

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CERTIFICATION OF ELIGIBILITY FOR WIND ENERGY AND RENEWABLE ENERGY TAX CREDITS	DOCKET NO. RMU-05-8
---	---------------------

ORDER ADOPTING RULE MAKING

(Issued January 26, 2006)

Pursuant to the authority of Iowa Code § 17A.4, Iowa Code chapter 476B.5 (Supp. 2005), and Iowa Code chapter 476C (Supp. 2005), the Utilities Board adopts the rules attached hereto and incorporated herein by reference. These rules add new rules 15.18 and 15.19, and are designed to implement House File 882 and Senate File 390, which assign to the Board the duty of determining whether a facility is eligible for new state tax credits for wind energy production and renewable energy. These rules replace rules that were adopted on an emergency basis on June 20, 2005, in Docket No. RMU-05-7. The emergency rules were published in the Iowa Administrative Bulletin on July 20, 2005, as ARC 4342B. On September 13, 2005, the Administrative Rules Committee voted to object to the provisions of the emergency rule as it related to the implementation of House File 882 only. The objection was published in the Iowa Administrative Bulletin on October 12, 2005, at page 619.

The adopted rules take into account objections raised by the Administrative Rules Committee and comments received. The reasons for adopting these rules are set forth in the attached notice of intended action, which is incorporated into this order by reference.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-05-8, 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/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 26th day of January, 2006.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code section 17A.4, 2005 Iowa Acts, Senate File 390 (Iowa Code chapter 476C (Supp. 2005)), and 2005 Iowa Acts, House File 882 (Iowa Code chapter 476B (Supp. 2005)), the Utilities Board (Board) gives notice that on January 26, 2006, the Board issued an order in Docket No. RMU-05-8, In re: Certification of Eligibility for Wind Energy and Renewable Energy Tax Credits, "Order Adopting Rules." The Board is adopting new rules 199 IAC 15.18(476,81GA,HF882) and 15.19 (476,81GA,SF390). The new rules adopt 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 Iowa Code chapter 476B (Supp. 2005) or renewable energy tax credits under Iowa Code chapter 476C (Supp. 2005). The Governor signed the legislation creating a new chapter 476C (2005 Iowa Acts, Senate File 390) on June 15, 2005, and the legislation amending chapter 476B (2005 Iowa Acts, House File 882) on June 16, 2005.

This rule making was initiated concurrently with an emergency rule making adopting the rules as initially proposed. The emergency rule making was identified as Docket No. RMU-05-7. The emergency rules were adopted on June 20, 2005, and published in IAB Vol. XXVIII, No. 2 (7/20/05) p. 106, as **ARC 4342B**. 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 a new rule to implement Senate File 390 (chapter 476C), citing the fact that the Board's staff had already been contacted by several persons who were interested in applying for a determination of eligibility and those persons wanted to know what information should be included in their applications to determine eligibility. Rather than attempting to inform only those who inquired on an ad hoc basis, the Board adopted emergency rules applying to both 476B and 476C applications.

The Notice of Intended Action for Docket No. RMU-05-8 was published in IAB Vol. XXVIII, No. 2 (7/20/05) p. 98, as **ARC 4341B**. On August 9, 2005, the Board received written statements of positions. On September 21, 2005, an oral presentation was held. On September 30, 2005, the Board issued an "Order Requesting Additional Comments" from the participants. On October 14, 2005, additional comments were received. Comments have been received from Carroll County Projects (Carroll County), Clipper Windpower, Inc. (Clipper), FPL Energy, LLC (FPL), Iowa Farm Bureau Federation (Farm Bureau), Iowa Winds, LLC (Iowa Winds), Interstate Power and Light Company (IP&L), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), and Midwest Renewable Energy Projects, LLC (MREP), which represents Northern Iowa Windpower II LLC, Northern Iowa Windpower III LLC, Winnebago Windpower LLC, Barton Windpower LLC, Barton Windpower II LLC, and Winnebago Windpower II LLC. Consumer Advocate filed additional comments

on October 17, 2005, and Edward Woolsey (Woolsey) e-mailed comments on October 1 and 19, 2005.

In addition to the public comment received, the Administrative Rules Review Committee (Committee) voted to object to the provisions of the emergency rules as those rules implement chapter 476B; the Committee did not object to the rules as they implemented chapter 476C. The objection was published in IAB Vol. XXVIII, No. 8 (10/12/05) p. 619. The objection, which will be discussed in greater detail below, addressed the issues of an executed purchase power agreement, the use of the emergency rule making procedure and the adoption of the rules prior to the effective date of the statute, and direct and indirect ownership.

Overall, Iowa Code chapters 476B (for large wind energy projects) and 476C (for smaller renewable energy projects) are very similar, sufficiently similar that the Board adopted a single set of emergency rules to implement both statutes and proposed to adopt a single set of final rules in this docket. However, several of the commenters pointed out various small differences in the language of the two chapters and argued that those differences are significant. FPL and Clipper both recommended that specific rules be adopted for each chapter and the Committee's objection only went to the rules as they applied to chapter 476B projects. The Board will adopt this recommendation. The rules for chapter 476B projects will be in 199 IAC 15.18 and the rules for chapter 476C projects will be in 199 IAC 15.19. In addition to clarifying the rules, this separation will make the process easier for proposing and considering future amendments that may apply only to small or large projects, but not both.

With the rules being separated, the comments addressing the rules as they apply to chapter 476B will be discussed first. Discussion regarding the rules as they apply to chapter 476C will follow. Because the comments reflect various views, often in conflict with the emergency rules, the Board will provide extensive summaries of some of the comments.

Iowa Code § 476B.5(1)"e" requires, among other things, that the applicant for tax credits provide "[a] copy of an executed power purchase agreement or other agreement to purchase electricity upon completion of the project." In the emergency rules and in the proposed rules, the Board interpreted this provision as requiring (a) a signed power purchase agreement (PPA) or (b) some other agreement, which may or may not be signed. Some commenters supported the Board's interpretation; others opposed it and said a signed contract was essential.

Clipper believes that the phrase "other agreement" cannot be construed to allow substitution of either a statement of intended action, a perceived statutory obligation, or any document other than one that contains an offer, acceptance, and consideration for wind power to be purchased at a set price by designated parties.

As far as the argument that a utility has Public Utility Regulatory Policies Act of 1978 (PURPA) requirements to purchase wind power from a qualifying facility, Clipper believes this is without merit. Clipper argues that federal law cannot create a *de facto* PPA, particularly given the significance of an executed PPA in establishing project economic viability. Additionally, Clipper notes that the

purchase obligation under PURPA may be terminated in certain circumstances under the Energy Policy Act of 2005.

FPL believes the Legislature recognized that a signed PPA is the best indicator of a project's viability and likelihood of success. Therefore, the Board should not rely on anything less than that, such as a draft, affidavit, or market participant form from an independent system operator. FPL would consider an "other agreement" to pertain to a Purchase and Sale Agreement which is executed prior to the initiation of construction setting forth the terms and conditions that will govern the sale of the facility to the load-serving entity. A second form of an "other agreement" FPL would accept is an agreement which shows that a merchant plant plans at some time in the future to sell into a nodal-based congestion management system (i.e., Midwest Independent Transmission System Operator's (MISO) Day 2 market). FPL notes that a market participant form is an administrative form and does not capture the intent of either party regarding the construction of a wind energy facility. FPL believes it is clear that the Legislature intended the phrase "at the completion of the project" to describe when electricity was to be purchased and not to imply that the agreement was to be provided when the project was complete.

Iowa Winds believes the Board has correctly interpreted the phrase "other agreement to purchase electricity" when it found that facilities meeting the definition of Qualifying Facility under PURPA satisfied the requirement. Iowa Winds also argues that any changes to the rules should not impact the existing queue.

IPL argues the Legislature added the “other agreement to purchase electricity” language only to assure that a contract not titled “purchase power agreement” would not be disqualified for lack of that specific title as long as the agreement bound a potentially qualifying facility to sell electricity and another party to buy electricity. IPL said the rules must be amended to reflect the legislative intent as articulated by the Committee.

MREP states the following agreements would satisfy the “other agreement to purchase electricity”: an executed PPA prior to project completion; an executed facility purchase agreement prior to project completion; or, in the case of a merchant facility, a Market Participation Agreement combined with a “generation asset registration confirmation code,” which takes place 30 days prior to commercial operation. Additionally, it could include a Qualifying Facility PPA that was provided on or before commercial operation since it would take time to get a final agreement.

Consumer Advocate maintained that the “other agreement to purchase electricity” was intended to include other agreements or power purchase obligations that may be different from more common purchase power contracts. Consumer Advocate believes the legislative intent was to extend eligibility beyond the traditional PPA to include a broad range of applicants and renewable energy projects. Although Consumer Advocate acknowledges that not requiring a PPA until the project is completed could frustrate the timely development and operation of alternative energy resources in Iowa, it disagrees that the solution is to require that the initial application include the executed PPA. Consumer

Advocate notes that there are many reasons why developers may have difficulty obtaining a PPA and that even with an executed PPA, it is not certain the project will be operational in 18 months.

On September 13, 2005, the Committee voted to object to the Board's emergency rules. The objection was issued on September 21, 2005; with respect to executed PPA issue, it provides as follows:

The committee objects to paragraph 199 IAC 15.18(1)"d", relating to the required documentation to demonstrate a market for the wind energy, on the grounds that it is beyond the authority of the Utilities Board. House File 882 requires, in §166: "*A copy of an executed power purchase agreement or other agreement to purchase electricity...*" The rule language states: "*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; this designation shall not be subject to change.*" The committee believes that the language of the Act clearly demonstrates a legislative intent that only an *executed* power purchase agreement or other *executed* agreement that has a similar force and effect can be accepted in the application process.

The Committee, which is a bipartisan, bicameral committee of the General Assembly formed pursuant to section 17A.8, interpreted the statute to require either (a) a signed power purchase agreement or (b) some other agreement, ***which must also be signed.*** The Board did not have the benefit of this legislative history at the time it was adopting the emergency rules and issuing the notice of proposed rule making, and the Board believes that, in light of the information available to it, the Board's original interpretation of the statute was a reasonable one. However, in light of this additional legislative history, the Board will amend the final rules to require that any application for 476B tax credits must

include "an executed power purchase agreement or some other executed agreement to purchase electricity."

This leaves the question of defining "agreement" for purposes of the "other agreement" alternative. During the rule making proceedings, the Board asked the parties for additional comment regarding the appropriate interpretation of this language, that is, what other agreements should be sufficient to satisfy this requirement. The comments tended to fit into two categories: One group argued that only an agreement that is, in fact, a power purchase agreement (but fails to identify itself as such) can satisfy the requirement. At the opposite extreme, another group argued that just about any agreement that gives evidence of an intent to construct and operate a facility should be sufficient. The Board believes that neither of these extremes is appropriate for adoption in the final rules.

The word "agreement" should be construed according to its ordinary legal meaning. Black's Law Dictionary defines "agreement," in relevant part, as follows:

A coming together of minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition.

* * *

Although often used as synonymous with "contract", agreement is a broader term; e.g. an agreement might lack an essential element of a contract. The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

Black's Law Dictionary, Fifth Ed., p. 62 (1979). Thus, an agreement requires (a) at least two parties and (b) most, but not necessarily all, of the essential elements of a contract. Further, as discussed above, it must be executed. The

Board therefore believes that an executed “other agreement” must include each of the following elements: 1) execution by at least two parties; 2) the subject matter must include a commitment to purchase electricity from the facility upon completion of the project; and 3) it must include most, but not necessarily all, of the essential elements of a contract. The adopted rules will reflect this interpretation.

The second major issue for the 476B rules is the ownership requirements. Many of the comments filed supported the notion that the Board should adopt strict ownership limitations in order to prevent any single person or other legal entity from owning, directly or indirectly, more than one or two of the approved projects.

Clipper states that the Board should not be constrained by corporate legal fiction such as different LLC names or structures for each project, and recommends that the Board’s rule focus on the equity holders or taxpayers receiving the ultimate direct benefit of the anticipated tax credit for purpose of determining any limitations on ownership of multiple facilities. Clipper suggests that in the amended rule, the Board strike the “self-certification” language and reword the information requirement on ownership to echo the provisions of Iowa Code section 476B.6(5) as amended to include the structure of the facility ownership, the participants in facility ownership who will have income tax responsibilities and tax credit benefits passed through to them for personal and corporate tax purposes, and the percentage of equity interest held by each participant in the facility ownership.

Iowa Winds asserts that neither the statute nor public policy provides a basis for the Board to look past the legal or corporate status of the owner. By doing so, the application process will be needlessly complicated. Iowa Winds recommends that absent clear statutory guidance, the issue could be more adequately addressed and resolved by the legislature.

IPL asks the Board to use the implied definition of "owner" as the equity owner, found in Iowa Code section 476B.5(1), and redraft the rules to clarify that an equity owner is limited by Iowa Code section 476B.5(5) to an ownership interest in no more than two qualified facilities. IPL notes that this view is consistent with the criticism of the Board's award of credits to five entities with the same equity owners in the last sentence of the Administrative Rules Review Committee's objection to 199 IAC 15.18(1)"b."

MREP notes that although the five companies it represents have the same equity owners, the five companies are the individual owners of the wind facilities and have separate tax identification numbers. None of the five companies own more than two facilities.

The Committee addressed the 476B ownership issues, saying:

The committee objects to the provisions of paragraph 199 IAC 15.18(1)"b" on the grounds that it is unreasonable. The amendments to Iowa Code § 476B.5(2), as provided in House File 882, state: "*[a]n owner shall not be an owner of more than two qualified facilities.*" Paragraph 199 IAC15.18(1)"b" requires only "*...a statement that owners meeting the eligibility requirements of Iowa Code Section 476B.5 ... are not owners of more than two eligible renewable energy facilities.*" The committee feels the statutory language evidences a clear legislative intent that the board should consider both direct and indirect ownership interests and not rely solely on corporate business structures to determine ownership. The committee notes that of the seven projects awarded eligibility under the House File 882 program,

credits were awarded to at least five entities with the same equity owners.

The Board is again guided by the interpretation of the Committee. Section 476B.5(1)"a" requires that an application include "information regarding the ownership of the facility including the percentage of equity interest held by each owner." Section 476B.5(2) then states that "an owner shall not be an owner of more than two qualified facilities." Taken together, these provisions indicate a legislative intent that the Board consider not only the legal entity that actually owns a facility, but when that legal entity is a corporation (or any other owner other than a natural person), that the Board also consider the equity owners of that legal entity when applying the two-facility limitation. The rules implementation in chapter 476B will be changed to reflect this requirement.

Given these changes in the final rules, the Board must consider what to do with the existing queue of projects. Several of the commenting parties suggested that the Board should reject all pending 476B applications and start the process over. IPL stated that the previous determinations of eligibility were irremediably flawed by the unlawful rules and should be nullified. IPL further states that once lawful rules are in place, new applications should be accepted. Both Clipper and FPL believe that an applicant should not be placed in the queue until the Board has received a completed application including all supporting documentation.

Others argue that the projects that have already been approved have some right and interest in that approval, which cannot be changed without giving them due process of law. In the "Objection to Application for Reconsideration" filed in Docket No. 199 IAC 15.18 by Northern Iowa Windpower II, LLC, Barton

Windpower LLC, and Barton Windpower II, LLC, on August 26, 2005, the parties state, "The law allows only the applicant to appeal a determination, and only if the application is denied." The letter goes on to say that no appeal has been filed and the eligibility determination is final.

The Board continues to believe that, based on the information available to it, the Board's original interpretation of the statute, as expressed in the emergency rules, was a reasonable one at the time it was made, although it is not the interpretation reflected in the final rules. As such, the emergency rules are valid and effective until March 21, 2006, or until replaced by the final rules, whichever comes first. For this reason, the Board will not reject the applications and start over; they were filed in compliance with the Board's valid rules at the time they were submitted and processed and that should not be undone.

However, that is not the end of the analysis. Each of those who received preliminary eligibility is subject to reconsideration and the Board has docketed and suspended the approvals pending completion of this rule making. On September 13, 2005, the Board issued an "Order Granting Reconsideration" in Docket No. 199 IAC 15.18 that granted the requests filed by IPL on August 19, 2005, and Endeavor Power Partners, LLC, on August 29, 2005. The Board did not establish a procedural schedule when granting the reconsiderations since the outcome of this rule making will affect the reconsideration request. Because the Board is conforming its rules to the statutory intent as explained by the Committee, applicants will have to amend or supplement their filings to comply

with the adopted rules. If some applicants cannot comply, they will lose their position in the queue.

Therefore, the Board believes that, as of the effective date of the new rules, applicants with approved applications that are subject to rehearing will have to file amendments or supplements to their applications, including an executed power purchase agreement or other executed agreement, as described above. Further, to the extent a single person or other legal entity holds an equity interest in more than two projects in the queue as of the effective date of the final rules, the Board will remove facilities involving that person or entity from the queue, beginning with those applications that were last filed, until that person or other legal entity holds an equity interest in no more than two projects.

This arrangement will give those entities currently holding approved applications up to the effective date of the final rules to amend or supplement their filings to meet the new requirements. The Board believes this is a reasonable and adequate time to allow, particularly when it is combined with the time they have already had to negotiate a power purchase agreement or other agreement, that is, the time since their original application was approved in July or August of 2005.

While chapters 476B and 476C are similar, they are not identical. For example, Iowa Code section 476C.3(1)"e" does not require an executed agreement, and the statute makes it clear that the purpose of requiring an agreement is to designate which party, the producer or purchaser, is eligible to

apply for tax credit certificates. There is no basis for requiring an executed agreement for chapter 476C applicants.

In addition, chapters 476B and 476C differ on ownership criteria. Two commenters addressed the ownership issue for chapter 476C projects.

Carroll County believes that the intent of the legislature is relatively clear, expecting at least 51 percent of qualifying projects to be owned by certain defined persons, who presumably would receive the benefits associated with that ownership. Carroll County submits that as long as both the formal structure and the underlying expected financial benefit stream meet the 51 percent standard, the project should be eligible for credits. This determination can be made when the investment terms are first negotiated and/or at completion of the project. With respect to ownership by family members, Carroll County asserts that the rules should not preclude eligibility simply because applicants are related. However, the rules should not allow an individual to acquire additional tax credit eligibility through ownership by a minor child or other dependents.

Farm Bureau advocates that the Board's rules should facilitate local ownership of wind energy facilities and be consistent with chapter 476C requirements. They believe that Iowa Code § 476C.1(6)"b" provides some guidance as to the intent of the legislature for ownership that is different from the requirements for an eligible facility in Iowa Code § 476B.1(4).

As previously discussed, chapter 476B establishes ownership limits and requires that applicants identify their equity owners. This indicates a legislative intent that the Board consider equity owners when applying the ownership limit.

Chapter 476C is different. It includes a limit on ownership and requires that an application include information regarding the ownership of the facility, but it also includes a specific list of eligible types of owners. Specifically, section 476C.3(5) provides that an "owner meeting the requirements of section 476C.1, subsection 6, paragraph "b" shall not be an owner of more than two eligible renewable energy facilities."

Section 476C.1(6)"b" then provides that any eligible renewable energy facility must be at least 51 percent owned by one or more of any combination of the following:

1. A resident of this state;
2. Any of the following, as defined in section 9H.1:
 - a. An authorized farm corporation;
 - b. An authorized limited liability company;
 - c. An authorized trust;
 - d. A family farm corporation;
 - e. A family farm limited liability company;
 - f. A family trust;
 - g. A revocable trust; or
 - h. A testamentary trust;
3. A small business as defined in § 15.102;
4. An electric cooperative association organized pursuant to chapter 499;
5. An electric cooperative association that has members organized pursuant to chapter 499;
6. A cooperative corporation organized pursuant to chapter 497 or a limited liability corporation organized pursuant to chapter 490A and meeting other requirements; or
7. A school district.

Thus, chapter 476C is quite specific in listing the entities that are eligible majority owners of qualifying projects. The Board finds no statutory authorization in this chapter to look through these listed entities to apply the ownership limits of section 476C.3(5) and the current ownership rules will be retained for chapter 476C projects.

Both chapters provide that if a project is not operational within 18 months after its approval, it shall cease to be an eligible facility. The Board requested comment concerning the possibility of adopting interim milestones so that non-viable projects could be eliminated sooner to open up new capacity in the queue. Several comments were received, but there was no consensus on appropriate milestones. In reviewing the comments, the Board is doubtful that a milestone approach would be easy to administer or significantly shorten the 18-month period for non-viable projects, particularly because the potentially non-compliant applicant would have to be given notice and an opportunity to show why the project should not be found ineligible. The Board will not adopt a milestone approach at this time for either chapter 476B or 476C projects.

A final issue common to both chapters that the Board requested comments on is allocation of small capacity amounts among eligible applicants. In practice, the Board has withheld allocation of small amounts of remaining capacity, balancing the potential benefit of designating a small portion of an applicant's capacity as eligible, with the potentially greater harm of prematurely triggering the facility's 18-month period for becoming operational or losing eligibility. Several suggestions were received, but the administrative costs appear to outweigh any potential benefits. Rather than adopt a procedure in rules that will likely prove administratively cumbersome and costly, the Board will continue to withhold fractional capacity amounts (i.e., amounts less than the capacities of the next-eligible or "next date" applicants in the queue). However, if any of these "next-date" applicants petition the Board to allocate the remaining capacity amount

according to 199 IAC 15.18(5) or 199 IAC 15.19(5), the Board will contact all “next date” applicants, inform them of the potential harm of triggering the 18-month deadline 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.

Because the amendments are in response to the public comment and comments from the Committee, no additional notice prior to adopting these rules is required. 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(17A,474,476,48GA,HF2206) is applicable to this rule.

These amendments will become effective on March 22, 2006.

These amendments are intended to implement Iowa Code chapters 476B and 476C (Supp. 2005).

The following amendments are adopted.

Item 1. Adopt the following new rule:

199—15.18(476,81GA,HF882) Certification of eligibility for wind energy tax credits under Iowa Code chapter 476B. Any person applying for certification of eligibility for state tax credits for wind energy pursuant to Iowa Code section 476B.5 as amended by 2005 Iowa Acts, House File 882, section 166, is subject to this rule.

15.18(1) Filing requirements. Any person applying for certification of eligibility for wind 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 Iowa Code section 476B.5 as amended by 2005 Iowa Acts, House File 882, section 166, are not owners of more than two eligible renewable energy facilities. In determining whether the two facility limit is exceeded, the Board will consider not only the legal entity that owns the utility, if other than a natural person, but the equity owners of the legal entity. If the owner of the facility is other than a natural person, information regarding the equity owners must be provided.

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 section 476B.1 as amended by 2005);

(2) Total nameplate generating capacity rating;

(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 July 1, 2008, for eligibility under Iowa Code chapter 476B, as amended by 2005 Iowa Acts, House File 882).

d. A copy of the executed power purchase agreement or other agreement to purchase electricity. If the power purchase agreement has not yet been finalized and executed, the board will accept as an other agreement an executed agreement signed by at least two parties that includes both a commitment to purchase electricity from the facility upon completion of the project and most of the essential elements of a contract.

e. A statement regarding the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code chapter 476B as amended by 2005 Iowa Acts, House File 882, (1 cent per kWh, wind energy only tax credits).

15.18(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 Iowa Code chapter 17A and Iowa Code Section 476B.5 as amended by 2005 Iowa Acts, House File 882, section

166(2). In the absence of a timely appeal, the preliminary determination shall be final.

15.18(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.

15.18(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.

15.18(5) Allocation of capacity among eligible applicants. Iowa Code section 476B.5 as amended by 2005 Iowa Acts, House File 882, section 166(4), establishes 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 that filings are made 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. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with 199 IAC 15.18(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

Item 2: Adopt the following new rule:

199—15.19(476,81GA,SF390) Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C. Any person applying for certification of eligibility for state tax credits for wind energy or renewable energy pursuant to 2005 Iowa Acts, Senate File 390, section 9 (Iowa Code section 476C.3), is subject to this rule.

15.19(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 2005 Iowa Acts, Senate File 390, section 7 (Iowa Code section 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 (2005 Iowa Acts, Senate File 390, section 7 (Iowa Code section 476C.1(6)"b")) 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, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;
- (3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in section 9H.1;
- (4) A revocable trust as defined in Iowa Code section 9H.1;
- (5) A testamentary trust as defined in section 9H.1;
- (6) A small business as defined in Iowa Code section 15.102;
- (7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499;
- (8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 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 wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, or solar energy conversion facility, as defined in 2005 Iowa Acts, Senate File 390, section 7 (Iowa Code section 476C.1));

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in 2005 Iowa Acts, Senate File 390, section 7 (Iowa Code section 476C.1);

(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 2005 Iowa Acts, Senate File 390 (Iowa Code chapter 476C); and

(5) For eligibility under Iowa 2005 Iowa Acts, Senate File 390 (Iowa Code chapter 476C), demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in 2005 Iowa Acts, Senate File 390, section 7(7) (Iowa Code section 476C.1(7))), divided by the number of separate owners meeting the requirements of 2005 Iowa Acts, Senate File 390, equals no more than 2.5 MW of capacity per eligible 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; that designation shall not be subject to change.

e. A statement regarding the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to 2005 Iowa Acts, Senate File 390 (Iowa Code chapter 476C), (1.5 cents per kWh, wind and other renewable energy tax credits).

15.19(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 Iowa Code chapter 17A, 2005 Iowa Acts, Senate File 390, section 9 (Iowa Code section 476C.3(2)). In the absence of a timely appeal, the preliminary determination shall be final.

15.19(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.

15.19(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.

15.19(5) Allocation of capacity among eligible applicants. 2005 Iowa Acts, Senate File 390, section 9(4) (Iowa Code section 476C.3(4)), establishes 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 that filings are made 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. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the

petition. Applicants who opt in must comply with 199 IAC 15.19(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

January 26, 2006

/s/ John R. Norris _____

John R. Norris
Chairman