

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>CERTIFICATION OF ELIGIBILITY FOR WIND ENERGY AND RENEWABLE ENERGY TAX CREDITS</p>	<p>DOCKET NO. RMU-05-8</p>
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ORDER REQUESTING ADDITIONAL COMMENTS

(Issued September 30, 2005)

On September 21, 2005, an oral presentation was held in Docket No. RMU-05-8. This docket involves a rule making commenced to implement House File 882 and Senate File 390 (Iowa Code §§ 476B.5 and 476C.3). These statutes assign the Utilities Board (Board) the duty to determine whether a facility is eligible for state tax credits for wind energy and renewable energy. Concurrently with this rule making, the Board issued an order in Docket No. RMU-05-7 that adopted on an emergency basis the same rules that were noticed in Docket No. RMU-05-8 for public comment.

The proposed rules generated significant public comment at the oral presentation. In order for persons to have an opportunity to fully address various issues and questions raised by the initial written comments and at the oral presentation, the Board will allow for additional written comments. In addition to any other comments that persons may wish to make, the Board invites comments on the following questions:

1. Iowa Code chapter 476B provides that if a facility is not operational within 18 months after a preliminary determination of eligibility, the facility loses its eligibility status and its credits become available to others in the queue. There was discussion at the oral presentation that adopting certain milestones might release capacity sooner, if an eligible facility could not meet the milestones. If a milestone approach were adopted to ensure that projects were moving forward during the 18-month period, what milestones would be appropriate for projects qualifying for chapter 476B tax credits? What about the timing as to when those milestones should be met?

2. The Board understands that differing approaches may be appropriate for the smaller wind projects qualifying for chapter 476C credits. Is a milestone approach appropriate for those projects? Why or why not? If you believe milestones are appropriate for smaller projects, what should those milestones be and when should they be met?

3. Much comment was generated about the language contained in Iowa Code § 476B.5(1)"e." Please comment on what you believe constitutes an "other agreement to purchase electricity." Also, please comment on when you believe the statutory language requires an executed purchase power agreement or other agreement—at the time of filing the application for tax credits, when the project is completed, or as a milestone during the 18-month period.

4. Some commentors asked the Board to look past the legal or corporate status of the facility owner in chapter 476B cases to determine the equity ownership

shares of the legal owner and enforce ownership limits based on that equity ownership. If you favor this approach, please provide specifics as to what ownership limits you would impose and the statutory authority for imposing such limits.

5. Some commentors asked the Board to limit ownership in chapter 476C cases by looking past the legal or corporate status of the facility owner to determine if common family members were involved and limiting facility ownership on this basis. If you favor this approach, please provide specifics as to what ownership limits you would impose and the statutory basis for imposing such limits. For example, how would family members be defined—would the term include in-laws, adult children as well as minor children, etc. Also, would it matter if the eligible facilities owned by family members were located in different counties rather than being located near each other?

6. In addition, the Board seeks comment on its allocation of capacity among eligible applicants in the queue under 199 IAC 15.18(5). This subrule states, in part:

[I]f 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.

In practice, the Board has withheld allocation of small amounts of remaining capacity, balancing the potential benefit of designating a small portion of applicants' capacity as eligible, with the potentially greater harm of prematurely triggering the 18-month period under 199 IAC 15.18(4), when facilities must become operational or lose their eligibility. Determining this balance has seemed clear up to now, but may not always

be the case. Therefore, in the future, the Board may withhold any remaining capacity if it is less than the total capacity applications on the “next date” in the queue. Using this approach, if any of the “next date” applicants petition the Board to allocate the remaining capacity under 199 IAC 15.18(5), the Board would contact all “next date” applicants, inform them of the potential harm of triggering the 18-month period under 199 IAC 15.18(4), and allow them to “opt out” of the allocation while maintaining their place in the queue. The remaining capacity would then be allocated to all “next date” applicants except those who choose to opt out. The Board seeks comments on this approach and invites commentors to submit alternative approaches that they believe better allocate this capacity.

IT IS THEREFORE ORDERED:

Additional written comments may be filed in Docket No. RMU-05-8 on or before October 14, 2005.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 30th day of September, 2005.