

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WIND AND RENEWABLE ENERGY TAX CREDITS	DOCKET NO. RMU-06-7
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ORDER COMMENCING RULE MAKING

(Issued September 8, 2006)

Pursuant to the authority of Iowa Code § 17A.4 and Iowa Code chapters 476B and 476C, the Utilities Board (Board) proposes to adopt amendments to 199 IAC 15.18 and 15.19 and adopt new rules 199 IAC 15.20 and 15.21. The rule making proceeding is identified as Docket No. RMU-06-7.

Iowa Code chapters 476B and 476C assign the Board two specific roles in implementing tax credits for energy produced by large wind facilities (chapter 476B) and by smaller wind and renewable energy facilities (chapter 476C). On January 26, 2006, the Board issued an order adopting rules addressing its first role, processing the applications for facility eligibility. The proposed rules include amendments to these adopted rules (199 IAC 15.18 and 15.19) designed to implement statutory changes enacted in 2006 (Senate File 2399).

Proposed new rules 15.20 and 15.21 address the Board's second role, accepting and reviewing the tax credit applications and forwarding the applications to the Department of Revenue. Under Iowa Code chapters 476B and 476C, the

Department of Revenue is responsible for processing the tax credit applications and issuing tax credit certificates. The reasons for proposing the new rules (15.20 and 15.21) and amendments (15.18 and 15.19) are more fully set forth in the "Notice of Intended Action" attached hereto and incorporated by reference.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-06-7, is commenced for purposes of receiving comments upon the proposed rules attached to this order.
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 8th day of September, 2006.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code section 17A.4 and Iowa Code chapters 476B and 476C, the Utilities Board (Board) gives notice that on September 8, 2006, the Board issued an order in Docket No. RMU-06-7, In re: Wind and Renewable Energy Tax Credits, "Order Commencing Rule Making." The Board is noticing for public comment proposed amendments to 199 IAC 15.18 and 15.19 and proposed new rules 199 IAC 15.20 and 15.21.

Iowa Code chapters 476B and 476C assign the Board two specific roles in implementing tax credits for energy produced by large wind facilities (chapter 476B) and by smaller wind and renewable energy facilities (chapter 476C). On January 26, 2006, the Board issued an order adopting rules addressing its first role, processing applications for facility eligibility. The proposed amendments to 199 IAC 15.18 and 15.19 are designed to implement statutory changes to Iowa Code chapters 476B and 476C enacted in 2006 with the passage of Senate File 2399.

The two proposed new rules, 199 IAC 15.20 and 15.21, address the Board's second role, accepting and reviewing the tax credit applications and forwarding the applications to the Department of Revenue. Under Iowa Code chapters 476B and 476C, the Department of Revenue is responsible for processing the tax credit applications and issuing tax credit certificates.

Aside from minor wording changes, the proposed changes to 199 IAC 15.18 are as follows:

15.18(1)"c"(4) Filing requirements. Extends the maximum eligible in-service date from January 1, 2008, to January 1, 2009, in accordance with the statutory change in Iowa Code chapter 476B.

15.18(1)"d" Filing requirements. Allows an executed interconnection agreement or transmission service agreement, in lieu of a power purchase agreement, in accordance with the statutory change in Iowa Code chapter 476B.

15.18(4) Loss of eligibility status. Allows applicants to apply for a 12-month extension of their 18-month facility in-service requirement, due to “unavailability of necessary equipment,” in accordance with the statutory change in Iowa Code chapter 476B.

15.18(6) Waiting list for excess applications. Adds a subrule formalizing the “waiting list” or queue currently used by the Board to prioritize chapter 476B eligibility applications and adds an annual reporting requirement for applicants regarding the status of their applications to parallel the new statutory requirements under Iowa Code chapter 476C (see 15.19(6) below).

Aside from minor wording changes, the proposed changes to 199 IAC 15.19 are as follows:

15.19(1)"c" Filing requirements. Moves the statutory 2-facility ownership limit from paragraph 15.19(1)"b" and clarifies legislative intent to limit ownership in terms of ownership interest rather than sole ownership. If the 2-facility ownership limit were based only on sole ownership, the new statutory limits

reflected in new paragraphs 15.19(1)"d" and in 15.19(1)"e" below would render the statutory 2-facility limit meaningless.

15.19(1)"d" and 15.19(1)"e" Filing requirements. Implements the new statutory ownership limitation under Iowa Code chapter 476C – that any owner holding a 51 percent or greater equity interest in a facility cannot own an equity interest greater than 10 percent in any other eligible facility.

15.19(1)"f"(1) Filing requirements. Adds “refuse conversion facility” to the list of eligible facility types, in accordance with the statutory change in Iowa Code chapter 476C.

15.19(1)"f"(4) Filing requirements. Extends the maximum eligible in-service date from January 1, 2011, to January 1, 2012, in accordance with the statutory change in Iowa Code chapter 476C.

15.19(4) Loss of eligibility status. Extends the facility in-service requirement from 18 months to 30 months, in accordance with the statutory change in Iowa Code chapter 476C.

15.19(5) Allocation of capacity among eligible applicants. By reference, reflects the statutory addition of “energy production capacity equivalents” to the maximum total capacity limits eligible for tax credits under Iowa Code chapter 476C.

15.19(6) Waiting list for excess applications. Adds a subrule formalizing the “waiting list” or queue currently used by the Board to prioritize chapter 476C eligibility applications and adds an annual reporting requirement for applicants

regarding the status of their applications, in accordance with statutory changes in Iowa Code § 476C.

Proposed new rules 199 IAC 15.20 and 15.21 are based primarily on the tax credit application rules adopted by the Department of Revenue for chapter 476B tax credits (i.e., 701 IAC 42.25, 52.26, and 58.15) and chapter 476C tax credits (i.e., 701 IAC 42.26, 52.27, and 58.16), plus additional statutory considerations recently adopted in Iowa Code §§ 476B.6(5) and 476C.4(4). The proposed rules have been reviewed by representatives of the Department of Revenue and reflect their comments and suggestions.

Proposed rule 15.20 describes the requirements and procedures for chapter 476B tax credit applications, and rule 15.21 describes the same information for chapter 476C applications. The two rules are parallel in structure. The first subrule describes the application filing requirements, plus Board procedures for forwarding the applications to the Department of Revenue with accompanying Board analysis and opinion. The second subrule describes the Department of Revenue's process for reviewing the applications and issuing the tax credit certificates.

The proposed rules specify the format of the application without reference to a pre-printed form. The rules depart from standard Board filing requirements by requiring an original and two copies of the tax credit applications, rather than ten copies. The proposed rules provide that the applications are confidential pursuant to 199 IAC 1.9(5)"c."

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before October 17, 2006, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed new rules and amendments will be held at 10 a.m. on November 7, 2006, in the Board's hearing room at the address listed above. The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to this rule.

This amendment is intended to implement Iowa Code chapters 476B and 476C.

The following amendments are proposed.

Item 1. Amend subrule 15.18(1) as follows.

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 attesting that owners meeting the eligibility requirements of Iowa Code Supplement section 476B.5 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 Supplement section 476B.1);

(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 January 1, ~~2008~~ 2009, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179).

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.

The board will also accept a copy of an executed interconnection agreement or transmission service agreement, in lieu of a power purchase agreement, if the facility owner has instead agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

e. A statement indicating ~~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, chapter 179 (1 cent per kWh, wind energy only tax credits).

Item 2. Amend subrule 15.18(4) as follows:

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, if the facility is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the filing requirement, attesting to the unavailability of necessary equipment. After granting a 12-month extension, if the board determines that the facility was not operational within 30 months of board approval, the facility will

lose eligibility status. Otherwise, the facility may reapply to the board for new eligibility.

Item 3. Add new subrule 15.18(6) as follows:

15.18(6) *Waiting list for excess applications.* The board will maintain a waiting list of excess eligibility applications, for facilities that might have received preliminary eligibility under 199 IAC 15.18(2), but for the maximum capacity and capability restrictions under 199 IAC 15.18(5). The priorities of the waiting list will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under 199 IAC 15.18(5), the board will review the applications on the waiting list based on their priorities, before reviewing new applications. Applications will be removed from the waiting list after they are either approved or denied. Beginning August 31, 2007, each applicant on the waiting list shall annually provide the board a statement of verification attesting that the information contained in their eligibility application remains true and correct, or stating that the information has changed and providing the new information.

Item 4. Amend subrule 15.19(1) as follows:

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 Iowa Code Supplement 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 Iowa Code Supplement 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 Iowa Code section 9H.1;
- (4) A revocable trust as defined in Iowa Code section 9H.1;
- (5) A testamentary trust as defined in Iowa Code 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 statement attesting that each owner meeting the eligibility requirements of Iowa Code Supplement section 476C.1(6)"b" does not have an ownership interest in more than two eligible renewable energy facilities.

d. For any owner with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

e. For any owner with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

f. ~~e.~~ 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, or refuse conversion facility, as defined in Iowa Code Supplement section 476C.1);

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code Supplement 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~~ 2012, for eligibility under Iowa Code Supplement chapter 476C; and

(5) For eligibility under Iowa Code Supplement 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 Iowa Code Supplement section 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code Supplement chapter 476C, equals no more than 2.5 MW of capacity per eligible owner.

g. ~~g.~~ 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.

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

Item 5. Amend subrule 15.19(4) as follows:

15.19(4) *Loss of eligibility status.* Within ~~30~~ 48 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 ~~30~~ 48 months of board approval, the facility will lose eligibility status. However, the facility may reapply to the board for new eligibility.

Item 6. Amend subrule 15.19(5) as follows:

15.19(5) *Allocation of capacity among eligible applicants.* Iowa Code Supplement section 476C.3(4) establishes the maximum ~~amount~~ amounts of nameplate generating ~~capacity of facilities~~ capacities and energy production capacity equivalents 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.

Item 7. Add new subrule 15.19(6) as follows:

15.19(6) *Waiting lists for excess applications.* The board will maintain waiting lists of excess eligibility applications for facilities that might have received preliminary eligibility under 199 IAC 15.19(2), but for the maximum capacity and capability restrictions under 199 IAC 15.19(5). The priorities of the waiting lists will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under 199 IAC 15.19(5), the board will review the applications on the waiting lists based on their priorities, before reviewing new applications. Applications will be removed from the waiting lists after they are either approved or denied. Beginning August 31, 2007, each applicant on a waiting list shall annually provide the board a statement of verification attesting that the information contained in their eligibility application remains true and correct, or stating that the information has changed and providing the new information.

Item 8. Add new rule 15.20 as follows:

199– 15.20(476B) Applications for wind energy tax credits under Iowa Code chapter 476B. The wind energy tax credits equal one cent per kilowatt-hour of electricity generated by and purchased from eligible wind energy facilities under 199 IAC 15.18, for tax years beginning on or after July 1, 2006. The owners of an eligible facility may apply for wind energy tax credits for up to ten

tax years following the date the facility is placed in service. Wind energy tax credits will not be issued for wind energy purchased after June 30, 2019.

For the first tax year for which tax credits can be claimed, the kilowatt-hours generated by and purchased from an eligible facility may exceed 12 months production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credits for the 2007 tax year can include energy produced and purchased between April 1, 2006, and December 31, 2007.

15.20(1) *Application process for wind energy tax credits.* A wind energy facility must be approved as eligible by the board under 199 IAC 15.18 in order to qualify for wind energy tax credits. The wind energy facility must also be approved by the board of supervisors of the county in which the facility is located, in accordance with Iowa Code section 476B.6(1). Once the owners receive approval from their board of supervisors, additional approval from the board of supervisors is not required for subsequent tax years.

Wind energy tax credits shall not be allowed for a facility for which the owners have claimed an exemption from property tax under Iowa Code sections 427B.26 or 441.21(8), or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with department of revenue rule 701 IAC 80.13(427B).

Tax credit applications for eligible facilities must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)"c") and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8)"b"(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.

a. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.20(476B)), and the following 14 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.18, plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199 IAC 15.18.

(3) A copy of the board of supervisors' approval, from the county in which the facility is located, issued pursuant to Iowa Code section 476B.6(1).

(4) A statement attesting that the owners have not claimed an exemption for the facility from property tax under Iowa Code sections 427B.26 or 441.21(8), or from sales tax under Iowa Code section 423.3(54).

(5) A statement attesting that neither the owners nor the purchaser have received renewable energy tax credits for the facility under 199 IAC 15.21.

(6) A copy of the executed power purchase agreement or other agreement to purchase electricity. Alternatively, a copy of an executed interconnection agreement or transmission service agreement is acceptable if the owners have elected to sell electricity from the facility directly or indirectly to a wholesale power pool market.

(7) A statement attesting that the electricity for which tax credits are sought has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the wind energy tax credits, the definition of "related person" is the same as specified in department of revenue subrules 701 IAC 42.25(2) and 52.26(2). That is, the definition of "related person" uses the same criteria set forth in section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

(8) The date that the eligible facility was placed in service (that is, between July 1, 2005, and January 1, 2009).

(9) The total number of kilowatt-hours of electricity generated by the facility during the tax year.

(10) Invoices or other information that document the number of kilowatt-hours of electricity generated by the eligible facility and sold to an unrelated purchaser during the tax year.

(11) Information regarding the facility owners, including the name, address, and tax identification number of each owner, and the percentage of equity interest held by each owner. If an owner is other than a natural person, information regarding the equity owners must also be provided. This information shall be consistent with information provided in the original application for facility eligibility under 199 IAC 15.18, as amended.

(12) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(13) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended. This identification should include a statement from the applicant attesting to their eligibility and any available supporting documentation.

(14) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the

partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro rata share of earnings from the entity, for each of the partners, members, shareholders, or beneficiaries of the entity. The wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company, to receive the wind energy tax credits issued under Iowa Code chapter 476B, and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapters 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

(1) The completeness of the application.

(2) The facility's eligibility status under 199 IAC 15.18.

(3) Whether the reported kilowatt-hours of electricity generated by and purchased from the facility during the tax year seem accurate and eligible for wind energy tax credits.

15.20(2) *Review process and computation of wind energy tax credits.* The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue wind energy tax credit certificates to the facility owners, in accordance with department of revenue requirements and procedures under rules 701 IAC 42.25, 52.26, and 58.15.

Item 9. Add new rule 15.21 as follows:

199- 15.21(476C) Applications for renewable energy tax credits under Iowa Code chapter 476C. The renewable energy tax credits equal 1.5 cents per kilowatt-hour of electricity, or 44 cents per 1,000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose, generated by and purchased from eligible renewable energy facilities under 199 IAC 15.19, for tax years beginning on or after July 1, 2006. Either the owners of an eligible facility or a designated purchaser of renewable energy from the facility may apply for renewable energy tax credits,

for up to ten tax years following the date the facility is placed in service.

Renewable energy tax credits will not be issued for renewable energy purchased after December 31, 2021.

For the first tax year for which tax credits can be claimed, the kilowatt-hours, standard cubic feet, or British thermal units generated by and purchased from an eligible facility may exceed 12 months production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include renewable energy produced and purchased between April 1, 2006, and December 31, 2007.

15.21(1) *Application process for renewable energy tax credits.* A renewable energy facility must be approved as eligible by the board under 199 IAC 15.19 in order to qualify for renewable energy tax credits. Tax credit applications must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)"c") and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199

IAC 1.9(8)"b"(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.

a. Either the facility owners or the purchaser of renewable energy shall be eligible to apply for the tax credits, as designated under 199 IAC 15.19(1)"g." If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.21(476C)), and the following 12 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.19, plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199 IAC 15.19.

(3) A statement attesting that the owners have not received wind energy tax credits for the facility under 199 IAC 15.20.

(4) A copy of the power purchase agreement or other agreement to purchase from the facility, electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or purchaser of renewable energy will be eligible to apply for the tax credits and shall be consistent with the designation originally filed under 199 IAC 15.19(1)"g."

(5) A statement attesting that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, for which tax credits are sought, has been generated by the eligible facility and sold to an unrelated purchaser. For

purposes of the renewable energy tax credits, persons are related to each other if either person owns an 80 percent or more equity interest in the other person.

(6) The date that the eligible facility was placed in service (that is, between July 1, 2005, and January 1, 2012).

(7) The total number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility during the tax year.

(8) Invoices or other information that document the number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility and sold to an unrelated purchaser during the tax year.

(9) Information regarding the facility owners or designated eligible purchaser, including the name, address, and tax identification number of each owner or purchaser. If the application is filed by the facility owners, this shall also include the percentage of equity interest held by each owner. This information shall be consistent with ownership information provided in the original application for facility eligibility under 199 IAC 15.19, as amended.

(10) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(11) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue

Code, as amended. This identification should include a statement from the applicant attesting to their eligibility and any available supporting documentation.

(12) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro rata share of earnings from the entity for each of the partners, members, shareholders, or beneficiaries of the entity. The renewable energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company to receive the renewable energy tax credits issued under Iowa Code chapter 476C and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the renewable energy tax credits will flow through to the entity's

partners, shareholders, or members in accordance with their pro rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapters 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

(1) The completeness of the application.

(2) The facility's eligibility status under 199 IAC 15.19.

(3) Whether the reported kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by and purchased from the facility during the tax year seem accurate and eligible for renewable energy tax credits.

15.21(2) *Review process and computation of renewable energy tax credits.*

The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue renewable energy tax credit certificates to the facility owners or designated purchaser, in accordance with

department of revenue requirements and procedures under 701 IAC 42.26,
52.27, and 58.16.

September 8, 2006

/s/ John R. Norris

John R. Norris
Chairman