

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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

(Issued November 22, 2006)

Pursuant to the authority of Iowa Code § 17A.4 and Iowa Code chapters 476B and 476C, the Utilities Board (Board) adopts the rules attached hereto and incorporated by reference. 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 adopted rules include amendments to the rules adopted on January 26, 2006 (199 IAC 15.18 and 15.19), designed to implement statutory changes enacted in 2006 (Senate File 2399).

Two new adopted 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. The reasons for adopting the rules are set forth in the attached notice entitled "Adopted and Filed," which is incorporated herein by reference. The adopted rules take into account the comments received.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-06-7, 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 22nd day of November, 2006.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.4 and Iowa Code chapters 476B and 476C, the Utilities Board (Board) gives notice that on November 22, 2006, the Board issued an order in Docket No. RMU-06-7, In re: Wind and Renewable Energy Tax Credits, "Order Adopting Rule Making." The Board is adopting amendments to 199 IAC 15.18(476B) and 15.19(476C) and new rules 199 IAC 15.20(476B) and 15.21(476C).

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 adopted amendments to 199 IAC 15.18(476B) and 15.19(476C) are designed to implement statutory changes to Iowa Code chapters 476B and 476C enacted in 2006 Iowa Acts Senate File 2399.

The two new adopted rules, 199 IAC 15.20(476B) and 15.21(576C), 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 Notice of Intended Action for Docket No. RMU-06-7 was published in IAB Vol. XXIX, No. 7 (9/27/06) p. 443, as **ARC 5400B**. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed written comments on October 17, 2006. No other substantive written comments were filed, although Interstate Power and Light Company filed a letter in lieu of comments stating it had no comments on the proposed rules. An oral presentation was held on November 7, 2006. No oral comments were received.

Consumer Advocate proposed parallel changes to 199 IAC 15.20(1)"a"(11) and 15.21(1)"a"(9), which relate to the information to be included in tax credit applications under Iowa Code chapters 476B and 476C. Consumer Advocate's first proposed change explicitly links the facility ownership information to the specific energy production period for which tax credits are being sought. Consumer Advocate would add the phrase "during the period for which wind energy tax credits will be sought under Iowa Code chapter 476B" to the first sentence of 199 IAC 15.20(1)"a"(11) and the phrase "during the period for which renewable energy tax credits will be sought under Iowa Code chapter 476C" to the second sentence of 199 IAC 15.21(1)"a"(9). The proposed change provides useful clarification and will be reflected in the adopted rules.

Consumer Advocate proposed two other changes to 199 IAC 15.20(1)"a"(11) and 15.21(1)"a"(9). Consumer Advocate would delete the last sentence of the proposed subrules and replace it with the following: "Applicant shall identify any changes in ownership information that have occurred since reporting this

information in the original application for facility eligibility under 199 IAC 15.18 (or 15.19), as amended."

These changes by Consumer Advocate strike the requirement that ownership information in the tax credit application must match the ownership information in the original facility application, as amended, and replace it with a requirement to update any ownership changes since the application for facility eligibility.

Consumer Advocate states that it is concerned the Board's proposed rules could be interpreted as requiring a new facility application if the facility's ownership changes after its original eligibility application is filed, resulting in a loss of position in the eligibility waiting list, commonly referred to as the queue.

Consumer Advocate believes this might discourage full disclosure of ownership changes and states that its proposed revisions would place the burden on the owner to identify any ownership changes and allow the Board to consider such ownership changes when the Board gives its opinion on the completeness of the tax credit application.

After reviewing the comments, the Board does not find the changes to be warranted. If ownership changes pose a potential problem for maintaining a facility's original eligibility status, it would be better for prospective owners to resolve this issue before the ownership change rather than after the ownership change, when the tax credit application has already been filed. If applicants have a concern that amending their original eligibility applications might jeopardize the facility's eligibility status, they can seek a declaratory ruling prior to effecting the ownership change. Consumer Advocate's suggestion that uncertainty about the

impact of ownership changes on eligibility might give applicants an incentive to falsify ownership information in their tax credit applications may be correct, but this uncertainty and incentive would also apply if the ownership change issue were postponed until after the tax credit application is filed.

The Board also believes that reinserting the phrase "as amended" to the subrules might address some of Consumer Advocate's concerns. This phrase was in the noticed rule making, but was dropped by the rules editor prior to publication because it was inserted in a grammatically incorrect place, where it appeared the phrase was referring to amended rules, not amended applications. The phrase in the adopted rules has been moved to make it clear that it refers to amended applications, not amended rules.

Because the changes to the noticed rules are in response to public comment and are for clarification only, 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) is applicable to these rules.

These amendments will become effective on January 24, 2007.

These amendments are intended to implement Iowa Code chapters 476B and 476C.

The following amendments are adopted.

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 regarding indicating 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 the applicant's 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. 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.

e. 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.

~~e.~~ h. A statement ~~regarding~~ indicating 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 ~~48~~ 30 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 ~~48~~ 30 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 the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information.

Item 8. Add new rule 199—15.20(476B) 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(476B), 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(476B) 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(476B), 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(476B).
- (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 section 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(476C).
- (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 documents 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 during the period for which wind energy tax credits will be sought under Iowa Code chapter 476B. 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, as amended, under 199 IAC 15.18(476B).

(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. This identification should include a statement from the applicant attesting to the applicant's 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 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 chapter 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(476B).

(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(422), 52.26(476B), and 58.15(476B).

Item 9. Add new rule 199—15.21(476C) 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(476C), 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(476C) 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(476C), 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(476C).

(3) A statement attesting that the owners have not received wind energy tax credits for the facility under 199 IAC 15.20(476B).

(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 documents 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 during the period for which renewable energy tax credits will be sought under Iowa Code chapter 476C.

This information shall be consistent with ownership information provided in the original application for facility eligibility, as amended, under 199 IAC 15.19(476C).

(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. This identification should include a statement from the applicant attesting to the applicant's 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, 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 chapter 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(476C).

(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(422,476C), 52.27(422,476C, and 58.16(422,476C).

November 22, 2006

/s/ John R. Norris

John R. Norris
Chairman