

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CERTIFICATION OF ELIGIBILITY FOR WIND ENERGY AND RENEWABLE ENERGY TAX CREDITS	DOCKET NO. RMU-05-7
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**ORDER ADOPTING RULES WITHOUT PUBLIC NOTICE AND PARTICIPATION
AND PROVIDING FOR IMMEDIATE EFFECTIVE DATE**

(Issued June 20, 2005)

INTRODUCTION

On June 15 and 16, 2005, the Governor signed two legislative acts identified as Senate File 390 and House File 882, which provide for state tax credits for wind energy production and renewable energy. Senate File 390 creates a new Iowa Code chapter 476C, providing for tax credit certificates that will be issued to eligible producers or purchasers of renewable energy by the Department of Revenue (Department) in an amount equal to 1.5 cents per kWh of electricity, \$4.50 per million British thermal units of heat for a commercial purpose, \$4.50 per million British thermal units of methane gas or other biogas used to generate electricity, or \$1.45 per one thousand standard cubic feet of hydrogen fuel generated by and purchased from an eligible renewable energy facility. The tax credits are limited to 90 megawatts of wind-driven generating capacity and 10 megawatts of all other renewable energy-driven generating capacity.

House File 882 modifies existing Iowa Code chapter 476B to provide for a tax credit of 1 cent per kWh, limited to a maximum of 450 megawatts of wind-driven generating capacity. The tax credits under chapters 476B and 476C are mutually exclusive; that is, a wind energy facility can qualify for tax credits under one chapter or the other, but not both.

Because the provisions of these acts were deemed by the General Assembly to be of immediate importance, they took effect immediately upon enactment.

Pursuant to new §§ 476B.5 and 476C.3, the Utilities Board (Board) is assigned the duty of determining whether a facility is eligible for these tax credits. The Board's preliminary determination must be made on the basis of a written application and must be made within 30 days of receipt of a complete application. If the Board does not take any action within 30 days, the application is deemed denied. Any preliminary determination or deemed denial will become final unless it is appealed to the Board within 30 days of the date of the preliminary determination. If the application is incomplete, the Board may grant an extension of time for filing additional information.

FINDINGS REGARDING PUBLIC PARTICIPATION AND EFFECTIVE DATE

Board staff has already been contacted by persons who are interested in applying for a determination of eligibility. They would like to know what information they should include in their application for a determination of eligibility. These rules are intended to provide initial guidance regarding the required contents of an

application so that the public can file applications and begin taking advantage of the new legislation as soon as practicable. This comports with the legislative findings that these acts are of immediate importance and should take effect upon enactment. In order to give full and immediate effect to these statutes, the Board's rules implementing the statutes must also take effect immediately. As such, the Board finds, pursuant to Iowa Code § 17A.4(2), that public participation in this proceeding would be impracticable and contrary to the public interest because it would delay the public's ability to file for and receive these new tax credits. Moreover, concurrent with this proceeding the Board is initiating a regular rule making proceeding, identified as Docket No. RMU-05-8, to receive comment from the public concerning this matter and adopt final rules that will replace the rules adopted in this order.

For much the same reason, the Board finds pursuant to Iowa Code § 17A.5(2) that the rules being adopted in this order should become effective immediately upon filing with the administrative rules coordinator. The rules confer a benefit on the public by clarifying the filing requirements for determining whether a facility is eligible for the new tax credits and allowing interested persons to begin filing applications at the earliest date possible. Again, this finding comports with the legislative determination that these acts are of immediate importance and should therefore take effect upon enactment.

DESCRIPTION OF ADOPTED RULES

As stated previously, under either chapter the Board must make a preliminary determination regarding whether a facility is an eligible renewable energy facility within 30 days of receiving the written application. In order to meet this deadline, the Board finds that the application must contain substantially all of the following information:

1. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.
2. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner and the percentage of equity interest held by each owner, and a statement that owners meeting the eligibility requirements of either Iowa Code § 476B.5 or Iowa Code § 476C.1 are not owners of more than two eligible renewable energy facilities. "The legal status of each owner" refers to the ownership requirements of Iowa Code § 476C.1(6), which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:
 - (a) A resident of Iowa;
 - (b) An authorized farm corporation, limited liability company, or trust, as defined in Iowa Code § 9H.1;

- (c) A family farm corporation, limited liability company, or trust, as defined in § 9H.1;
- (d) A revocable trust, as defined in § 9H.1;
- (e) A testamentary trust, as defined in § 9H.1;
- (f) A small business as defined in Iowa Code § 15.102;
- (g) An electric cooperative association organized pursuant to Iowa Code § 499 that sells electricity to end users located in Iowa;
- (h) A cooperative corporation organized pursuant to Iowa Code § 497 or a limited liability corporation organized pursuant to Iowa Code § 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code § 9H;
or
- (i) A school district located in Iowa.

3. A description of the facility, including at a minimum the following information:

- (a) Type of facility (that is, a qualified facility as defined in Iowa Code § 476B.1; or a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, or solar energy conversion facility, as defined in Iowa Code § 476C.1);

(b) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code § 476C.1(7);

(c) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(d) The date the facility is expected to be placed in service (that is, placed in service on or after July 1, 2005, but before January 1, 2011, for eligibility under Iowa Code § 476C; or placed in service on or after July 1, 2005, but before July 1, 2008, for eligibility under Iowa Code § 476B); and

(e) For eligibility under Iowa Code § 476C, demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code § 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code § 476C.1(6)"b", equals no more than 2.5 MW of capacity per 476C.1(6)"b" owner.

4. A copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, which shall designate either the producer or the purchaser as eligible to apply for the renewable energy tax credit. If the power

purchase agreement or other agreement has not yet been finalized and executed, the Board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit, which designation shall not be subject to change.

5. A statement regarding the type of tax credit being sought; that is, indicating whether the applicant is applying for § 476B (1 cent per kWh, wind energy only) or § 476C (1.5 cents per kWh, wind and other renewable energy) tax credits.

Upon receipt of a complete application, the Board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The Board will notify the applicant by letter of the approval or denial of the application, within 30 days of the date the application was filed. If the Board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the Board within 30 days of the date of the denial, pursuant to the provisions of chapter 17A and §§ 476B.5(2) and 476C.3(2). In the absence of a timely appeal, the preliminary determination shall be final.

If an incomplete application is filed, the Board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Moreover, the Board and its staff may request additional information at any time.

If an eligible facility is not operational within 18 months of Board approval, it will lose eligibility status. However, the facility may reapply to the Board for new eligibility.

The Board notes that each of these chapters establishes a limit on the total amount of wind or renewable energy capacity that may be certified as eligible for these tax credits. Specifically, under section 476C.3(4) the maximum amount of nameplate generating capacity of all wind energy conversion facilities the Board may find eligible cannot exceed 90 megawatts of nameplate generating capacity, and the maximum amount of nameplate generating capacity plus energy production capacity equivalent of all other facilities cannot exceed a combined total of 10 megawatts. Under section 476B.5(4), the maximum amount of wind energy conversion facilities that the Board may find eligible cannot exceed 450 megawatts. (All limits stated in terms of nameplate generating capacity.) It is possible that the Board will receive applications for tax credits that, in total, exceed these limits. In that case, the Board proposes to rule on the applications in the order they are received, based upon the date of receipt. The Board does not track the time of day of filings made with the Board, so if the Board receives more than one application on the date that the combined capacity of applications reaches the maximum, the Board proposes to allocate the final eligibility determinations proportionally among all applications received on that date.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. An emergency rule, identified as Docket No. RMU-05-7, is adopted for the reasons set forth in this order.
2. Pursuant to the findings contained in the body of this order, the rule is adopted without public notice and participation and is effective upon filing with the Administrative Rules Coordinator.
3. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed Emergency" notice in the form attached hereto and incorporated by reference in this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper

Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of June, 2005.

UTILITIES DIVISION [199]

Adopted and Filed Emergency

Pursuant to Iowa Code sections 17A.4, Senate File 390, and House File 882, the Utilities Board (Board) gives notice that on June 20, 2005, the Board issued an order in Docket No. RMU-05-7, In re: Certification of Eligibility for Wind Energy and Renewable Energy Tax Credits, "Order Adopting Rules Without Public Notice and Participation and Providing for Immediate Effective Date." The Board is adopting new rule 199 IAC 15.18 (476). The new rule adopts procedures and filing requirements to facilitate the Board's determination of whether an energy facility is eligible for the wind energy production tax credits under House File 882, or renewable energy tax credits under Senate File 390. The Governor signed Senate File 390 on June 15, 2005, and House File 882 on June 16, 2005. House File 882 amends existing Iowa Code chapter 476B and Senate File 390 creates a new Iowa Code chapter 476C.

In compliance with Iowa Code section 17A.4(2), the Board found in its Order that notice and public participation were impracticable because of the immediate need for new rules to implement this new legislation. The Board's staff has already been contacted by persons who are interested in applying for a determination of eligibility and those persons would like to know what information should be included in their application to determine eligibility.

The Board also found in its Order that, pursuant to Iowa Code 17A.5(2)"b"(2), the normal effective date of the amendments should be waived and these amendments should be made effective upon filing, as they confer a benefit on those persons seeking to qualify for the tax credits. This amendment should be made effective upon filing with the Administrative Rules Coordinator on June 20, 2005, because of the benefits it confers upon qualifying energy producers.

The Board does not find it necessary to adopt a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these rules.

This amendment is also published herein under Notice of Intended Action as **ARC _____** to allow public comment. This emergency filing permits the Board to implement the new statutes.

This amendment will be effective June 20, 2005, the date filed with the Administrative Rules Coordinator.

The amendment is intended to implement Senate File 390 and House File 882.

The following amendment is adopted.

Item 1: New rule 199 IAC 15.18 is adopted as follows:

199—15.18(476) Certification of Eligibility for Wind Energy and Renewable Energy Tax Credits.

Any person applying for certification of eligibility for state tax credits for wind energy pursuant to Iowa Code 476B.5 or renewable energy pursuant to Iowa Code section 476C.3 is subject to this rule.

15.18 (1) Filing Requirements.

Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the Board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner and the percentage of equity interest held by each owner, and a statement that owners meeting the eligibility requirements of either Iowa Code § 476B.5 or Iowa Code § 476C.1 are not owners of more than two eligible renewable energy facilities. "The legal status of each owner" refers to the ownership requirements of Iowa Code § 476C.1(6), which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

(1) a resident of Iowa;

(2) an authorized farm corporation, limited liability company, or trust, as defined in Iowa Code § 9H.1;

(3) a family farm corporation, limited liability company, or trust, as defined in § 9H.1;

(4) a revocable trust, as defined in § 9H.1;

(5) a testamentary trust, as defined in § 9H.1;

(6) a small business as defined in Iowa Code § 15.102;

(7) an electric cooperative association organized pursuant to Iowa Code § 499 that sells electricity to end users located in Iowa;

(8) a cooperative corporation organized pursuant to Iowa Code § 497 or a limited liability corporation organized pursuant to Iowa Code § 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code § 9H; or

(9) a school district located in Iowa.

c. a description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a qualified facility as defined in Iowa Code § 476B.1; or a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, or solar energy conversion facility, as defined in Iowa Code § 476C.1);

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code § 476C.1(7);

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service (that is, placed in service on or after July 1, 2005, but before January 1, 2011, for eligibility under

Iowa Code § 476C; or placed in service on or after July 1, 2005, but before July 1, 2008, for eligibility under Iowa Code § 476B); and

(5) For eligibility under Iowa Code § 476C, demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code § 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code § 476C.1(6)"b", equals no more than 2.5 MW of capacity per 476C.1(6)"b" owner.

d. A copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, which shall designate either the producer or the purchaser as eligible to apply for the renewable energy tax credit. If the power purchase agreement or other agreement has not yet been finalized and executed, the Board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit, which designation shall not be subject to change.

e. A statement regarding the type of tax credit being sought; that is, indicating whether the applicant is applying for § 476B (1 cent per kWh, wind energy only) or § 476C (1.5 cents per kWh, wind and other renewable energy) tax credits.

15.8(2) Review and Notification

Upon receipt of a complete application, the Board will review it to make a preliminary determination regarding whether the facility is an eligible renewable

energy facility. The Board will notify the applicant by letter of the approval or denial of the application, within 30 days of the date the application was filed. If the Board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the Board within 30 days of the date of the denial, pursuant to the provisions of chapter 17A and §§ 476B.5(2) and 476C.3(2). In the absence of a timely appeal, the preliminary determination shall be final.

15.8(3) Incomplete Application and Additional Information.

If an incomplete application is filed, the Board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the Board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

15.8(4) Loss of Eligibility Status.

Within 18 months following Board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the Board determines that the eligible facility was not operational within 18 months of Board approval, the facility will lose eligibility status. However, the facility may reapply to the Board for new eligibility.

15.8(5) Allocation of Capacity Among Eligible Applicants.

Iowa Code chapters 476B.5(4) and 476C.3(4) each establish the maximum amount of nameplate generating capacity of facilities eligible for the tax credits. In the event the Board receives applications for tax credits that, in total, exceed

the statutory limits, the Board will rule on the applications in the order they are received, based upon the date of receipt. Because the Board does not track the time of day of filings are with the Board, if the Board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the Board will allocate the final eligibility determinations proportionally among all applications received on that date.

June 20, 2005

/s/ John R. Norris
John R. Norris
Chairman