

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>ENDEAVOR POWER PARTNERS, LLC | DOCKET NO. WRU-06-10-3837 |
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**ORDER GRANTING WAIVER WITH CONDITIONS**

(Issued March 17, 2006)

On February 20, 2006, Endeavor Power Partners, LLC (Endeavor), filed with the Utilities Board (Board) a request for waiver of the generating certificate requirements of Iowa Code chapter 476A. A supplement to the request was filed on March 2, 2006, asking for a waiver of the notice requirements in 199 IAC 24.15. No objections or other responses to the waiver request or supplemental request were filed.

Endeavor seeks to construct a 150 MW wind energy project in Osceola County, Iowa. The wind project will be spread over 25 square miles and will consist of 60 2.5 MW Clipper "Liberty" turbines assembled at Clipper's Cedar Rapids facility. The output will be collected through a network of gathering lines operating at 34.5 kV. The number of turbines connected to a single gathering line will be exactly equal to 25 MW. In other words, ten turbines (25 MW total) will be connected to each of the six gathering lines. Endeavor states that it plans to sell the output at wholesale to Interstate Power and Light Company pursuant to a power purchase agreement dated July 7, 2005.

Endeavor's planned project falls within the parameters of Board review under chapter 476A. Pursuant to the statute, a certificate must be obtained for any "facility" with a total capacity of 25 MW or more. Iowa Code § 476A.1(5). However, Iowa Code § 476A.15 grants the Board the authority to waive the requirements of chapter 476A for any size generation unit if it determines that "the public interest would not be adversely affected."

Endeavor's project is subject to Board review only because the capacity of wind turbines connected to a single gathering or feeder line is exactly 25 MW. If the capacity of wind turbines connected to a single gathering or feeder line was less than 25 MW, the project would fall within the parameters of various declaratory rulings issued by the Board, which have held that if the capacity of turbines connected to a single gathering or feeder line is less than 25 MW, there is no "facility" as defined in Iowa Code § 476A.1(5). See, MidAmerican Energy Company, "Declaratory Order," Docket No. DRU-03-3 (6/6/03); Flying Cloud Power Partners, LLC, "Declaratory Order," Docket No. DRU-03-2 (2/10/03).

In analyzing whether a waiver should be granted, the decision criteria for issuing a generating certificate must be examined. The three criterion in Iowa Code § 476A.6 are (1) whether the facility is consistent with legislative intent, the economic development policy of the state, and will not be detrimental to provision of adequate and reliable electric service, (2) whether the applicant will construct, maintain, and operate the facility pursuant to the provisions of a certificate, and (3) whether the construction, maintenance, and operation of the facility are consistent with

reasonable land use and environmental policies. The waiver request contains sufficient information with respect to the first criterion because of Iowa's stated legislative policy in Iowa Code § 476.41 to "encourage the development of alternate energy production facilities . . . in order to conserve our finite and expensive energy resources and to provide for their most efficient use." In addition, Iowa Code § 476.53 states that it is the intent of the General Assembly to attract electric power generating facilities to the state. The proposed project also supports economic development policies by creating jobs and improving the energy infrastructure.

The first criterion also requires consideration of the effect of the proposed project on transmission. The information provided by Endeavor states that a transmission impact study was completed by the Midwest Independent Transmission System Operator, Inc. (MISO), and ABB, Inc., in May 2005 that concluded a 100.5 MW facility would not adversely impact local area stability. MISO is updating the study for a 150 MW facility. As a condition of this waiver, Endeavor will be required to complete the system impact studies and receive the proper interconnection approvals from MISO or other appropriate entities. Endeavor will also be required to comply with the terms and conditions of all current and future transmission authorization given by each entity having authority over interconnection and utilization of the transmission system by the proposed facility. Finally, Endeavor will be required to file with the Board copies of all transmission and system impact studies that it conducts to comply with MISO or other appropriate entities' requirements.

The second criterion is of little importance in this case. A certificate, if required, would merely state that Endeavor must comply with applicable law. Endeavor is subject to statutory requirements regardless of whether an actual certificate is issued. For example, Iowa Code § 476A.2(2) provides that Board approval must be obtained for a significant alteration to a facility. Granting this waiver will not exempt Endeavor from this or any other statutory requirement with respect to its future activities.

The final decision criterion relates to environmental and land use factors. Environmental permits are within the purview of the Iowa Department of Natural Resources (IDNR) and the Board has traditionally deferred to IDNR's expertise in these areas and has found this criterion satisfied if IDNR issues the appropriate permits. Endeavor states that it has been in contact with IDNR and other appropriate agencies regarding necessary permits. The Board finds that the waiver request adequately addresses the decision criteria for a generating certificate and will therefore waive the requirements of chapter 476A. The waiver will not detrimentally affect the public interest. However, the Board reminds Endeavor that it must obtain any other applicable environmental permits and comply with any other state and local regulations, such as applicable zoning or land use restrictions.

Endeavor also asked for a waiver of the notice requirements in a March 2, 2006, supplement to its waiver application. Rule 199 IAC 24.15 requires that generation siting waiver requests be served on "all owners of record of real property that adjoins the proposed facility site." Endeavor said that with a project covering

25 square miles, compliance with this requirement would pose an undue regulatory burden.

The rule in question was enacted in 2004 in response to a waiver request in late 2003 involving Western Minnesota Municipal Power Agency, which proposed to erect two gas turbines near Exira. The adjoining landowner appeared and was heard in the proceeding, but after the proceedings were concluded the Board determined that adjoining landowners should receive notice of the waiver filing because of the potential effect on their properties. See, Western Minnesota Municipal Power Agency, “Order Affirming Proposed Decision and Order,” Docket No. WRU-03-19 (9/17/03). However, the rule was not intended to apply to wind projects because up to the time the rule was adopted in 2004 and, in fact, until Endeavor’s current request, all Iowa wind projects have been configured to fall within the Board’s numerous declaratory rulings that the siting statutes do not apply if less than 25 MW of capacity are connected to a single gathering line.

Endeavor in its supplemental request said it has obtained all necessary private easements for its project. In addition, Endeavor said public meetings have been held before local zoning boards, with notice to adjoining property owners. Endeavor has also performed or is in the process of arranging for various environmental studies, including a detailed wetlands study. Finally, Endeavor points out that its project just meets the 25 MW threshold; if it were any less, there would be no Board action required.

The Board will grant the waiver. Wind projects do not present the same noise and environmental issues that gas or coal projects present. In addition, the expense of performing the abstract work to obtain names and addresses of property owners in a 25-square mile area would be burdensome. Zoning hearings have already been held with published notice to landowners. While published notice is an option the Board could order, there does not appear to be any value in requiring additional notice, particularly because all private easements have been obtained and Endeavor could easily reconfigure the project to avoid the requirement altogether (although this may adversely affect the economics.) Iowa's public policy is to encourage renewable generation. One way to do this is to reduce the regulatory burden on such projects when the regulations in question do not advance the public interest, as the Board has done in prior declaratory rulings. The standards for a waiver found in 199 IAC 1.3 have been satisfied.

**IT IS THEREFORE ORDERED:**

1. The request for waiver filed by the Endeavor Power Partners, LLC, on February 20, 2006, is granted, conditioned upon Endeavor conducting appropriate transmission system impact studies and receiving all appropriate interconnection and transmission request approvals from appropriate reliability authorities as set forth in the body of this order.
2. Endeavor shall promptly file with the Board copies of all transmission and system impact studies that it conducts to comply with MISO or other appropriate entities' requirements.

3. The notice requirements contained in 199 IAC 24.15 are waived.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 17<sup>th</sup> day of March, 2006.