FILED WITH
Executive Secretary
September 25, 2015
IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: WIND AND RENEWABLE ENERGY TAX CREDITS	DOCKET NO. NOI-2015-0001

COMMENTS

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 Iowa Utilities Board (Board or IUB) may claim annual renewable energy tax credits over a ten-year period. Since that time, there have been several amendments to the operational deadline requirements in Iowa Code chapter 476C (2015).

Iowa Code § 476C.7 provides that the Board may adopt rules for the administration and enforcement of the chapter. On August 21, 2015, the Board opened this proceeding to discuss conditions in which the Board may grant a 12-month extension to the facility's operational deadline or place a limit on the number of extensions that a facility may request. The Board invited the submission of comments from the Office of Consumer Advocate (OCA), the investor-owned electric utilities, environmental groups, the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, Chapter 476C applicants (both those that have received preliminary approval and those on the waiting list), and any others with an interest in these issues to participate in this inquiry.

Pursuant to the Board's request, the OCA responds as follows to the questions posed in the IUB "Order Opening Inquiry and Soliciting Comments," issued August 21, 2015.

1. **Should the Board set conditions or milestone requirements upon which a 12-month extension of the operational deadline would be granted? Explain.**

Response: The Board was granted broad rulemaking authority in Iowa Code Section 476C.7 for the administration and enforcement of Chapter 476C. All rules promulgated by the Board must be consistent with statute.

OCA asserts the Board is not allowed to set conditions or milestones for the first extension. Iowa Code Section 476C.3(3)(b) states the facility **shall** be granted a first extension if the facility notifies the Board prior to the expiration that it intends to become operational and wishes to preserve its eligibility.

OCA does conclude the Board may set conditions or milestones for further extensions. Iowa Code Section 476C.3(3)(b) states an extension **may** be renewed for succeeding twelve-month periods if the facility notifies the Board prior to the expiration of its extension of the continued intention to become operational during the succeeding period of extension. The legislature intentionally went from **shall** to **may** granting discretion to the Board in renewing extensions.

2. **Does the Board have the authority to adopt criteria for 12-month extensions without modifying its rules? Explain.**

Response: A rule is defined in Iowa Code Section 17A.2(11) as an "agency statement of general applicability that implements, interprets, or proscribes law or policy, or that describes the organization, procedure, or practice requirement of an agency." Adopting criteria for a twelve-month extension would fall within the definition of a rule and require rule making by the Board.

3. **Comment on the following possible criteria to evaluate requests for a 12-month extension:**

a. **Signed contracts to sell production.**

Response: The Board was granted broad rulemaking authority in Iowa Code Section 476C.7 for the administration and enforcement of Chapter 476C. All of these possible criteria are within the discretion of the Board

b. **Signed contracts to purchase equipment.**

Response: *See* 3.a. Response.

c. **A copy of the interconnection agreement.**

Response: *See* 3.a. Response.

d. **Estimated cost of the facility and actual expenses to date.**

Response: *See* 3.a. Response.

e. Identification of barriers that are delaying installation and activities that are underway to overcome the barriers.

Response: *See* 3.a. Response.

f. Demonstration that a tax credit transfer agreement (if applicable) is in place.

Response: *See* 3.a. Response.

g. Any additional or different criteria you would suggest.

Response: No additional or different criteria at this time.

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 that have exceeded this number of extensions?

Response: The Board was granted broad rulemaking authority in Iowa Code Section 476C.7 for the administration and enforcement of Chapter 476C. The Board has the authority to limit the number of extensions. OCA would suggest the denial of extensions is more appropriately made on the failure of the facility to meet the Board's criteria or milestones that are established in the Board's rules.

5. Board rule 199 IAC 15.19(6) provides that 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. Should the rule be modified in such a way that it would only pertain to applicants on the waiting list who have not provided a periodic update during the previous 12 months?

Response: The Board was granted broad rulemaking authority in Iowa Code Section 476C.7 for the administration and enforcement of Chapter 476C. The Board has the authority to proscribe the reporting requirements.

6. The Board's rules in 199 IAC 15.20 and 15.21 require that the tax credit applications are filed in paper format. Should the rules be modified to allow for electronic filing with the Board via e-mail, as an alternative to paper, which would allow the Board to forward information to the Iowa Department of Revenue via its secure filing system?

Response: The Board was granted broad rulemaking authority in Iowa Code Section 476C.7 for the administration and enforcement of Chapter 476C. The Board has the authority to proscribe the application requirements.

7. Provide other suggestions for modification of chapter 15.19 rules.

Response: No other suggestions at this time.

OCA appreciates having the opportunity to provide information responsive to the matters contained within the Board's Notice of Inquiry. OCA would appreciate having the opportunity to respond to the comments of other parties to this proceeding.

Respectfully submitted,

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