

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  WIND ENERGY TAX CREDITS	DOCKET NO. RMU-08-4
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**ORDER COMMENCING RULE MAKING**

(Issued May 22, 2008)

Pursuant to the authority of Iowa Code §§ 17A.4, 17A.7, Iowa Code chapter 476B, and Senate File 2405 of the 2008 legislative session, the Utilities Board (Board) proposes to adopt amendments to 199 IAC 15.18 and 15.20. The rule making proceeding is identified as Docket No. RMU-08-4.

Senate File 2405 amends Iowa Code chapter 476B by allowing tax credits for electricity generated for on-site consumption, setting a minimum nameplate capacity of 2 megawatts for eligibility applications filed after March 1, 2008, and extends the in-service deadline for eligible projects by three years (from July 1, 2009, to July 1, 2012). The proposed amendments implement these changes to chapter 476B. The reasons for proposing the amendments 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-08-4 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/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 22<sup>nd</sup> day of May, 2008.

## **UTILITIES DIVISION [199]**

### **Notice of Intended Action**

Pursuant to Iowa Code sections 17A.4, 17A.7, Chapter 476B, and Senate File 2405, the Utilities Board (Board) gives notice that on May 22, 2008, the Board issued an order in Docket No. RMU-08-4, In re: Wind Energy Tax Credits, "Order Commencing Rule Making." The Board is noticing for public comment proposed amendments to 199 IAC 15.18 and 15.20. The amendments impact both facility eligibility and the tax credits applications for Chapter 476B wind facilities.

Senate File 2405 (passed during the 2008 General Assembly session) amends Iowa Code Chapter 476B by allowing tax credits for electricity generated for on-site consumption, setting a minimum nameplate capacity of two megawatts for eligibility applications filed after March 1, 2008, and extending the in-service deadline for eligible projects by three years (from July 1, 2009, to July 1, 2012). The proposed amendments to 199 IAC 15.18 and 15.20 implement these changes.

The language in Senate File 2405 allowing tax credits for on-site consumption can be interpreted to allow an applicant to apply the tax credits to either (a) electricity sales or on-site consumption, but not both, or (b) sales and on-site consumption together. The statutory changes contained in Senate File 2405 have no fiscal impact because they do not affect the overall eligibility limits. The statutory changes also have no adverse effect on pending applications. Because there is no adverse fiscal impact or effect on pending applications, the Board is proposing the less restrictive interpretation

of the statutory changes, which would allow an applicant to apply the tax credits to a mix of electricity sales and on-site consumption.

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 July 8, 2008, 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 amendments will be held at 10 a.m. on July 15, 2008, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

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 these amendments.

These amendments are intended to implement Iowa Code Chapter 476B, as amended by Senate File 2405.

The following amendments are proposed.

Item 1. Amend subrule **15.18(1)"c"(2)** as follows:

(2) Total nameplate generating capacity rating. For applications filed on or after March 1, 2008, the facility must have a combined nameplate capacity of no less than 2 megawatts;

Item 2. Amend subrule **15.18(1)"c"(4)** as follows:

(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, 2009~~ July 1, 2012, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179).

Item 3. Replace current subrule 15.18(1)"d" with **new** subrule **15.18(1)"d"** as follows:

d. A signed statement from the owner attesting that the owner intends to either sell electricity generated by the facility, consume the electricity on-site, or a combination of both.

Item 4. Amend the first paragraph of current subrule **15.18(1)"d"** and renumber as follows:

~~e.d.~~ Alf the owner intends to sell electricity generated by the facility, 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 include both a commitment to purchase electricity from the facility upon completion of the project and most of the essential elements of a contract.

*Item 5. Renumber current subrule **15.18(1)"e"** as follows:*

*f.e. A statement 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 6. Amend the first paragraph of 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), which is sold or used for on-site consumption by the owner, 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~~ sold or used for on-site consumption after June 30, ~~2019~~ 2022.

Item 7. Amend subrule **15.20(1)"a"(6)** as follows:

(6) ~~A~~For any electricity sold, 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.

Item 8. Amend subrule **15.20(1)"a"(7)** as follows:

(7) ~~A~~ For any electricity sold, the owner must provide 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.

For any electricity consumed on-site, the owner must provide a signed statement attesting under penalty of perjury that the electricity for which tax credits are sought was generated by the eligible facility and consumed on-site by the owner.

Item 9. Amend subrule **15.20(1)"a"(8)** as follows:

(8) The date that the eligible facility was placed in service (that is, between July 1, 2005, and ~~January 1, 2009~~ July 1, 2012).

Item 10. Amend subrule **15.20(1)"a"(10)** as follows:

(10) ~~Invoices~~For any electricity sold, 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.

For any electricity consumed on-site, the number of kilowatt-hours of electricity generated by the eligible facility and consumed on-site by the owner.

Item 11. Amend subrule **15.20(1)"b"(3)** as follows:

(3) Whether the reported kilowatt-hours of electricity generated by ~~and purchased~~ from the facility and sold or used by the owner for on-site consumption during the tax year seem accurate and eligible for wind energy tax credits.

May 22, 2008

/s/ John R. Norris

John R. Norris  
Chairman