

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  BARTON WIND POWER, LLC, BARTON WINDPOWER II, LLC, NORTHERN IOWA WINDPOWER II, LLC, AND ENDEAVOR POWER PARTNERS, LLC	DOCKET NO. 199 IAC 15.18
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**ORDER GRANTING RECONSIDERATION**

(Issued September 13, 2005)

On July 21, 2005, letters were issued by the Utilities Board's (Board) Executive Secretary stating that a preliminary determination had been made that Barton Wind Power, LLC, Barton Windpower II, LLC, and Northern Iowa Windpower II, LLC (collectively, the Applicants), were eligible renewable energy facilities under Iowa Code chapter 476B. On July 29, 2005, a letter issued by the Board's Deputy Executive Secretary notified Endeavor Power Partners, LLC (Endeavor), that its application for renewable energy tax credits pursuant to chapter 476B could not be processed because eligibility for the 450 MW reserved under that chapter had been fully subscribed. The letter noted that if there are any reductions in the MW capacity of any of the eligible facilities, or if any eligible facilities are not operational within 18 months pursuant to 199 IAC 15.18(4), any released capacity will be made available to applicants in the queue.

On August 19, 2005, Interstate Power and Light Company (IPL) filed applications for reconsideration of the Applicants' eligibility determinations. IPL had previously objected to the Applicants' applications for eligibility. Among other things, IPL argued that the Applicants did not have executed power purchase agreements as required by Iowa Code § 476B.5(1)"e" and that, because of common ownership of the Applicants, they should not be eligible for all the credits for which they applied.

The Applicants filed resistances to the applications for reconsideration on August 26, 2005. The Applicants stated that reconsideration of the Board's eligibility determinations was not available to IPL under chapter 476B and that the filing was untimely pursuant to Iowa Code § 476.12. The Applicants supplemented their resistances on August 29, 2005, with resolutions from the Worth County Board of Supervisors approving their eligibility for the tax credits.

On August 29, 2005, Endeavor filed a notice of appeal and request for reconsideration of the determination that its application for chapter 476B tax credits could not be processed. In essence, Endeavor was asking the Board to rescind the seven preliminary determinations of eligibility previously made to others, including the Applicants, who were ahead of Endeavor in the queue. Endeavor argued that the emergency rules adopted by the Board for chapter 476B were defective and that the seven others were not eligible for the chapter 476B tax credits because none of them had an executed power purchase agreement. Endeavor also claimed the ownership limits contained in chapter 476B were violated.

The revisions to chapter 476B became effective on July 1, 2005. Similar provisions for smaller wind projects contained in chapter 476C became effective on June 16, 2005. The Board issued emergency rules that were identical for both chapters on June 20, 2005. Since the emergency rules were adopted, the rules have been the subject of two meetings of the Administrative Rules Committee, made up of members of the Iowa House of Representatives and Senate. The committee is in the process of seeking an Attorney General's opinion regarding the emergency rules.

There has been another significant event since the Board issued the letters to the Applicants and Endeavor in July. The purchase obligation under the Public Utility Regulatory Act of 1978 (PURPA) may change under certain circumstances because of provisions contained in the Energy Policy Act of 2005, which became effective on August 8, 2005. The Board relied on PURPA's legal purchase obligation, at least in part, in determining that the Applicants met the eligibility requirements of chapter 476B.

Because of the significant events that have occurred subsequent to the issuance of the letters, the Board will grant reconsideration of the applications filed by the Applicants and Endeavor for the purpose of receiving additional evidence and argument. However, the Board will not set a schedule at this time. An oral presentation on the noticed rules for chapters 476B and 476B is scheduled for September 21, 2005, in Docket No. RMU-05-8. The noticed rules are proposed to be identical to the emergency rules adopted by the Board. This oral presentation may include arguments on some of the issues presented by the applications for rehearing.

After the oral presentation, the Board will determine the procedures and schedule for obtaining additional evidence and argument on the applications for reconsideration, if necessary.

The Board is aware that Iowa Code chapter 476B and the Board's emergency rules provide that if an eligible facility is not operational within 18 months of Board approval, the facility will lose eligibility status. One issue raised by granting reconsideration for further review is whether the 18-month period is stayed or tolled for some or all of the time it takes to complete the reconsideration process. Parties will be asked to comment on this issue at the appropriate time.

Because the Board's decision on the applications for reconsideration may impact others in the chapter 476B queue, the Board will mail copies of this order to all those in the chapter 476B queue. Those persons may want to consult their legal counsel for advice on whether to intervene in these proceedings and participate in the oral comment proceeding in Docket No. RMU-05-8.

**IT IS THEREFORE ORDERED:**

1. The requests for reconsideration filed by Interstate Power and Light Company on August 19, 2005, are granted to the extent the Board will hear additional evidence and argument as outlined in this order.

2. The request for reconsideration filed by Endeavor Power Partners, LLC, on August 29, 2005, is granted to the extent the Board will hear additional evidence and argument as outlined in this order.

3. Copies of this order shall be mailed to all persons filing applications for tax credits pursuant to Iowa Code chapter 476B.

**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 13<sup>th</sup> day of September, 2005.