

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

<p>IN RE:</p> <p>REVIEW OF RENEWABLE ENERGY PERCENTAGE VERIFICATION RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 30]</p>	<p>DOCKET NO. RMU-2023-0030</p>
---	---------------------------------

The Environmental Law & Policy Center (ELPC) and Iowa Environmental Council (IEC) (collectively, Environmental Commenters) offer these comments in response to the Iowa Utilities Board (Board) Order issued April 11, 2024, proposing to rescind 199 Iowa Administrative Code Chapter 30.

Environmental Commenters support the Board’s proposal to rescind the Chapter 30 rules because the rules are not providing the benefit originally intended, have not kept up with an evolving renewable energy market, and in fact, are harming the public by facilitating and failing to hold in account deceptive utility practices.

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.

II. Background on 199 Iowa Administrative Code Chapter 30

On March 11, 2024, the Iowa Utilities Board (Board) issued an order opening a docket to address 199 Iowa Administrative Code Chapter 30 on Renewable Energy Percentage Verification rules. This rulemaking is part of the Board's comprehensive evaluation of existing rules initiated by Governor Reynolds through Executive Order 10.

The Chapter 30 rules are relatively new. The Board initiated a rulemaking on May 19, 2017 that culminated in an order adopting rules on November 3, 2017.¹ ELPC and IEC participated in that rulemaking submitting multiple rounds of comments. ELPC and IEC supported the rulemaking believing that such a program would help meet sustainability and customer clean energy targets, attract sustainably-minded businesses, drive economic development and further renewable energy deployment.²

ELPC and IEC noted that a primary purpose of any renewable energy verification program is to prove legitimacy of renewable energy claims.³ In the initial rulemaking, ELPC and IEC expressed concern about double counting of Renewable Energy Credits.⁴ ELPC and IEC also expressed concerns about the statements made by both utilities and customers based on a

¹ RMU-2017-0002, Order Adopting Rules (issued Nov. 3, 2017).

² RMU-2017-0002, ELPC, IEC and Wind on the Wires (WOW) Statement of Position (July 11, 2017).

³ *Id.*

⁴ *Id.* at 2-3.

renewable energy verification program, noting that “[s]tatements must be both technically true and non-deceptive.”⁵

The adopted rules addressed the concern about potential utility claims stemming from a renewable energy verification program by including specific language related to utility claims:

The language will be in substantially the following form, where “x” is the verified REP [Renewable Energy Percentage]:

Utility: x percent of the electricity that the utility sold to retail customers during the prior period was from renewable energy generation. The utility provided its retail customers with x percent renewable energy during the prior period.⁶

III. ELPC and IEC Support Rescission of the Renewable Energy Verification Rules.

ELPC and IEC support the Board’s recommendation that the Renewable Energy Verification rules be rescinded. The Board recommended that the renewable energy verification rules be rescinded because they do not provide the intended benefit (e.g., proving the legitimacy of the renewable energy claim). Renewable energy goals have also continued to evolve with 24/7 100% renewable energy goals and other round-the-clock goals that the current rules do not address and could not easily address. Importantly, MidAmerican’s recent claims have failed to comply with the existing rule without any accountability, and even claims that comply with the rule are misleading to the public in the current market.

The Board’s regulatory analysis states that the rule is not achieving the “intended benefit of having the Board independently verify the renewable energy generation percentage . . . rather, in these proceeding and under existing chapter 30, the Board merely recites information generated from third-parties without engaging an independent verification and review.” RMU-2023-0030,

⁵ *Id.* at 3.

⁶ 199 Iowa Admin. Code 30.4.

Order Opening Docket and Setting Technical Conference and Comment Deadline, Attachment A, at 1 (filed April 11, 2024). The Board's rationale alone would be an appropriate basis for rescinding the rules, but there are additional problems with the existing rule.

The Board adopted the initial chapter 30 rules when customer renewable energy goals were simpler and based only on a renewable percentage target. The market has continued to evolve since that time, and the current rules are inadequate for the current market. For example, Google became the first company to announce a 24/7 carbon-free energy goal for its operations in 2020.⁷ Customers like Google will want to demonstrate that their facilities are powered by renewable energy around the clock and not relying on coal or other fossil fuels in any hour of the day. To accomplish this, a renewable verification program would require tracking and retiring RECs on an hourly basis to help meet 24/7 clean energy goals that customers have or may adopt. This is an additional level of complexity that is not included in the current Renewable Energy Verification rules, and given the Board's concern about how the program currently operates, likely could not be effectively incorporated.

MidAmerican has used the Renewable Energy Verification to actively mislead the public. ELPC and IEC had concern during the original rule adoption that utility claims about renewable energy could mislead the public. That is why in the 2017 rulemaking we recommended that there be language related to acceptable and appropriate claims. The existing rules attempted to provide guidance along those lines, but the nuanced statements in the rule, while appropriate at the time, were not enough to address a quickly changing renewable energy context.

For example, on July 11, 2022, MidAmerican put out a press release with the headline

⁷ Google "24/7 Carbon-Free Energy by 2030," available at <https://www.google.com/about/datacenters/cleanenergy/> (last visited May 16, 2024).

“MidAmerican renewable energy mix exceeded 88% in 2021.”⁸ This statement is not true and does not meet the requirements of 199 Iowa Administrative Code 30.4 that language substantially comply with the form “x percent of the electricity that the utility sold to retail customers during the prior period was from renewable energy generation.” MidAmerican made a more nuanced statement that may have complied with the requirements in the Renewable Energy Verification rules in the body of the press release, although MidAmerican combined that statement with one that exaggerated the validation provided by the Board’s order in the verification docket: “The board’s annual verification order validates the amount of renewable energy MidAmerican delivered over the course of the year, as a percentage of total retail energy the company delivered to its Iowa customers.”⁹ The more accurate nuanced statement was not the headline nor was it what the press and public took away from the release. There was no Board action addressing MidAmerican’s press release language.

Even if MidAmerican had used the required language in the press release headline, like it had in previous years,¹⁰ the nuanced statement does not convey the reality of the situation to the public. When MidAmerican makes a statement that percentage of retail energy delivered to the public is renewable, the public is left with the impression that is the renewable percentage of MidAmerican’s overall energy mix. The general public and the media do not realize that MidAmerican sells a significant amount of energy wholesale. When MidAmerican was making the claim in a press release that its “renewable energy mix exceeded 88% in 2021,” MidAmerican’s overall renewable energy mix was 57 percent according to the FERC Form 1

⁸ MidAmerican Energy Company, Press Release “MidAmerican renewable energy mix exceeded 88% in 2021,” (July 11, 2022) available at www.midamericanenergy.com/newsroom/2022-88-pct-renewable-energy (last visited May 13, 2024).

⁹ *Id.*

¹⁰ See e.g., MidAmerican Energy Company, Press Release, “Renewable energy comprised 61.3% of the electricity MidAmerican Energy delivered to Iowa customers in 2019” (May 12, 2020) available at www.midamericanenergy.com/newsroom/2020-ia-61.3-percent-renewable (last visited May 14, 2024).

submitted by MidAmerican.¹¹ In 2021, MidAmerican generated 13,711,214 MWh from fossil resources (33 percent of its net generation),¹² but this fact is impossible to discern from MidAmerican's press release about the Board's renewable verification order.

It is also in the context of new customer goals for 24/7 or around the clock clean energy that the claims based on the current program can become particularly deceptive and misleading. The broader public perceives renewable energy goals as round the clock goals. It was only as companies started reaching 100% renewable energy goals based on Renewable Energy Credits that the shortcoming of those goals came to light. Google has explained:

Our 100% renewable energy match was a major achievement, but the urgency of the climate challenge demands an even bigger and bolder vision. That's why in 2020 we announced a first-of-its-kind target to achieve 24/7 Carbon-Free Energy by 2030¹. This means that we aim to procure clean energy, such as solar and wind, to meet our electricity needs, every hour of every day, within every grid where we operate. Achieving 24/7 carbon-free energy will not only ensure that our operations are supported by carbon-free energy around the clock - it will also increase the impact of our clean energy procurement on the decarbonization of the grids that serve us.¹³

The Board adopted the Renewable Energy Verification rules before specific round the clock goals had been adopted like Google's 24/7 policy existed. The claims language in the current rule focused on the percentage of retail sales, but such a claim does not provide the context of fossil generation used to power the grid on an hourly basis. In fact, a claim by a utility that it meets x percent of energy sold as renewable will be perceived as a round the clock claim. The general public does not think about the differences between retail sales, wholesale sales, or renewable energy credits and without providing that context claims based on the current Renewable Energy

¹¹ MidAmerican FERC Form 1, filed Apr. 4, 2022, at 401a.

¹² The remaining 10 percent of generation was nuclear.

¹³ Google, "Operating on 24/7 Carbon-Free Energy by 2030" available at sustainability.google/progress/energy/ (last visited May 14, 2024).

Verification rules will mislead the public.

In the absence of Board enforcement of the claim language in 199 Iowa Administrative Code 30.4, MidAmerican has become even more brazen in making its claims. In 2023, MidAmerican’s press release did not even have the nuance buried in the body of the press release as it did in 2022. On September 25, 2023, the press release headline read “MidAmerican served Iowa customers electricity demand with 100% renewable energy in 2022.”¹⁴ This statement is not true. MidAmerican’s overall renewable energy mix was 68 percent of its net generation according to its own FERC Form 1 filing.¹⁵ In 2022, MidAmerican generated 10,078,400 MWh from fossil resources (23 percent of its generation), but this fact is impossible to discern from MidAmerican’s press release. The press release did not offer anything that would let the public know that the claim was based on a percentage of retail sales, and no statements in that release comply with the requirements of 199 Iowa Administrative Code 30.4. MidAmerican’s press release had the intended effect, with resulting press stories that give the impression that customers received all of their energy from renewable sources with reports that, “[t]he utility says last year, all electricity its Iowa customers used came from wind, solar, hydropower, and other renewable sources.”¹⁶

MidAmerican has used the Board’s renewable energy verification rule to mislead the public into thinking MidAmerican provides customers with more renewable energy than it does. MidAmerican’s misleading claim that it met 100% of electricity demand with renewable energy obscures the fact that MidAmerican operates one of the largest coal fleets in the country. For residents and businesses looking to make their own renewable energy claims, MidAmerican’s

¹⁴ MidAmerican Energy Company, Press Release “MidAmerican served Iowa customers’ electricity demand with 100% renewable energy in 2022” (Sept. 25, 2023) *available at* www.midamericanenergy.com/newsroom/2023-wind-generation-100-pct-in-2022 (last visited May 13, 2024).

¹⁵ FERC Form 1 (filed Mar. 31, 2023) at 401a.

¹⁶ *See e.g.* WVIK, Michelle O’Neill, “MidAmerican reaches big, renewable energy milestone” (Oct. 9, 2023) *available at* www.wvik.org/wvik-top-stories/2023-10-09/midamerican-energy-reaches-big-renewables-milestone (last visited May 13, 2024).

misleading claims could have significant consequences. The current rule cannot adequately handle MidAmerican's claims. The Board has admitted that it does not independently verify the claims, and there has been no consequence for MidAmerican's blatant violation of the existing rules. Even compliance with the rules is no longer sufficient to inform the public about MidAmerican's renewable generation that operates in tandem with a significant coal fleet. The Board should rescind the rules so that utilities can no longer use a verification process that simply restates company information to mislead the public about the actual renewable energy mix that powers the electric grid.

IV. Conclusion

ELPC and IEC support the Board's proposal to rescind the chapter 30 rules. As the Board acknowledged in its regulatory analysis the rules are not an independent verification of the utilities' renewable energy generation percentage. Further, the energy verification rules are not written to provide verification for all industry goals as there has been a shift in clean energy goals to 24/7 or round-the-clock targets. MidAmerican has used the rules to make misleading statements to the public about its renewable generation and obscure the reality of its coal fleet operating in tandem with its renewable generation. Some of MidAmerican's statements are in violation of the existing rules, and there has not been any enforcement in response to the statements. Consistent with the Board's regulatory analysis and for all of the reasons explained above, ELPC and IEC support rescinding the Renewable Energy Verification rules in Chapter 30.

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/ Michael R. Schmidt

Michael R. Schmidt (AT0013962)
Iowa Environmental Council
505 5th Avenue, Suite 850
Des Moines, Iowa 50309
P: (515) 244-1194
schmidt@iaenvironment.org