subsequently modified our position here, we incorporate our previous comments by reference.

## **199 IAC 35.2 – Definitions**

In our initial comments, we suggested including achievable potential in the definitions section of the energy efficiency rules and provided a basic definition as a starting point for discussion. We have further reviewed that definition and provide 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 have reviewed the definition of technical potential and are comfortable deleting the definition for “phase-in technical potential” and replacing the use of “phase-in technical potential” in 35.8(1)(c) and “phase-in potential” in 35.8(1)(e) with “technical potential” in both cases.

## **Plan Modification Should Focus on Improving Plan Performance. - 35.6(4)**

We previously recommended and continue to recommend 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 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.

The key element of the discussion from our perspective is that the utility should be working to save as much energy as possible and meeting the performance standards established in the plans and approved by the Board. If measures or programs in the plan are not working as designed, the utility should be taking steps to improve the program design to maximize savings

and meet plan goals and performance standards. This is consistent with the statute that requires that performance standards be set in the plans and that “[t]he utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards.” Iowa Code § 476.6(15)(b). If the utility is not meeting the performance standards, the utility should modify its plan in order to meet those standards.

We recommended the following language to address this issue:

**35.6(4)(a)(4) The approved performance standard in annual kWh or therm savings is not met by 10% or more.**

OCA recommended changes to 35.6(4)(a)(3):

**An approved program is eliminated, ~~or~~ a new program is added, or a program has realized or expects to realize a material and sustained change in savings impacts.**

OCA’s proposed language captures the idea 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.

While we think it is clear that there should be a plan modification required when utilities do not meet savings goals, we are open to determining exactly when that requirement is triggered. We suggested a clear standard for modification when a utility is short of its goal by 10% or more. There was some discussion at the Workshop of a 20% standard. We remain willing to work with the parties to find an acceptable trigger or even triggers with flexibility. For example, we could suggest language such as:

**35.6(4)(a)(4) The approved performance standard in annual kWh or therm savings is not met by 20% or more in any plan year or 10% or more in two consecutive plan years.**

This would address concerns that the utilities expressed in setting too low a threshold, but would also incorporate a mechanism for addressing changes if there is a smaller but consistent underperformance.

**Improve the Collaborative Process During Plan Development. - 35.6(1)**

The Workshop generated significant discussion on the collaborative process related to the development of the energy efficiency plans. IPL suggested revised language to impose additional requirements on a program proposal by a stakeholder. We have concerns that the existing standard is not well-defined and that there is significant subjectivity in the evaluation of stakeholder program proposals. We think changes in this section should be focused on helping create a process that facilitates stakeholders providing program ideas that the utilities would adopt.

To that end, we recommend two changes. First, we think that stakeholders presenting a new program idea should be required to provide “sufficient supporting information to enable the utility to analyze the participant’s proposal.” This is broader than the current language, but it still places the burden on the stakeholder to support any program proposal. In turn, we suggest language requiring the utility to provide a written response detailing the rejection or modification of a stakeholder proposal with sufficient detail to enable a stakeholder to attempt to address the utility’s concerns with the program proposal. This language is designed to facilitate an opportunity for stakeholders to address concerns with their program proposals in advance of the plan filing.

The following language accomplishes these recommendations:

**35.6(1) Collaboration.** A utility shall offer interested persons the opportunity to participate in the development of its energy efficiency plan. At a minimum, a utility shall provide the opportunity to offer suggestions for programs and for the

assessment of potential and to review and comment on a draft of the assessment of potential and energy efficiency plan proposed to be submitted by the utility. The utility may analyze proposals from participants to help determine the effects of the proposals on its plan. A participant shall have the responsibility to provide sufficient ~~data~~ supporting information to enable the utility to analyze the participant's proposal. The opportunity to participate shall commence at least 180 days prior to the date the utility submits its assessment of potential and plan to the board. If a participant has submitted a program proposal at least 60 days before the date the utility submits its plan to the board, the utility shall, at least 20 days before the date the utility submits its plan to the board, provide a written response detailing the rejection or modification of a stakeholder proposal with sufficient detail to enable a stakeholder to attempt to address the utility concerns with the program proposal.

**Assessment of Potential and Developing Performance Goals. - 35.8(1)(e)**

The Workshop included discussion of IPL's proposal to add the Total Resource Cost test to 35.8(1)(e)(1). Cost-effectiveness tests are delineated in 476.6(13). After the Workshop discussion, we do not see a compelling reason to require a different cost-effectiveness test in the rule than what exists in the statute. This is particularly the case when utilities have the ability to separately calculate the Total Resource Cost test and present that information if a utility so chooses. We do not support adding the Total Resource Cost Test to the rules at this time.

We do support maintaining the requirement for including the number of eligible participants in 35.8(1)(e)(3).

**Maintain Transparency and Keep Existing Budget Plan Requirements. – 35.8(2)(d)**

The Workshop had some discussion about budget plan filing requirements and consolidating current categories and eliminating subcategorization. IPL suggests consolidating customer incentive costs, equipment costs, and installation costs into one bundle in its presentation of the plan budget. MidAmerican noted during the workshop that there is value in keeping these categories separate. We agree, and we reiterate that this change would make costs less transparent. This in turn would impact the feedback and evaluation that could be provided on

program design. In particular, it would make it more difficult for other stakeholders to evaluate the appropriateness of customer incentive costs and the assumptions on equipment costs and installation costs since they would be grouped together. The overall grouped cost could appear reasonable while the allocation among the incentive costs, equipment costs, and installation costs could be unreasonable. This type of change would make it more difficult for stakeholders to help get program and budget design right in the plan development process. In addition, the TRM includes measure cost information, which should make this information easier to provide and reduce IPL's claimed burden.

IPL also requests that the Board evaluate elimination of the subcategorization language at the end of 35.8(2)(d). In general, we think that providing transparency is positive and important. IPL asserts a burden but does not provide data to help weigh the asserted burden compared to the benefit. Nothing in the workshop addressed this burden or provided information that would change our position. We also note that this subcategorization requires the utilities to provide information about contractors and the services that they provide related to the energy efficiency programs. The utilities rely heavily on contractors to deliver the energy efficiency programs. This is a particularly important requirement for understanding the programs and how they operate and are implemented. We are opposed to the elimination of this requirement.

**Create Additional Independence in the Evaluation, Measurement and Verification Process.  
- 35.8(2)(f)**

We continue to recommend creating additional independence in the EMV process. As a starting point, we recommended creating a formal oversight committee for each utility EMV process modeled on the successful Oversight Committees for the development of the Technical Reference Manual and Net-to-Gross Report. The Oversight Committee should oversee EMV

activities including but not limited to scope of work development, timeline for EMV activities, RFP development, vendor selection, and review of draft and final EMV reports. The Oversight Committees for the TRM and NTG Report have operated on a consensus basis with a backstop of reporting issues of disagreement to the Board for review and decision. A similar process should be adopted for EMV activities.

One piece of our recommendation that the utilities provided feedback on during the Workshop was the inclusion of energy efficiency plan docket intervenors on the oversight committee. The utilities expressed concern that energy efficiency vendors, implementors, and participants would have an incentive to intervene to influence the EMV process. We agree that the potential for conflicts of interest of some stakeholders and intervenors necessitates caution. Our primary goal in our recommendation is to provide additional independence, and we do not want to inadvertently introduce additional conflicts. We would support limiting participation on the oversight committee to avoid these conflicts. We would suggest the following language: “No stakeholder that implements or directly participates in an energy efficiency program shall be allowed to participate in the Oversight Committee related to that program.”

As a starting point, we propose the following changes to the existing evaluation language in the rules:

**35.8(2)(f)** A monitoring and evaluation plan. The utility shall describe in complete detail how it proposes to monitor and evaluate the implementation of its proposed programs and plan and shall show how it will accumulate and validate the information needed to measure the plan’s performance against the standards. The utility shall work with an Oversight Committee with representation from the Office of Consumer Advocate and intervenors to oversee and make decisions about evaluation activities. No stakeholder that implements or directly participates in an energy efficiency program shall be allowed to participate in the Oversight Committee related to that program. The utility shall propose a format for monitoring reports and describe how annual results will be reported to the board on a detailed, accurate and timely basis. If the Oversight Committee

is not in agreement on aspects of the evaluation or results that should be included in any report to the Board.

An alternative approach to provide additional independence in the EMV process would be to directly address evaluator hiring and firing and conflict of interest. The hiring of an EMV contractor should have the involvement of an independent third party such as the OCA. Similarly, the dismissal of an EMV contractor should be done for just cause and only with the prior consent of a third party such as the OCA. In addition, the EMV contractors must not have a conflict of interest created by other program involvement. At a minimum, the EMV contractor should not be a program implementer and should forgo program development for the next plan cycle, which may address recommendations that the evaluator will make.

The following changes to the existing evaluation language in the rules would accomplish this:

**35.8(2)(f)** A monitoring and evaluation plan. The utility shall describe in complete detail how it proposes to monitor and evaluate the implementation of its proposed programs and plan and shall show how it will accumulate and validate the information needed to measure the plan's performance against the standards. The utility shall not hire an evaluation, monitoring, and verification contractor without consulting the Office of Consumer Advocate. The utility shall not dismiss an evaluation, monitoring, and verification contractor without just cause and prior consent of an independent third party such as the Office of Consume Advocate. An evaluation, monitoring, and verification contractor shall not be a program implementer for the same plan and is prohibited from any work implementing the recommendations it may make. The utility shall propose a format for monitoring reports and describe how annual results will be reported to the board on a detailed, accurate and timely basis.

In addition to improving EMV independence, we think the evaluation plan section is an appropriate section of the rules to improve the consideration and understanding of non-energy benefits. Non-energy benefits can include greater comfort, higher job productivity, job creation and local economic development, reduced emissions and environmental benefits, lower utility disconnects, and more. Non-energy benefits are explicitly included in the existing rule sections

regarding the development of the potential study in 35.8(1)(c) and the identification of annual performance goals in 35.8(1)(e). Encouraging evaluation of non-energy impacts in the evaluation process will help quantify those impacts and improve understanding of those impacts over time. Non-energy benefits can be significant in scope and can be a powerful driver for participation in energy efficiency plans, which can further increase energy savings. The SEE Action guidance, Energy Efficiency Program Impact Evaluation Guide (2012)<sup>1</sup>, includes significant discussion of evaluating non-energy benefits and should serve as a useful tool to support such efforts.

We suggest the following language at the end of the evaluation plan section to encourage examination of non-energy benefits: “Where feasible, the utility may evaluate and quantify non-energy benefits and impacts.”

**Load Forecast Filing, Class Load Data Filing, and Timing of Filings in 35.9(1), 35.9(2), 35.10(1) and 35.11.**

We continue to support retaining 35.9(1) and 35.9(2) in the Chapter 35 rules, maintaining the majority of the information required, and requiring filing of this information on a regular basis. The information found in 35.9(1) and 35.9(2) is an important part of both energy efficiency planning and overall resource planning. Iowa does not currently utilize a robust and transparent resource planning process, such as the integrated resource planning processes in many jurisdictions used to periodically evaluate resource needs and compare both supply-side and demand-side options to meet those needs. Absent this robust single process, utility resource planning is accomplished with a variety of separate dockets guided by separate rule chapters. Those dockets include, for example, proposals for new generation (GCU and RPU), compliance filings and tariff filings under PURPA (IAC and TF), emissions plan and budget dockets (EPB) and energy efficiency dockets (EEP). While we would welcome the Board establishing a more

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<sup>1</sup> [https://www4.eere.energy.gov/seeaction/system/files/documents/emv\\_ee\\_program\\_impact\\_guide\\_0.pdf](https://www4.eere.energy.gov/seeaction/system/files/documents/emv_ee_program_impact_guide_0.pdf).

robust and unified resource planning process, we understand if this is beyond the scope of the rule revisions currently underway for Chapter 35. Without a new integrated resource plan process in place, we do not support removing and relaxing the minimal resource planning information filings and requirements found in Chapter 35. However, we offer these suggestions for simplifying the compliance requirements for 35.9(1), 35.10(1) and 35.11:

- 35.9(1): Eliminate 35.9(1)(c).
- 35.10(10): Eliminate 35.10(1)(c).
- 35.11: Reduce the frequency of filing by only requiring a load forecast to be filed once between plan filings, not each year. This could be accomplished with the language proposed below. Note that we continue to support the filing of class load data on an annual basis.

**199—35.11(476) Additional filing requirements.** In those years an electric utility does not file an energy efficiency plan, the utility shall file by May 15 the information required in subrules ~~35.9(1) and 35.9(2)~~. In the third year after a utility files an energy efficiency plan, the utility shall file by May 15 the information required in subrule 35.9(1). If there has been no change in the utility's forecast procedure in regard to information required in paragraphs 35.9(1)"d" through "f," the utility may state "no change from previous forecast" for each paragraph. In those years a the third year after a gas utility does not files an energy efficiency plan, the utility shall file by November 1 the information required in subrule 35.10(1). If there has been no change in the information required in paragraphs 35.10(1)"f" through "h," the utility shall identify the portions of the previous docket where the information is located.

We also note that IPL's proposed net metering pilot tariff interpretation letter references the class load data filed under 35.11 as a source of information for the calculation of the net metering customer cap. Given the potential importance of this data for purposes outside of energy efficiency, we further support annual filing of the class load data.

### **Distributed Generation and Customer-Sited Renewables in 35.9(5) or 35.9(1)**

In our initial comments, we proposed that the customer-sited renewables should be added to the information provided on capacity outside the utility's system in 35.9(5). We believe the increasing quantity of solar energy, as well as other forms of customer-sited renewable energy, support specifically identifying this resource as a part of the filing. While Iowa has had a low penetration of customer-sited renewable energy historically, the amount is increasing and is likely to continue to increase in future years. For example, the Solar Energy Industries Association projects that Iowa will install 223 MW of solar over the next five years (with a mix of residential, commercial, and utility-scale projects).<sup>2</sup> We support including current information on distributed generation resources or customer-sited renewable resources and projected information as a part of either the load forecast filing in 35.9(1) or the capacity outside the utility's system in 35.9(5). An alternative to our proposed language for 35.9(5) could be adding this to the end of 35.9(1)(a) as part of the load forecast filing:

The forecast shall include the effects to date and the projected effects of distributed generation facilities as defined in 199 IAC Chapter 45. The utility shall provide current and projected annual amounts of generation and capacity from distributed generation facilities.

### **Prudence Review – 35.13**

The Workshop included discussion of how to improve the prudence review process and how to better coordinate the review process to address concerns with the programs when those concerns are most pertinent. One suggestion discussed was to have formal comments filed on the annual report that would then be part of a future prudence review record. We think this idea is worth exploring. We do not have a formal proposal addressing these issues, but we are interested in the ideas discussed at the Workshop and remain committed to working with the utilities and

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<sup>2</sup> <http://www.seia.org/sites/default/files/iowa.pdf>.

OCA to improve this part of the energy efficiency process. We will review what they propose and continue to offer feedback as appropriate.

We appreciate the Board and staff reviewing the energy efficiency rules in a thorough and thoughtful manner. We look forward to reviewing comments from other parties, and we reserve the right to comment on other proposals or other issues that we have not addressed here.

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Respectfully submitted,

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