

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 REGARDING COMPLIANCE

(Issued December 21, 2006)

The Iowa General Assembly in 2006 enacted some changes to Iowa Code chapter 476C, which relates to tax credits for smaller wind and renewable energy facilities. The statutory changes can be found in Senate File 2399¹ and are effective on January 1, 2007.

On November 22, 2006, the Board issued an "Order Adopting Rule Making" in Docket No. RMU-06-7. Among other things, the adopted rules implement certain changes to the facility eligibility process to implement the recent statutory changes. The rules will become effective on January 24, 2007.

For the facility eligibility process, one of the more significant changes concerns the restriction on the number of facilities that an owner may have. Iowa Code § 476C.3(6) previously limited an owner to no more than two eligible facilities. A new sentence was added by Senate File 2399, which further limits ownership by stating that "[a] person that has an equity interest equal to or greater than fifty-one percent in

¹ 2006 Iowa Acts, ch. 1135.

an eligible renewable energy shall not have an equity interest greater than ten percent in any other eligible renewable energy facility." Senate File 2399 (Section 13) also states that this change "applies to all facilities on the [Iowa Code chapter 476C] waiting list. . . .regardless of the date a facility applied for eligibility." The Board has added 199 IAC 15.19(1)"c," "d," and "e" to its rules to reflect this new requirement, but believes the statutory change can best be explained by example.

The Board will use an authorized limited liability company (LLC) as the example because most, if not all, of the facilities for which eligibility has been granted are owned by LLCs. Previously, one LLC could own no more than two eligible facilities. With the statutory change, the LLC cannot have an ownership interest in more than two eligible facilities and, if an LLC owns more than 51 percent of one eligible facility, it cannot have an equity interest greater than 10 percent in any other eligible renewable energy facility. In other words, in the case where one LLC owns 100 percent of two eligible facilities, the LLC will either have to divest itself of one of the eligible facilities or reduce its equity interest in the second facility to 10 percent or less.

Because the statutory change was recently enacted and because it applies to all facilities in the Iowa Code chapter 476C waiting list, regardless of filing date or eligibility status, the Board will allow Iowa Code chapter 476C applicants to amend the ownership information specified in their applications for the sole purpose of bringing their facilities into compliance with the new ownership restrictions in Iowa Code chapter 476C.3(6) and 199 IAC 15.19(1)"c," "d," and "e." For applicants that

file their compliance ownership amendments on or before the effective date of the new rules, January 24, 2007, facilities will retain their place in the Iowa Code chapter 476C waiting list, pending review of the proposed amendments. If compliance ownership amendments are not filed by that date, those facilities not in compliance will be removed from the waiting list. They can, of course, reapply, at which time they will be placed in the waiting list based on the new filing date.

IT IS THEREFORE ORDERED:

Iowa Code chapter 476C applicants shall be allowed to amend their applications as necessary to bring their facilities into compliance with the new ownership restrictions contained in Iowa Code chapter 476C.3(6) and 199 IAC 15.19(1)"c," "d," and "e." Such amendments shall be filed on or before January 24, 2007. If compliance ownership amendments are not filed by that date, those facilities not in compliance will lose their place in the Iowa Code chapter 476C waiting list.

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 21st day of December, 2006.