

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: GREEN PRAIRIE ENERGY, LLC	DOCKET NO. 199 IAC 15.19
---	--------------------------

**ORDER APPROVING AMENDMENT, ESTABLISHING RELOCATION LIMITS,
AND NOTIFICATION OF APPLICANTS**

(Issued March 3, 2008)

On July 5, 2005, Green Prairie Energy, LLC (Green Prairie), filed with the Utilities Board (Board) a renewable energy tax credit eligibility application for a 2.0 MW wind generator pursuant to Iowa Code chapter 476C and 199 IAC 15.19. The Board granted preliminary eligibility for the facility by letter dated July 29, 2005, and requested in the letter that Green Prairie notify the Board immediately of any significant changes to the project described in the application.

On January 24, 2008, Green Prairie filed an amendment to its original eligibility application. The amendment moves the location of the wind generation facility by 18 to 23 miles and also changes the equity configuration of Green Prairie. Pursuant to Iowa Code chapter 476C, the Board is not directed to review the equity ownership of a limited liability company (LLC) owner; the change in Green Prairie's equity configuration does not change Green Prairie's ownership of the facility so this is not a significant change requiring Board approval.

The change in the facility's location does, however, constitute a significant change requiring Board approval. Green Prairie's amendment lists a new location of the wind generation facility in Palo Alto County, which is approximately 18 to 23 miles from the Emmet County location specified in Green Prairie's original application. Green Prairie characterizes this change as minor and states in its amendment that "this type of minor change is typical when wind turbines are finally sited."

The Board has reviewed amendments to previously-approved eligibility applications on a case-by-case basis to determine whether the proposed change is significant enough to be regarded as a new application. This review involves a fairness issue, since eligibility applications are processed on a "first come first served" basis, meaning that applicants with projects that are not fully developed can potentially gain eligibility ahead of others who are still finalizing the details of their projects simply by filing their applications first. The filing date of eligibility applications is important because of the statutory capacity limits on eligibility. Applications in excess of the capacity limits are added to a waiting list and are then processed on a "first come first served" basis as new capacity becomes available.

To counterbalance this early-filing advantage, the Board has determined that significant changes to a previously-approved application might in some circumstances be regarded as a new application, replacing the original application and releasing capacity for the next applicants on the waiting list. The Board's staff has consistently advised inquiring applicants to seek declaratory orders from the

Board on significant changes to their applications under 199 IAC 4 before filing amendments to their original eligibility applications.

The question is whether it is fair to treat Green Prairie's filing to relocate its wind generation facility by 18 to 23 miles as an amendment to the original application or as a new application. Of the 17 completed wind generation facilities applying for Iowa Code chapter 476C tax credits this year, only one other applicant filed an amendment to change its original specified location; that change was not regarded as significant because the move was only 1 to 2 miles to an adjacent parcel of land.

However, in approving facility eligibility, the Board has recognized that final siting may change because facility identifications regarded as acceptable have ranged from broad identification of the county where the project will be located to specific sections and quarter sections of land. Applicants who specified exact locations in their original applications should not be treated more harshly than those who listed only general locations. It is time to establish a clear safe harbor for the relocation of eligible facilities, balancing the interests of all applicants.

The Board will therefore allow without further Board action relocations within the same county and also allow relocations to different counties if the relocation is 25 miles or less from the original site. These limits will accommodate the relocation specified in Green Prairie's proposed amendment and clarify the issue and provide a safe harbor for other applicants. The Board recognizes that a hard and fast rule may not be equitable in every situation and that there may be good cause, such as

enhanced project efficiency, for a change in location that exceeds 25 miles and is in a different county. If an applicant believes a variance from the safe harbor standards set forth in this order is warranted, it should seek a declaratory order from the Board pursuant to 199 IAC 4. If no declaratory order allowing the relocation is issued, any amendment changing the facility location by more than the limits set forth here will be considered a new application, the applicant will lose its original eligibility, and its capacity will be reallocated to those who are next on the waiting list.

The Board notes that Green Prairie waited until January 24, 2008, or more than seven months after its facility became operational and only six days before it filed an application for tax credits, to notify the Board of the change in location. The failure to timely notify the Board of such a change put its tax credit eligibility at risk. In the interest of avoiding future "after-the-fact" amendment requests like this one (which could put significant investment at risk), the Board is sending a copy of this order to all chapter 476B and chapter 476C applicants so that they are advised to resolve any other issues involving significant amendments to their eligibility applications as soon as possible, preferably by seeking a declaratory order from the Board under 199 IAC 4 prior to filing the amendment and before the facility becomes operational.

IT IS THEREFORE ORDERED:

1. The amendment filed by Green Prairie Energy, LLC, on January 24, 2008, is approved.

2. All chapter 476B and chapter 476C eligibility applicants are hereby notified that the Board will allow amendments to the original application that changes a facility's location within the same county. Relocations to a different county are also allowed if the distance of the relocation is 25 miles or less. Relocations that exceed these limits may be allowed if good cause is established (such as enhanced project efficiency), but the applicant must request and receive a timely declaratory order allowing a relocation that exceeds the safe harbor guidelines established in this order. If no declaratory order is issued, an amendment that exceeds these guidelines will be treated as a new application and the applicant will lose its original eligibility and its capacity will be reallocated to those on the waiting list.

3. All chapter 476C applicants are advised to resolve any other issues regarding possible significant amendments to their eligibility applications as soon as possible, by seeking a declaratory order from the Board pursuant to 199 IAC 4.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 3rd day of March, 2008.