
IOWA UTILITIES BOARD
Energy Section

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TO: The Board

FROM: Ellen Shaw

SUBJECT: Recommendation to Open Notice of Inquiry on the Board's Wind Energy and Renewable Energy Tax Credit Rules

I. Background

In 2005, the Iowa legislature created a production tax credit program (Senate File 390) for energy produced by smaller wind and renewable energy facilities (Iowa Code chapter 476C). Facilities that have received preliminary eligibility approval by the Board may claim annual renewable energy tax credits over a ten-year period. The legislation provided, among other requirements, that the facility must be operational within 18 months after receiving eligibility approval by the Board and that all facilities must be operational by January 1, 2011. Since that time, there have been several amendments to the operational deadline requirements in Iowa Code chapter 476C:

- Legislation in 2006 extended the operational requirement from 18 months to 30 months after receiving eligibility approval by the Board and extended the requirement for all facilities to be operational to January 1, 2012.
- Legislation in 2009 provided for one 12-month extension to the operational deadline of a wind energy conversion facility (476C wind) due to the unavailability of necessary equipment.
- Legislation in 2011 allows 476C wind and 476C other applicants to apply for successive 12-month extensions if they notify the Board, prior to their operational deadline, of the continued intention to become operational. The requirement for all facilities to be operational was extended to January 1, 2015.
- Legislation in 2014 extended the requirement for all facilities to be operational to January 1, 2017.

A total of 363 megawatts (MW) of capacity is allotted to the 476C wind program, which means that the MW total of all of the facilities that will receive 476C wind tax credits cannot exceed 363 MW. At this time, 48 facilities (totaling 80.05 MW)

have been granted eligibility and have become operational under the 476C wind program and, thus, may apply annually for the ten-year tax credits.

Since the inception of the 476C program, over 140 wind projects that had been granted eligibility have been discontinued. The facility owners either withdrew their eligibility application or allowed the operational deadline for the facility to lapse, thus relinquishing the eligibility. If there is a waiting list¹ at the time a facility relinquishes eligibility, the applications are processed in the order received until the MW capacity allotted to program is filled.

At this time, there are 113 facilities in the 476C wind program that have been granted eligibility and are not operational.² There are 19 facilities on the 476C wind waiting list.

476C Wind Eligibility		
Approved and Operational	48 facilities	80.05 MW
Approved and Not Operational ³	113 facilities	281.50 MW
Total	161 facilities	361.55 MW*
Waiting List	19 facilities	46.85 MW

*Does not total 363 MW because the facilities on the waiting list have expressed to Board staff that they want the full, not partial, MW capacity requested in their applications.

Of the 113 facilities, 47 facilities (117.50 MW) were granted eligibility in 2009 and have been granted 78 months to become operational (30 months plus four 12-month extensions).

476C Wind Operational Deadline Extensions and Length of Time Granted to Become Operational		
12-month Extensions Granted: 4	47 facilities	78 months
12-month Extensions Granted: 1	11 facilities ⁴	42 months
12-month Extensions Granted: 0	55 facilities	30 months

¹ Applications received that exceed the available capacity are placed on a waiting list until additional capacity becomes available.

² Of the 113 facilities, 10 are operational, but the owners have indicated to Board staff that they are evaluating whether or not the tax credits would be useful to them. Staff is categorizing the 10 facilities as not operational for purposes of this memo since the 10 facilities might relinquish eligibility.

³ Senate File 2343, which extended the operational deadline for all facilities to January 1, 2017, contains a fiscal note that, assuming that the 113 facilities (approximately 263 MW) become operational during 2015-2017, the tax credit claims would reduce net General Fund Revenue by \$75 million over 14 fiscal years.

⁴ Eight of the 11 facilities have requested, but not yet been granted, a second 12-month operational deadline extension.

All of the 53 MW⁵ of capacity allotted for the 476C other⁶ program has been granted by the Board. At this time, three facilities (totaling 22.60 MW) that have been granted eligibility in the 476C other program have become operational.

476C Other Eligibility		
Approved and Operational	3 facilities	22.60 MW
Approved and Not Operational	7 facilities	30.40 MW
Total	161 facilities	53.00 MW*
Waiting List*	3 facilities	5.425 MW

*Two of the three facilities on the 476C other waiting list have received eligibility approval and have requested approval for additional capacity.

476C Other Operational Deadline Extensions and Length of Time Granted to Become Operational		
12-month Extensions Granted: 2	2 facilities	54 months
12-month Extensions Granted: 1	0 facilities	N/A
12-month Extensions Granted: 0	5 facilities	30 months

The 2015 legislative session contained two study bills and a senate bill that proposed the following for facilities that had received eligibility approval several years ago and are not yet operational:

- Senate Study Bill 1193 and House Study Bill 243 each proposed that any facility granted eligibility approval prior to January 1, 2010, and had not become operational or commenced substantial construction shall relinquish approval on January 1, 2016. The facility may reapply for eligibility approval.
- Senate File 511 proposed an extension to the 476C program's operational deadline only for facilities that applied for eligibility approval on or after January 1, 2008.

The only legislation passed during the 2015 session that modified the 476C program was House File 645, which was signed by the governor on June 26, 2015. House File 645 allotted (among other items) an additional 10 MW to the 476C other program for solar applicants who are, or are contracted with, a municipal utility, a rural electric cooperative, or an investor-owned utility.

⁵ The 53 MW excludes recently signed House File 645.

⁶ The 476 other program includes renewable energy facilities other than wind.

II. Legal Standards

The citations below are from the Iowa Code and from the Iowa Administrative Code (IAC):

Iowa Code § 476C.3(1)-(3) states:

476C.3 Determination of eligibility.

1. A producer or purchaser of renewable energy may apply to the board for a written determination regarding whether a facility is an eligible renewable energy facility by submitting to the board a written application containing all of the following:

a. Information regarding the ownership of the facility including the percentage of equity interest held by each owner.

b. The nameplate generating capacity of the facility or energy production capacity equivalent.

c. Information regarding the facility's initial placement in service.

d. Information regarding the type of facility and what type of renewable energy the facility will produce.

e. Except when the renewable energy is produced for on-site consumption by the producer, 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 purchaser of renewable energy as eligible to apply for the renewable energy tax credit.

f. Any other information the board may require.

2. The board shall review the application and supporting information and shall make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board shall notify the applicant of the approval or denial of the application within thirty days of receipt of the application and information required. If the board fails to notify the applicant of the approval or denial within thirty days, the application shall be deemed denied unless the application is placed on a waiting list as described in subsection 6. An applicant who receives a determination denying an application may file an appeal with the board within thirty days from the date of the denial pursuant to the provisions of chapter 17A. In the absence of a timely appeal, the preliminary determination shall be final. If the application is incomplete, the board may grant an extension of time for the provision of additional information.

3. a. A facility that is not operational within thirty months after issuance of an approval for the facility by the board shall cease to be an eligible renewable energy facility. However, a wind energy conversion facility that is approved as eligible under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional twenty-four months to become operational.

b. A facility which notifies the board prior to the expiration of the time periods specified in paragraph "a" that the facility intends to become operational and wishes to preserve its eligibility shall be granted a twelve-month extension. An extension may be renewed for succeeding twelve-month periods if the board is notified prior to the expiration of the extension of the continued intention to become operational during the succeeding period of extension.

c. If the owner of a facility discontinues efforts to achieve operational status, the owner shall notify the board. Upon receipt of such notification, the board shall no longer consider the facility as an eligible renewable energy facility under this chapter.

d. A facility that is granted and thereafter loses approval may reapply to the board for a new determination.

Iowa Code § 476C.3(6) states:

6. The board shall maintain a waiting list of facilities that may have been found eligible under this section but for the maximum capacity restrictions of subsection 4. The priority of the waiting list shall be maintained in the order the applications were received by the board. The board shall remove from the waiting list any facility that has subsequently been found ineligible under this chapter. If additional capacity becomes available within the capacity restrictions of subsection 4, the board shall grant approval to facilities according to the priority of the waiting list before granting approval to new applications. An owner of a facility on the waiting list shall provide the board each year by August 31 with a sworn statement of verification stating that the information contained in the application for eligibility remains true and correct or stating that the information has changed and providing the new information.

Iowa Code § 476C.7 states:

476C.7 Rules.

The department and the board may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

The Board's rule 199 IAC 15.19(4) states:

15.19(4) Loss of eligibility status.

a. Within 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 30 months of board approval, the facility will lose eligibility status.

b. If the facility is a wind energy conversion facility and is not operational within 18 months due to the unavailability of necessary

equipment, the applicant may apply for a 12-month extension of the 30-month limit, attesting to the unavailability of necessary equipment. After granting the 12-month extension, if the board determines that the facility was not operational within 42 months of board approval, the facility will lose eligibility status.

c. Prior to expiration of the time periods specified in paragraphs 15.19(4) "a" and "b," the applicant may apply for a further 12-month extension if the facility is still expected to become operational. Extensions may be renewed for succeeding 12-month periods if the applicant applies for the extension prior to expiration of the current extension period. If the applicant does not apply for further extension, the facility will lose eligibility status.

d. If the owners of a facility discontinue efforts to achieve operational status, the owners shall notify the board. Upon the board's receipt of such notification, the facility will lose eligibility status.

e. If the facility loses eligibility status, the facility may reapply to the board for new eligibility.

The Board's rule 199 IAC 15.19(6) states:

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 subrule 15.19(2), but for the maximum capacity and capability restrictions under subrule 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 subrule 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.

III. Analysis

Iowa Code chapter 476C contains specifications of the renewable energy tax program, including the definitions of an eligible facility, the tax credit amounts, the eligibility application procedures, the tax credit certificate application procedures, the certificate issuance period, and the transferability of tax credit certificates. The eligibility application content requirements listed in 476C.3(1) include the statement "Any other information the board may require." The annual tax credit application content requirements in 476C.4(1) include the statement "Any other information the board deems necessary." The Board's 15.19 eligibility rules

generally reflect the language in the statute, with additional requirements for the eligibility applications and the annual tax credit applications.

The statute's provision for 12-month extensions to the 30-month operational deadline requires the applicant to request an extension prior to the facility's current operational deadline. A 476C wind applicant that has been granted eligibility must attest to the unavailability of equipment for the initial 12-month extension and must indicate the facility is still expected to become operational for subsequent 12-month extensions. A 476C other applicant that has been granted eligibility must indicate the facility is still expected to become operational in each 12-month extension request.

The statute's provision for successive 12-month extensions is limited by the statute's deadline for all eligible facilities to become operational. The statute has extended the deadline for all eligible facilities to become operational four times; the original deadline was January 1, 2011, and the current deadline is January 1, 2017. A consequence of the provision for successive extensions to the operational deadline of an eligible facility and the periodic extensions to the deadline for all facilities to become operational is that there are several facilities that have been granted 78 months to become operational under the 476C wind program, while there is a waiting list of more recent applicants for 476C wind capacity.

Iowa Code § 476C.7 provides that the Board may adopt rules for the administration and enforcement of the chapter. Staff suggests the Board open a notice of inquiry (NOI) as a means to discuss conditions or milestones that may be required of a facility before the Board grants a 12-month extension to the facility's operational deadline and perhaps even place a limit on the number of extensions that a facility may request.

Board rule 15.19(6) provides that each applicant on the waiting list shall provide the Board each year by August 31 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. Since it appears to Board staff that the purpose of the annual verification is for the applications on the waiting list to contain updated information, and since the applicants tend to file updates on their projects during the year (thus fulfilling the purpose), staff has not followed up with the applicants regarding the annual statement of verification. Additionally, there are no consequences associated with the applicants not filing the annual updates. Staff suggests the NOI include discussion of amending the Board's rules to exempt an applicant from the annual statement of verification if the applicant has provided at least one update to the eligibility application during the prior 12 months.

The Board's rules in 15.21 for the annual tax credit applications require the annual application for tax credits to be in paper format. After Board staff

completes its review of the application, staff forwards a copy of the application to the Iowa Department of Revenue (IDOR) along with staff's opinion as to the completeness of the application. IDOR's rules⁷ do not specify the format (paper or otherwise) for the annual tax credit applications. IDOR staff has spoken informally with Board staff regarding one of IDOR's goals of moving the administration of the tax credit awards and claims to an electronic system, which may include the option of Board staff forwarding the tax credit applications electronically to IDOR through its secure filing system. IDOR staff periodically informs Board staff of the status of the transition to the electronic administration of the tax credit awards. Board staff suggests the NOI include discussion of modifying Board rules to allow the option for an e-mail format.

The NOI would be an opportunity for participants to provide other suggestions regarding the Board's administration of Iowa Code chapter 476C. Staff anticipates the NOI responses from interested parties will help the Board gauge the reasonableness of possible rule change in 15.19 and 15.21.

Staff recommends the Board pose the following questions to NOI participants:

1. Should the Board set conditions or milestone requirements upon which a 12-month extension of the operational deadline would be granted? Explain.
2. Can the Board adopt criteria for 12-month extensions without modifying its rules? Explain.
3. Comment on the following possible criteria for a 12-month extension and/or suggest criteria:
 - a. Signed contracts to sell production
 - b. Signed contracts to purchase equipment
 - c. A copy of the interconnection agreement
 - d. Estimated cost of the facility and actual expenses to date
 - e. Identification of barriers that are delaying installation and activities that are underway to overcome the barriers
 - f. Demonstration that a tax credit transfer agreement (if applicable) is in place
4. Should the Board limit the number of 12-month extensions for a facility? If so, how many extensions? How should the Board address those who have exceeded this number of extensions?
5. Board rule 15.19(6) provides that each applicant on the waiting list shall provide the Board each year by August 31 a statement of verification attesting that the information contained in the applicant's

⁷ IDOR rules 701 IAC 42.28(1) and 52.27(1).

eligibility application remains true and correct, or stating that the information has changed and providing the new information. Should the rule be modified in such a way that it would only pertain to applicants on the waiting list who have not provided an update during the previous 12 months? Explain.

6. The Board's annual tax credit application rules in 15.21 require that the tax credit applications are filed in paper format. Should the rules be modified to allow the option for electronic filing via e-mail?
7. Provide other suggestions for amending the Board's rules in 15.19.

Staff recommends the Board serve copies of the order opening the NOI electronically to electric distribution utilities, the Iowa Utility Association, the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, and the Environmental Law and Policy Center. Additionally, staff recommends the renewable energy tax applicants that have received eligibility approval and the applicants on the waiting list be served with copies of the order via e-mail.

IV. Recommendation

Attached for the Board's consideration is a draft order opening the NOI regarding possible conditions or milestones that may be required of an eligible facility before the Board grants a 12-month extension to the facility's operational deadline and a possible limit on the number of extensions that a facility may request. Staff recommends that the NOI also solicit comments on the modification of the Board's annual verification requirement rule and on the option for electronic annual renewable energy tax credit filing via e-mail.

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