

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: PETITION TO AMEND RULES 20.16 AND 27.13	DOCKET NO. RMU-2022-0020
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ORDER DENYING PETITION TO AMEND RULES 20.16 AND 27.13

PROCEDURAL BACKGROUND

On August 12, 2022, Soft Lights Foundation (Soft Lights)¹ filed with the Utilities Board (Board) a petition to regulate the quality of LED streetlights and area lights. Soft Lights requested the Board rescind language included in 199 Iowa Administrative Code (IAC) rules 20.16 and 27.13 that relates to LED light and technologies and adopt new language that meets energy efficiency requirements.

On August 16, 2022, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed its Appearance in Docket No. RMU-2022-0020, pursuant to Iowa Code § 475A.2.

On September 1, 2022, MidAmerican Energy Company, the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, and Interstate Power and Light Company (collectively, the Joint Utilities) filed a responsive comment in which they assert the existing rules are appropriate and should be retained. Also on

¹ On its website, Soft Lights identifies itself as “the leading activist organization dedicated to restoring the natural night resource and protecting people from the harms of LED light.” softlights.org/ (last accessed on September 8, 2022).

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September 1, 2022, OCA filed a response that requested the Board deny Soft Lights' petition for rule making.

On September 2, 2022, Soft Lights filed a response that asserted that LED streetlights are not energy efficient, are toxic and dangerous, and do not comply with any existing engineering standards. On September 7, 2022, Soft Lights filed four additional documents, titled as follows: "What Injuries Do LEDs Cause?" "How Did the LED Fraud Start?" "Why Don't LEDs Save Energy?" and "Why is LED Light Different?" The documents appear to be copies of material included on the Soft Lights website under a section heading titled "The LED Fraud." softlights.org/led-fraud/ (last visited on September 30, 2022).

STANDARD OF REVIEW

Pursuant to Iowa Code § 17A.7(1), any "interested person may petition an agency requesting the adoption, amendment, or repeal of a rule." Under procedural rules adopted by the Board, other interested persons may file written comments, views, or arguments concerning the petition within 20 days of the filing of the petition, and reply comments may be filed within 27 days of the filing of the petition. 199 IAC r. 3.3(2). Pursuant to § 17A.7(1) and Board rule 3.3(3), within 60 days after submission of the petition, the Board shall, by written order, deny the petition on the merits, commence a rule making in accordance with § 17A.4, or, if exempt from the procedures of § 17A.4, adopt a rule.

The purpose of § 17A.7 is to "enable interested persons, on their own initiative, to induce a reasoned consideration of the propriety of the issuance, amendment, or

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repeal” by an agency. *Community Action Research Group v. Iowa State Com. Comm’n*, 275 N.W.2d 217, 220 (Iowa 1979) (citation omitted). Section 17A.7 imposes two requirements on an agency that decides to deny a petition for rule making: first, the denial must be “in writing,” and second, the denial must be “on the merits.” *Litterer v. Judge*, 644 N.W.2d 357, 361 (Iowa 2002).

“On the merits” does not limit an “agency’s discretion” in deciding whether the rule should continue as is or should be changed; rather, “[i]t is only meant to assure that agencies give *fair consideration* to such request for a change in rules or an addition to rules.” *Community Action Research Group*, 275 N.W.2d at 219 (emphasis added), see also *Bernau v. Iowa Dep’t of Transp.*, 580 N.W.2d 757, 766 (Iowa 1998) (affirming agency’s denial of a petition for rule making and concluding agency gave “fair consideration” of the rule-making request where agency declined, in writing, to adopt rules governing the selection of the location of a highway). “Thus, the ‘on the merits’ requirement does not require an agency to actually ‘take a stand on the substantive issues’ behind the request for rulemaking” and, instead, “the agency may rely on reasons other than the actual merits of the request.” *Litterer v. Judge*, 644 N.W.2d at 361.

DISCUSSION

Iowa Code § 476.62 provides that:

[a]ll public utility-owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced when worn-out exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the board.

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The Board complied with the requirements of § 476.62 through the adoption of rule 20.16, which covers rate-regulated electric utilities, and rule 27.13, which covers electric cooperatives and municipal electric utilities. In whole, rule 20.16 provides:

20.16(1) Newly installed lighting. All newly installed public utility-owned exterior flood lighting shall be solid-state lighting or lighting with equivalent or better energy efficiency.

20.16(2) In-service lighting replacement schedule. In-service lighting shall be replaced with solid-state lighting or lighting with equivalent or better energy efficiency when worn out due to ballast, lamp, or fixture failure for any other reason, such as vandalism or storm damage. A utility shall file with the board as part of the utility's annual report required in 199— Chapter 23 a report stating the progress in converting to higher pressure sodium lighting or lighting with equivalent or higher energy efficiency. Information shall be provided as part of the board 24/7 requirements.

20.16(3) Efficacy standards. Lighting other than solid-state has equivalent or better efficacy if one or more of the following can be established:

- a. For fixtures, the mean lumens-per-watt lamp rating is greater than 100; or
- b. The new lighting uses no more energy per installation than comparable, suitably sized solid-state; or
- c. The new lighting luminaires have a mean efficacy rating equal to or greater than 100 lumens per watt according to a Department of Energy (DOE) Lighting Facts label, testing under the DOE Commercially Available LED Product Evaluation and Reporting Program (CALiPER), Design Lights Consortium (DLC) or any other testing agency that follows Illuminating Engineering Society of North America LM-79-08 test procedures

Rule 27.13 is identical to rule 20.16 in all material respects.

Soft Lights states that Iowa Code § 476.62 sets high pressure sodium (HPS) lighting as the baseline, while subrules 20.16(1) and 27.13(1) set the baseline as solid-state lighting (LED) technology. Soft Lights asserts that LED lights are not “lighting with equivalent or better energy efficiency” than HPS as required under

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§ 476.62. Consequently, Soft Lights argues that reference to LED lighting and technology in the subrules should be eliminated and replaced with HPS lighting.

Soft Lights' argument is primarily centered on what it views to be the most appropriate definition of "energy efficiency." Soft Lights contends the United States Department of Energy, the West Virginia Department of Environmental Protection, the Environmental and Energy Study Institute, the United Kingdom Department of Energy and Climate Change, and the Law Insider each define the term "energy efficiency" to include a quality component and an energy usage component. In other words, Soft Lights argues that "energy efficiency" means "providing the same level of service using less energy." Applying this definition to § 476.62, Soft Lights states that any equivalent lighting must match HPS in terms of quality and use less energy. Because, according to Soft Lights, LED does not match HPS in terms of quality, Board rules 20.16 and 27.13 are noncompliant with § 476.62.

In its response, OCA argues that Soft Lights' definition of "energy efficiency" is too narrow and restrictive. The Board agrees. The term "energy efficiency" is not defined in either the Iowa Code or the Board's rules; however, in chapter 35 of the Board's rules, which governs energy efficiency and demand response planning, the term "energy efficiency measure" is defined to mean activities "which reduce customers' energy usage." 199 IAC r. 35.2. This definition does not include a quality component

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and is not dissimilar to how other states have defined the term.²

Approximately 12 years ago, the Board issued an order recognizing that technology has advanced such that LED lighting may be more efficient than HPS lighting. *In re: Exterior Flood Lighting*, Docket No. RMU-2010-0002, Order Adopting Rules, p. 1 (Sept. 15, 2022). Soft Lights has provided the Board with no justification to reverse this position. Because LED technologies provide lighting with the equivalent, or more, lumens and uses less energy, LED technology is energy efficient and meets the requirements of § 476.62, notwithstanding the quality arguments made by Soft Lights.

Finally, the Board notes that in their September 1, 2022 filing, the Joint Utilities expressed business concerns, should the Board grant Soft Lights' request. Specifically, the Joint Utilities state that "HPS fixtures are no longer the industry standard for utility-owned lighting" and that "many manufacturers have transitioned their production lines from HPS to LED which has resulted in extremely limited offerings of HPS components, long lead times for delivery (if the components are available at all) and dramatically increased pricing." According to the Joint Utilities, amending Board rules 20.16 and

² See Ark. Code Ann. § 14-5-1803 (defining "energy efficiency project" to mean any change "that is designed to reduce energy consumption"); Colo. Rev. Ann. § 38-33.3-106.7 (defining "energy efficiency measure" to mean a device or structure that "reduces the amount of energy" used); Haw. Rev. Stat. Ann. § 196-61 (defining "energy-efficiency measure" to mean any type of product or technology that reduces "the consumption of energy in a public building"); 50 Ill. Comp. Stat. Ann. 50/5 (defining "energy efficiency improvement" to mean any product "intended to decrease energy consumption or enable a more efficient use" of energy); Nev. Rev. Stat. Ann. § 704.7833 (defining "energy efficiency measure" to mean a "program designed, intended or used to improve energy efficiency by reducing the energy consumption by a retail customer of an electric utility"); Okla. Stat. Ann. tit. 17, § 801.3 (defining "energy efficiency" to mean technologies that "reduce electricity used" by consumers; Utah Code Ann. § 63A-5b-1001 (defining "energy efficiency measure" to mean, in part, an action taken to reduce the agency's energy or fuel usage); and Wash. Rev. Code Ann. § 70A.50.010 (defining "energy efficiency services" to mean, in part, "activities to reduce a customer's energy consumption").

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27.13 to require the use of an unavailable technology would be unduly burdensome and, consequently, are additional reasons to deny Soft Lights' request.

For the reasons set forth above, the Board will deny the request for rule making made by Soft Lights.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The August 12, 2022 Petition to Regulate the Quality of LED and Area Street Lights filed by the Soft Lights Foundation, is denied.

UTILITIES BOARD

Geri Huser Date: 2022.10.10
15:04:28 -05'00'

Richard Lozier Date: 2022.10.10
15:41:08 -05'00'

ATTEST:

Kerrilyn Russ Date: 2022.10.10
16:04:24 -05'00'

Josh Byrnes Date: 2022.10.10
13:30:32 -05'00'

Dated at Des Moines, Iowa, this 10th day of October, 2022.