

November 23, 2015

IOWA UTILITIES BOARD

STATE OF IOWA
BEFORE THE IOWA UTILITY BOARD

IN RE:

DOCKET NO. NOI-2015-0001

WIND AND RENEWABLE ENERGY
TAX CREDITS

RESPONSE TO BOARD SOLICITING ADDITIONAL COMMENTS

CGC Methane 1, LLC submits these comments in response to the Board's Order Soliciting Additional Comments regarding renewable energy tax credits. CGC Methane 1, LLC appreciates the chance to provide additional the following comments:

1. **In determining whether the ownership limits in Chapter 476C are met, does the statute allow or require the Board to consider not only the legal entity that owns the utility (if not a natural person) but also the equity owners of the legal entity?**

476C allows the IUB to fully consider ownership. 476C.3.1 requires a "written application containing Information regarding the ownership of the facility ...". For authorized Limited Liability Companies (LLCs) Iowa Code Section 9H.1 states:

"Authorized limited liability company" means a limited liability company other than a family farm limited liability company founded for the purpose of farming and the ownership of agricultural land in which all of the following apply:

- a. The members do not exceed twenty-five in number.
- b. The members are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

It is well within the Board's authority to ascertain if this requirement for applicant LLCs is being met. The extent of the required information would reasonably be at the discretion of the Board. In regards to 476B, The Board was guided by the Administrative Rules Review Committee when addressing the ownership question: "The committee feels the statutory language evidences a clear legislative intent that the board should consider both direct and indirect ownership interests and not rely solely on corporate business structures to determine ownership." (In Re: Certification of Eligibility For Wind Energy And Renewable Energy Tax Credits Order Adopting Rule Making issued January 26, 2006)

2. **If the equity owners of a chapter 476C facility are not natural persons but another legal entity, does the statute allow or require the Board to drill down through the various legal entities to determine whether the Chapter 476C ownership limits are violated?**

476C allows the Board to drill down through the various legal entities in order to fully consider ownership. The logic here is the same as that for Question Number 1 above.

3. **If the Board determines it has the obligation or authority to consider equity owners of the legal entity, what kind of documentation should be required as part of the filing requirements for certification of eligibility in 199 IAC 15.19 to establish who the equity owners are? For example, do you believe an attestation from the equity owners would be sufficient to establish that the ownership limits are satisfied?**

Several documents should be required to more confidently establish ownership.

Suggestions for what documents should be included:

- A. For all Renewable Energy Facility applicants, an attestation from each equity owner.
- B. For any Renewable Energy Facility which is owned by an authorized Limited Liability Company, a complete set of K-1s from the most recent tax year. Each of these K-1s should in turn be issued to a natural person and each of these K-1s shall also show the percentage of ownership of the company in order for the Board to determine if 100% of the ownership of the LLC is in fact owned by the individuals identified on the K-1s.

For an LLC, attestation alone would not yield the best assurance to the Board that the ownership requirements are being met.

4. **Does the statute allow but the Board to require evidence of the applicant's capability to complete the project and to use this evidence of the applicant's capability to complete the project and to use this evidence in the Board's initial determination of eligibility?**

There is no specific requirement in 476C that would require the Board to request such information. However, should the Board opt to require submittal of such information and then make a determination of eligibility, such a determination process could actually have detrimental effects. For example, entrepreneurs, individual farmers who want to install a wind turbine, developers of a site specific or perhaps somewhat unique Renewable Energy Facilities and other smaller businesses could be at a disadvantage to larger entities. Ironically, those larger entities might also be just the ones which could be exposed as non-compliant single owners of the multiple LLCs which are populating the current 476C lists.

5. **Should the determination of initial eligibility be conditioned upon the applicants demonstrating a minimum level of progress prior to the application? If yes, what minimum level of progress should be required?**

No. Should a project need the tax credit in order to be financially viable, a reasonable developer would not proceed with any expenditures until its eligibility is established.

6. Does Chapter 476C allow a completed project to obtain eligibility after it is operational, or does the statute prohibit what could be termed "free riders"?

No comment.

Thank you for looking at these important issues regarding the 476C tax credit program for renewable energy in Iowa.

Respectfully submitted,



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