

November 23, 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
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ADDITIONAL COMMENTS

The Office of Consumer Advocate (“OCA”), a division of the Iowa Department of Justice, submits these Additional Comments pursuant to Iowa Utilities Board’s (Board) Order Soliciting Additional Comments on November 3, 2015, (“Order”) and does hereby answer the questions posed by the Board as follows:

- 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? Explain your legal analysis in reaching your conclusion.**

Response: Iowa Code § 476C.7 provides that the Board may adopt rules for the administration and enforcement of the chapter. All rules promulgated by the Board must be consistent with statute.

Iowa Code § 476C.1(6) defines eligible renewable energy facility. OCA asserts the Board is not allowed to set limitations or conditions on the legal entities or equity owners not already set forth in statute. The Board may seek legislation to create those limitations or conditions.

- 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? Explain your legal analysis in reaching your conclusion.**

Response: Iowa Code § 476C.7 provides that the Board may adopt rules for the administration and enforcement of the chapter. All rules promulgated by the Board must be consistent with statute.

Iowa Code § 476C.1(6) defines eligible renewable energy facility. OCA asserts the Board is not allowed to set limitations or conditions on the legal entities or equity owners

not already set forth in statute. The Board may seek legislation to create those limitations or conditions.

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?**

Response: See responses to Questions 1 and 2.

4. **Concerns have been expressed about entities that apply for eligibility but do not appear to be moving forward with their projects. Does the statute allow the Board to require evidence of the applicant's capability to complete the project and to use this evidence in the Board's initial determination of eligibility? Explain your legal analysis. If your answer is yes, what should the additional filing requirements be? Also, comment on whether the following should be made part of those requirements:**

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.

- a. **Financial statements or other documentation to establish the owner's financial capability to complete the project.**

Response: See response to Question 4.

- b. **A timeline for completion of the project.**

Response: See response to Question 4.

- c. **Information regarding the contractors or others working on the project to establish the owner's operational capability to complete the project.**

Response: See response to Question 4.

- d. **Information on project steps taken prior to filing the eligibility application.**

Response: See response to Question 4.

5. **Should the determination of initial eligibility be conditioned upon the applicant demonstrating a minimum level of progress prior to the application? If yes, what minimum level of progress should be required? Note that the minimum level of progress should relate to any additional filing requirements you identified in response to the prior question.**

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 does not see any requirement in Iowa Code Ch. 476C for a minimum level of progress prior to the application. OCA asserts the Board is not allowed to set conditions not already set forth in statute. The Board may seek legislation to create those conditions.

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”?

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 does not see any prohibition in Iowa Code Ch. 476C for completed projects. The Board has the authority to prescribe the application requirements.

Respectfully submitted,

/s/ Mark R. Schuling

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