

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

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IN RE:  REVIEW OF COMPETITIVE BIDDING PROCESS RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 40]	DOCKET NO. RMU-2023-0040
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The Environmental Law & Policy Center (ELPC), Iowa Environmental Council (IEC), and Sierra Club (collectively, Environmental Commenters) offer these comments in response to the Board Order issued January 31, 2024, proposing new rules for 199 Iowa Administrative Code Chapter 40. In sum, the Board’s proposed rule includes a substantive and regressive change to the Chapter 40 rules, creating a presumption that competitive bidding complies with the requirements of Iowa Code § 476.53(3)(c)(2) rather than incorporating that bidding as evidence in Board dockets. This change is inconsistent with the statute, past Board practice, and the recommendations of the London Economics International LLC Review. Notably, this change could eliminate critical evidence that has been incorporated in Board dockets and relied upon by the courts. The Board should thus modify its proposed rule to eliminate such a presumption.

**I. Commenters**

ELPC is a non-profit corporation. ELPC has an office in Des Moines and members who reside in the State of Iowa. ELPC’s goals include promoting clean energy, clean air, and clean water. ELPC has advocated for policies and practices that facilitate the efficient reduction of emissions to make our air and water cleaner, including increased energy efficiency and renewable energy development. ELPC has invested significant time and resources into promoting clean air,

clean water and clean energy in Iowa and nine other states in the Midwest.

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 just, healthy environment and sustainable future for all Iowans. The IEC represents a broad coalition of Iowans including 100 diverse member and cooperator organizations ranging from agricultural, conservation, and public health organizations, to educational institutions, business associations, and churches, along with hundreds of individual members. IEC's work focuses on clean water, clean air, conservation, and clean energy.

Sierra Club is a nonprofit organization with nearly 700,000 members nationally and over 6,000 members in the state of Iowa. Sierra Club's mission includes promoting clean energy and reducing air and water pollution associated with electricity generation. Sierra Club regularly participates in Board proceedings on behalf of its members who have a strong interest in receiving reliable power that is generated and supplied in a cost-effective and environmentally sound manner.

## **II. Background on 199 Iowa Administrative Code Chapter 40**

On January 31, 2024, the Iowa Utilities Board (Board) issued an order opening a docket to address 199 Iowa Administrative Code Chapter 40 on Competitive Bidding Process. This rulemaking is part of the Board's comprehensive evaluation of existing rules initiated by Governor Reynolds through Executive Order 10. In its order, the Board states that "[m]ost of the current proposed changes to chapter 40 center on the removal of unnecessary and restrictive language." RMU-2023-0040, Order Opening Docket and Setting Technical Conference and Comment Deadline, at 2 (filed Jan. 31, 2024).

The Iowa Legislature initially prompted the Board to promulgate rules on competitive

bidding when it enacted the advance ratemaking statute in 2001. In 2001, Iowa Code § 476.53(3)(c)(2) provided:

The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. The rate-regulated public utility *may* satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility or lease is a reasonable alternative to meet its electric supply needs. (emphasis added)

In 2002, the Board adopted 199 Iowa Administrative Code chapter 40. The rule language did not create a presumption that competitive bidding satisfied the statute, but allowed it as evidence in meeting the statutory requirements. The Board practice acknowledged the discretionary nature of the statutory language – that the competitive bidding process is evidence of compliance, but not the only evidence considered in the analysis. *See, e.g.*, GCU-2012-0001 and RPU-2012-0003, Proposed Decision and Order (filed Nov. 8, 2013) (discussing evidence that includes a Request for Proposal (RFP), resource planning modeling and extensive party testimony and stating “[t]he analysis of whether an alternative is reasonable is not limited to a consideration of cost factors; non-cost factors can play a significant role in the selection of a generation source.”)

In 2018, the Iowa Legislature amended Iowa Code § 476.53(3)(c)(2) as follows:

The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. ~~The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility or lease is a reasonable alternative to meet its electric supply needs.~~

2018 Iowa Acts ch. 1160, § 15. The changes to the statute removed the provision that a utility “may satisfy the requirements of this subparagraph through a competitive bidding process.”

**III. The Board's Proposed Rule is Inconsistent with Statute, Past Board Practice, and the Recommendations of the London Economics Ratemaking Review.**

The Board's proposed rule presents a significant substantive change to the Chapter 40 rules. The proposed rule creates a presumption that does not exist in Iowa Code § 476.53(3)(c)(2) by deeming that competitive bidding meets the requirements of the code section in all instances where a utility follows the competitive bidding rules. The proposed presumption goes well beyond the statute, the current rules that establish a competitive bidding process with minimum requirements, and past Board practice. In addition, the proposed presumption undermines the recommendations of the London Economics International ratemaking review and the Board's past requirements for resource planning in advanced ratemaking. Environmental Commenters oppose changing the Chapter 40 rules to create a new presumption that competitive bidding meets the statutory requirements in Iowa Code § 476.53(3)(c)(2).

The Board proposes language changes to the Chapter 40 in three places that create the new presumption. The following paragraphs compare the existing rule language to the proposed rule via tracked changes:

**40.1(2) *Applicability and purpose.*** ~~The rules apply to any rate-regulated electric public utility choosing to establish a competitive bidding process under Iowa Code Supplement section 476.53(3) "c"(2). A rate-regulated utility choosing to comply with these minimum requirements for bidding processes used to purchase supply will be deemed to have demonstrated to the board that it has considered other sources for long-term electric supply for purposes of Iowa Code section 476.53(3)"c"(2). The rules establish minimum requirements for bidding processes used to purchase supply. Under these rules, bids compete not only with other bids but also with the utility's own build or lease options. Utilities maintain the right to secure or free up electric capacity and energy through means other than a competitive bidding process.~~

**40.2(1) *Procedures.*** ~~The utility shall use~~ using the following procedures to competitively acquire supply-side resources under its competitive bidding process will be deemed to have considered other sources for long-term electric supply. If an affiliate of the utility plans to submit bids for supply-side resources it will own or operate, it shall ~~additionally~~ adhere to the procedures specified in 199 IAC 40.4(476).

**40.3(1) General requirements.** A utility ~~conducting a~~ intending its bidding process to satisfy the requirements of 476.53(3)(c)(2) shall develop detailed cost estimates of its own build or lease options. Those options may include units jointly planned with other companies, plant upgrades or modifications, and plant extensions. The cost estimates shall be detailed and filed on both a project and per-unit basis.

The competitive bidding rules currently reference Iowa Code § 476.53(3)(c)(2). This code section requires as a pre-condition to advance ratemaking that “[t]he rate regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply.” IOWA CODE § 476.53(3)(c)(2). The existing rule allows a utility to establish competitive bidding under 476.53(3)(c)(2). The existing rule does not have a presumption that the competitive bidding process meets the requirements of the statute. Thus, the Board currently weighs competitive bidding along with any other available evidence in the advance ratemaking contested case in order to make a determination about whether the utility has considered other sources of supply and if the selected source is reasonable when compared to feasible alternatives.

Environmental Commenters do not support a presumption that allows a competitive bidding process to satisfy the requirements of Iowa Code § 476.53(3)(c)(2). While a competitive bidding process is evidence that the utility considered alternatives—and that evidence should be considered in an advanced ratemaking docket—the statute requires the Board make a specific finding that the utility has both considered other sources of supply and that the selected option is reasonable. Such a determination requires evaluating and weighing all of the evidence presented. The Board’s proposed rule creating a presumption that the code requirements are met precludes consideration of additional evidence.

There are many examples of situations where a competitive bidding process alone would not meet the statutory criteria. For example, a competitive bidding process that only looks at one

type of generation would provide evidence of the reasonableness of cost relative to that specific source of generation, but it would not demonstrate that other feasible generation options were considered or that the selected option was reasonable, even on a cost basis, compared to generation sources that were not considered. A resource plan may identify a specific resource need and then the utility may conduct a competitive bidding process for the identified resource, but the competitive bidding process may fail to consider important context such as a seasonal capacity shortfall. In that situation, the competitive bidding process may identify a least-cost resource, but other, unexamined resources may be more reasonable with consideration of the full range of factors. Another example is that a competitive bidding process could identify a given wind project as lower cost to build, but the lower-cost project may not be located to take advantage of existing transmission rights when another wind project with slightly higher costs could, potentially changing the reasonableness of a project. The statute and current Board rules allow for all of these factors to be weighed in the advanced ratemaking case, while the proposed rules eliminate that examination. The Board should not limit its evaluation by creating a new presumption in the proposed rules.

The Board's proposed rule creating a presumption of compliance with 476.53(3)(c)(2) also undercuts the Board's existing authority and the recommendations for resource planning in the recent ratemaking study conducted by London Economics International LLC (LEI). In 2023, the Iowa Legislature passed House File 617 requiring that the Board review ratemaking procedures. The Board contracted with LEI to assist in conducting this review and solicited public input through docket NOI-2023-0001. The Board sent LEI's final report to the Legislature and filed it in the NOI docket. NOI-2023-0001, London Economics, International, *Review of Current Iowa Code Provisions and Ratemaking Procedures* (filed Dec. 21, 2023) (hereafter "LEI Review"). A

key recommendation in the LEI Review is that “the Legislature enact a statute mandating rate-regulated electric utilities periodically submit IRPs to the IUB for review and evaluation.” LEI Review at 5. The LEI Review recommended that the statute clearly define the parameters of the IRP including specific parameters that should be incorporated. *Id.* at 6.

While current Iowa statute does not have the formal process with regular updates that LEI recommended, the Board has used the advanced ratemaking statute requirements in Iowa Code § 476.53(3)(c)(2) to require the utilities to provide resource planning as part of an advanced ratemaking application. On multiple occasions, the Board has ordered MidAmerican to provide detailed resource planning information as part of its advanced ratemaking principles application:

In future advance ratemaking principles applications, MidAmerican is directed to include detailed information regarding its resource planning process, with a planning horizon of at least ten years. The resource planning process information is to identify various potential generating alternatives available and the impact of selecting each particular alternative on MidAmerican’s customers.

RPU-07-2, Order Approving Stipulation and Agreement, at 6-7 (Issued July 27, 2007); RPU-08-2, Order Approving Stipulation and Agreement, at 6 (Issued June 16, 2008); RPU-08-4, Order Approving Stipulation and Agreement, at 7 (Issued Aug. 27, 2008).

In the only advance ratemaking docket where the Iowa Supreme Court considered what evidentiary record was necessary to comply with Iowa Code section 476.53(3)(c)(2), the Court found that a record with a robust resource planning process that included capacity expansion modeling was sufficient evidence to support a finding of compliance. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 43 (Iowa 2012). In coming to this conclusion, the Court specifically cited MidAmerican’s “comparison of Wind VII to conventional and renewable generation alternatives” in the pre-filed testimony in the Wind VII docket:

The testimony of MidAmerican’s manager of market assessment further details MidAmerican’s comparison of Wind VII to conventional and renewable generation

alternatives. The record contains evidence as to MidAmerican's six-stage *resource planning process*, the different analytical models used during the process, and other criteria MidAmerican uses to further evaluate the attractiveness of other generation sources. Accordingly, the record supports a finding that MidAmerican compared its proposed facility to other feasible supply sources . . . .

*Id.* (emphasis added).

Resource planning is a recommended best practice and part of an evidentiary record that meets the requirements of Iowa Code § 476.53(3)(c)(2). Accordingly, the Board should not move forward with a proposed rule that undercuts the recommendations of the LEI review and limits the Board's ability to order a utility present resource planning as part of an advanced ratemaking docket.

#### **IV. Environmental Commenters' Suggested Changes to the Proposed Rule**

Environmental Commenters recommend the following highlighted changes to the Board's proposed rule to ensure that the rule is consistent with the statute, past Board practice, and the recommendations in the LEI Review.

**40.1(2) *Applicability and purpose.*** The rules ~~apply to any rate-regulated electric public utility choosing to establish a competitive bidding process under Iowa Code Supplement section 476.53(3) "c"(2). A rate-regulated utility choosing to comply with these minimum requirements for bidding processes used to purchase supply may use the competitive bidding process as evidence will be deemed to have demonstrated to the board~~ that it has considered other sources for long-term electric supply for purposes of Iowa Code section 476.53(3)"c"(2). ~~The rules establish minimum requirements for bidding processes used to purchase supply. Under these rules, bids compete not only with other bids but also with the utility's own build or lease options.~~ Utilities maintain the right to secure or free up electric capacity and energy through means other than a competitive bidding process.

**40.2(1) *Procedures.*** The utility ~~shall use~~ using the following procedures to competitively acquire supply-side resources under its competitive bidding process ~~will be deemed to have~~ may present the results as evidence that it has considered other sources for long-term electric supply. If an affiliate of the utility plans to submit bids for supply-side resources it will own or operate, it shall ~~additionally~~ adhere to the procedures specified in 199 IAC 40.4(476).

**40.3(1) *General requirements.*** A utility ~~conducting a~~ intending its bidding process



to provide evidence that it satisfies the requirements of 476.53(3)(c)(2) shall develop detailed cost estimates of its own build or lease options. Those options may include units jointly planned with other companies, plant upgrades or modifications, and plant extensions. The cost estimates shall be detailed and filed on both a project and per-unit basis.

**V. Conclusion**

In initiating this docket, the Board states that “[m]ost of the current proposed changes to chapter 40 center on the removal of unnecessary and restrictive language.” However, the Board’s proposed rule includes a major substantive change to the Chapter 40 rules that would create a presumption that competitive bidding complies with the requirements of Iowa Code § 476.53(3)(c)(2) and is inconsistent with the statute, past Board practice, and the recommendations of the LEI Review. The Board should modify its proposed rule to eliminate such a presumption.

Respectfully submitted,

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