

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ALTERNATE ENERGY PURCHASE PROGRAMS [199 IAC 15.1 and 15.17]	DOCKET NO. RMU-03-8
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ORDER ADOPTING RULE MAKING

(Issued August 29, 2003)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1,476.1A, 476.1B, and 476.47, the Utilities Board (Board) adopts the rules attached hereto and incorporated herein by this reference. These rules add a new definition to 199 IAC 15.1, add new rule 15.17, and add a new subparagraph to 199 IAC 20.9. The rules are designed to implement Iowa Code § 476.47. This statute, which became effective on July 1, 2001, requires all electric utilities to offer “alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa” by January 1, 2004. The statute requires rate-regulated utilities to file program tariffs in compliance with Board rules, but requires non-rate-regulated utilities to file tariffs “for informational purposes only.” Voluntary customer contributions through alternate energy purchase programs will supplement other components of renewable energy development, including the state-mandated purchase requirements contained in Iowa Code §§ 476.41 through 476.45.

Written or oral comments were submitted by Interstate Power and Light Company (IPL), MidAmerican Energy Company, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), the Iowa Sustainable Energy for Economic Development Coalition, Ag Processing Inc (Ag Processing), the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, Missouri River Energy Services, and the Iowa Environmental Council. The comments generally were favorable to the concept of establishing rules for alternate energy purchase programs, although many commenters offered specific suggestions or revisions to the proposed rules.

The Board will amend the definitions in rule 15.1 by deleting references to “allocated joint program costs” and “directly assigned program costs.” Eliminating these definitions will simplify the annual reporting reconciliations. Rather than using allocated joint program costs, costs will be defined as incremental program costs not otherwise recovered through a utility’s base rates or automatic adjustment clause.

The definition of “alternate energy purchase programs” is also revised to more closely match the statute’s goal of developing alternate energy. The change will allow small utilities to adopt programs like a customer contribution fund with funds donated to Iowa organizations involved in alternate energy development such as the Iowa Energy Center. The Board will retain the voluntary aspect of the program. This is consistent with the statutory language, which speaks of programs being “offered,” not mandated.

Some of the non-rate-regulated utilities argued that the statute allows programs where the utility, through its governing body, sets or mandates the contribution rate from each customer. This interpretation is inconsistent with the statute's use of the term "offer," which Webster's Ninth Collegiate Dictionary defines as "to present for acceptance or rejection," to "propose, suggest." While determining legislative intent is sometimes difficult, the use of this term suggests that customers are to have a choice whether to participate in the program and that the choice is to be made by customers individually, not collectively through their utilities' governing body. It is important to note, however, that nothing in the statute or rules prohibits utilities from offering programs that include both voluntary and mandated contributions, but it does require them to offer programs with voluntary contributions or seek a waiver of the requirement. The Board notes that some non-rate-regulated utilities currently purchase or own renewable generation and the costs of these resources are paid for through their customer's electric rates.

The dissent's interpretation fails to give meaning to the entire statute, which emphasizes the voluntary nature of the programs. Allowing non-rate-regulated utilities to simply pass program costs through in rates removes any voluntary aspect of the program from the individual customer's perspective. The statute, read as a whole, does not appear to treat rate-regulated and non-rate-regulated different in this respect.

A change will be made to subrule 15.17(1) to allow IPL to continue operating its existing Second Nature Program as a multi-state program with pooled resources, allowing potential for cost savings in administration and marketing. The statutory intent for a program with Iowa-based resources will be met as long as the pooled resources include sufficient Iowa resources to match Iowa participation. References to out-of-state exceptions for non-rate-regulated utilities will be clarified so that the exception applies when all power must be purchased from one or more suppliers located outside of Iowa. The Board will not adopt proposed changes that would add policy restrictions not contained in the statute or predetermine the outcome of issues reserved for the program approval process, such as the appropriate energy adjustment clause treatment of program participants.

The notice requirements of subrule 15.17(2) will be revised to allow more flexibility and to accommodate potential differences between rate-regulated and non-rate-regulated utility programs. Other minor clarifications are also made.

The program plan filing requirements in subrule 15.17(3) will be altered to simplify requirements for plan modifications and to remove a reference to competitive bidding. The rule will also allow for additional forms of customer contributions, such as fixed contributions. The requirement for utilities to specify methods for independent verification of results may be premature, given the current lack of a centralized clearing house for such information at the state or regional transmission organization level. This requirement will be removed from the accounting plan filing

requirements. Instead, the annual reporting requirement in paragraph 15.17(4)"c" will be changed to an alternative approach for obtaining much of the same information.

Annual reporting requirements in paragraph 15.17(4)"a" will be modified to provide for reporting of annual, rather than monthly, information. Other changes will be made consistent with changes to other rules discussed previously.

In response to Consumer Advocate's and Ag Processing's concerns, recovery of program deficits in the annual reconciliation through the alternate energy program (AEP) clause will be optional, rather than mandatory. However, any AEP recovery of program deficits will be offset with program surpluses that may occur in future years. The Board will not adopt restrictions on carry-forward of AEP purchase costs because these appear to restrict specific types of AEP development, a policy restriction not addressed in the statutes. Clarifying changes to the fuel reporting requirements in subrule 15.17(5) will also be adopted.

The program filing requirements for non-rate-regulated utilities are found in subrule 15.7(6). These will be changed to simplify the filing requirement for AEP facility information and to allow the possibility that non-rate-regulated utility programs may not involve specific AEP facilities. The term "program plan" will be changed to "tariff filing," consistent with Iowa Code § 476.47(2)"a." These filings with the Board are for informational purposes only.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-03-8, is adopted.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Mark O. Lambert

/s/ Elliott Smith

**SEPARATE STATEMENT OF CHAIRMAN DIANE MUNNS
CONCURRING IN PART AND DISSENTING IN PART
DOCKET NO. RMU-03-8**

I concur in the order of my colleagues, except for the portion that requires non-rate-regulated utilities to offer voluntary programs. I believe the statute allows these utilities to offer programs where the utilities' governing body determines the amount to be paid to the program and passes these program costs through to customers in their electric rates. The General Assembly described the programs to be provided by investor-owned utilities as "programs that allow customers to contribute voluntarily." Iowa Code § 476.47(2)"a." (emphasis added). In the next paragraph, different language is used to describe the non-rate-regulated utilities' programs. This

language, “programs at rates determined by their governing authority,” suggests that the requirements are not the same for these utilities and that a contribution level for customers may be set by the utilities’ governing body and paid by the utilities customers in their electric rates.

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 29th day of August, 2003.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.47, the Utilities Board (Board) gives notice that on August 29, 2003, the Board issued an order in Docket No. RMU-03-8, In re: Alternate Energy Purchase Programs, "Order Adopting Rules." The Board is adopting a new definition in 199 IAC 15.1(476), a new rule 199 IAC 15.17(476), and a new subparagraph 199 IAC 20.9(2)"b"(9). The amendments are in response to Iowa Code section 476.47, which requires all electric utilities to offer by January 1, 2004, "alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa."

On April 21, 2003, the Board issued an order in Docket No. RMU-03-8 to consider the new amendments. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXV, No. 23 (5/14/03) p. 1479, ARC 2459B. Written or oral comments were submitted by Interstate Power and Light Company (IPL), MidAmerican Energy Company, the Consumer Advocate Division of the Department of Justice, the Iowa Sustainable Energy for Economic Development Coalition, Ag Processing Inc, the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, Missouri River Energy Services, and the Iowa Environmental Council. An oral presentation was held on June 27, 2003.

Several changes have been made to the noticed rules in response to the comments. The definition of “alternate energy purchase programs” has been changed to allow small utilities to implement a program like a customer contribution fund with the proceeds donated to Iowa Energy Center. Such a program would further the development of alternate energy in Iowa, consistent with the statutory mandate. The Board will retain the voluntary aspects of the program. This is consistent with the statute, which provides that utilities are to “offer” such programs.

The Board will also adopt changes allowing for pooled facilities, such as are used in IPL’s current Second Nature Program. This multi-state program uses pooled resources, which allows for potential cost savings in administration and marketing. The statutory intent of the legislation, which is for an Iowa program based on Iowa resources, will be satisfied so long as the pooled resources include sufficient Iowa resources to match Iowa customer participation.

Other changes to the noticed rules have also been adopted. The Board will not detail here the reasons for adopting these changes because those reasons have been delineated in the Board’s order, referred to above, and issued simultaneously with this adopted and filed notice of rule making. This order is available at the Board’s Web site, <http://www.state.ia.us/iub>. This order is also available in hard copy for review or purchase at the Board’s Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515)281-5563.

The changes to the noticed rules are in response to the comments. The Board finds that no additional notice is required.

A separate waiver provision is included for municipal utilities and cooperatives, but the Board's waiver provision in 199 IAC 1.3(17A,474,78GA, HF2206) will be generally applicable to these rules.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.47, and will become effective on October 22, 2003.

The following amendments are adopted.

199—15.1(476) Definitions.

Item 1. Amend rule **199—15.1(476)** by adding the following new definition in alphabetical order:

“Alternate energy purchase program” means a utility program that allows customers to contribute voluntarily to the development of alternate energy in Iowa.

Item 2. Add new rule 199—15.17(476) as follows:

199—15.17(476) Alternate energy purchase programs.

Any consumer-owned utility, including any electric cooperative corporation or association or any municipally-owned electric utility, may apply to the board for a waiver under this rule.

This rule shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

15.17(1) Obligation to offer programs.

a. Beginning January 1, 2004, each electric utility, whether or not subject to rate regulation by the board, shall offer an alternate energy purchase program

that allows customers to contribute voluntarily to the development of alternate energy in Iowa, allowing for the exceptions listed in paragraph 15.17(1)"c."

b. Each electric utility subject to rate regulation by the board, except for utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall demonstrate on an annual basis that it produces or purchases sufficient energy from program AEP facilities located in Iowa to meet the needs of its Iowa program. These Iowa-based AEP facilities shall not include AEP facilities for which the utility has sought cost recovery under rule 199—20.9(476) prior to July 1, 2001.

c. The electric utility may partially or fully base its program on energy produced by AEP facilities located outside of Iowa under any of the following circumstances:

(1) The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility;

(2) The electric utility has a financial interest, as of July 1, 2001, in an AEP facility that is located outside of Iowa or in an entity that has a financial interest in an AEP facility located outside of Iowa; or

(3) The energy is purchased by an electric utility that is not subject to rate regulation by the board, or which elects rate regulation pursuant to Iowa Code section 476.1A, and that is required to purchase all of its electric power requirements from one or more suppliers that are physically located outside of Iowa.

15.17(2) Customer notification.

a. Each electric utility shall notify eligible customer classes of its alternate energy purchase program and proposed program modifications at least sixty days prior to implementation of the program or program modification. The notification shall include, as applicable:

(1) A description of the availability and purpose of the program or program modification, clarifying that customer contributions will not involve the direct sale of alternate energy to individual customers;

(2) The effective date of the program or program modification;

(3) Customer classes eligible for participation;

(4) Forms and levels of customer contribution available to program participants;

(5) A utility telephone number for answering customers' questions about the program; and

(6) Customer instructions for how to participate in the program.

b. In addition to the notification requirements under paragraph 15.17(2)"a," each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall:

(1) Include fuel report information described under subrule 15.17(5); and

(2) Submit the proposed notification to the board for approval at least 30 days prior to the proposed date of issuance of the notification.

15.17(3) Program plan filing requirements for rate-regulated utilities. On or before October 1, 2003, each electric utility subject to rate regulation by the

board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a plan for the utility's alternate energy purchase program. Initial program plans and any subsequent modifications will be subject to board approval. Modification filings need only include information about elements of the program that are being modified. The initial program plan filing shall include:

- a. The program tariff;
- b. The program effective date;
- c. A sample of the customer notification, including a description of the method of distribution;
- d. Customer classes eligible for participation and the schedule for extending participation to all customer classes;
- e. Identification of each AEP facility used for the program, including:
 - (1) Fuel type;
 - (2) Nameplate capacity;
 - (3) Estimated annual kWh output;
 - (4) Estimated in-service date;
 - (5) Ownership, including any utility affiliation;
 - (6) A copy of any contract for utility purchases from the facility;
 - (7) A description of the method or procedure used to select the facility;
 - (8) Facility location;
 - (9) If the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1)"c";

- f.* The forms and levels of customer contribution available to program participants, including, but not limited to:
- (1) kWh rate premiums applied to percentages of participant kWh usage, with an explanation of how the kWh rate premiums are derived; or
 - (2) kWh rate premiums applied to fixed kWh blocks of participant usage, with an explanation of how the kWh rate premiums are derived; or
 - (3) Fixed contributions, with an explanation of how the fixed amounts are derived;
- g.* The maximum allowable time lag between the beginning of customer contributions and the in-service date for identified AEP facilities, and the procedures for suspending customer contributions if the maximum time lag is exceeded;
- h.* The intended treatment of program participants under 199–20.9(476) energy automatic adjustment and AEP automatic adjustment clauses;
- i.* An accounting plan for identifying and tracking participant contributions and program costs, including:
- (1) Identification of incremental program costs not otherwise recovered through the utility's rates, including but not limited to: (a) program start-up and administration costs; (b) program marketing costs; and (c) program energy and capacity costs associated with identified AEP facilities;
 - (2) Methods for quantifying, assigning, and allocating costs of the program and for segregating those costs in the utility's accounts; and

j. Marketing and customer information plan, including schedules and copies of all marketing and information materials, as available.

15.17(4) Annual reporting requirements for rate-regulated utilities. On or before April 1, 2005, and annually thereafter, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a report of program activity for the previous calendar year. The annual report shall include:

a. Program Information including:

(1) The number of program participants, by customer class;

(2) Participant contribution revenues, by customer class, by form and level of contribution, and associated participant kWh sales;

(3) Program electricity generated from each program AEP facility and the associated costs; and

(4) Other program costs, by cost type.

b. An annual reconciliation of participant contributions and program costs.

(1) Program costs are incremental costs associated with the utility's alternate energy purchase program not otherwise recovered through the utility's base tariff rates, and electricity costs dedicated to the program and separated from the utility's 199—20.9(476) energy or AEP automatic adjustment clauses.

(2) The excess of participant contributions over program costs is an annual program surplus, and the excess of program costs over participant contributions is an annual program deficit.

(3) Annual program surpluses and deficits are cumulative over successive years.

(4) A program deficit may be recovered through the utility's 199—20.9(476) AEP automatic adjustment clause.

(5) Any program surplus shall be used to offset prior years' program deficits previously recovered through the AEP automatic adjustment clause, and the offset amount shall be credited through the utility's AEP automatic adjustment clause.

c. Identification of any other AEP or renewable energy requirements being met with program AEP facilities and identification of any revenues derived from the separate sale of the renewable energy attributes of program AEP facilities.

d. Documentation that shows the energy produced by the utility's program AEP facilities in Iowa (whether contracted, leased, or owned), not including AEP facilities for which the utility has sought cost recovery under 199—20.9(476) prior to July 1, 2001, is sufficient to meet the requirement of the utility's Iowa alternate energy purchase program.

e. A description of program marketing and customer information activities, including schedules and copies of all marketing and information materials related to the program.

f. Program modifications and uses for any program surplus that are under consideration, including procurement or assignment of additional electricity from AEP facilities, and

g. A copy of the utility's annual fuel report to customers under subrule 15.17(5).

15.17(5) *Annual fuel reporting requirements for rate-regulated utilities.*

a. Each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall annually report to all its Iowa customers its percentage mix of fuel and energy inputs used to produce electricity. The report shall, to the extent practical, specify percentages of electricity produced by coal, nuclear energy, natural gas, oil, AEP electricity produced for the utility's alternate energy purchase program, non-program AEP electricity, and resources purchased from other companies. The percentages for AEP electricity shall further specify percentages of electricity produced by wind, solar, hydropower, biomass, and other technologies.

b. The report shall include an estimate of sulfur dioxide (SO₂), nitrogen oxide (NO_x), and carbon dioxide (CO₂) emissions for each known fuel and energy input type. The emission estimate shall be expressed in pounds per 1000 kWh.

15.17(6) *Tariff filing requirements for non-rate-regulated utilities.*

a. On or before January 1, 2004, each electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A shall file with the board a tariff for the utility's alternate energy purchase program. Initial tariff filings and any subsequent modifications shall be filed for informational purposes only. Tariff modification filings need only include information about elements of the program that are being modified. The initial tariff filings shall include, as applicable:

- (1) The program tariff;
- (2) The program effective date;
- (3) A sample of the customer notification, including a description of the method of distribution;
- (4) Customer classes eligible for participation;
- (5) Identification of any specific AEP facilities to be included in the program, including: (a) fuel type; (b) nameplate capacity; (c) estimated annual kWh output; (d) estimated in-service date; (e) ownership, including any utility affiliation; (f) location and, (g) if the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1)"c"; and
- (6) Forms and levels of customer contribution available to program participants.

b. Joint filings. An electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A, may file its tariff jointly with other non-rate-regulated utilities or through an agent. A joint tariff filing shall contain the information required by paragraph 15.17(6)"a," separately identified for each utility participating in the joint tariff. The information for each utility may be provided by reference to an attached document or to a section of the joint tariff filing. A joint tariff filing filed by an agent shall state the agent's relationship to each utility and include a document from each utility authorizing the agent to act on the utility's behalf.

Item 3. Add new subparagraph 20.9(2)"b"(9) as follows:

(9) Eligible costs or credits associated with the utility's annual reconciliation of its alternate energy purchase program under 199—15.17(4)"b."

August 29, 2003

/s/ Diane Munns
Diane Munns
Chairman