

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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

(Issued November 3, 2015)

In 2005, the Iowa General Assembly adopted Iowa Code chapter 476C, which provided for tax credits for energy produced by smaller wind and renewable energy facilities. Among other things, the chapter provided that a facility must be operational within 18 months after receiving preliminary eligibility approval from the Utilities Board (Board) and that all facilities must be operational by January 1, 2011. Subsequent legislation extended the 18-month deadline to 30 months and various amendments allowed for successive 12-month extensions of the operational deadline; now, all facilities must be operational by January 1, 2017. The Board adopted 199 IAC 15.19 to implement Iowa Code chapter 476C.

A total of 363 megawatts (MW) of capacity has subscribed to the 476C program, with 48 facilities totaling 80.05 MW receiving preliminary approval and becoming operational. Over 140 projects that received preliminary approval have been discontinued because the owners withdrew eligibility approval or allowed the

operational deadline to lapse without requesting an extension. If there is a waiting list at the time a facility relinquishes its eligibility, the next application in line is processed.

As of August 19, 2015, there were 113 facilities in the Chapter 476C wind program that have received eligibility but are not operational. Of these facilities, 37 received eligibility approval in 2009 but have received successive 12-month extensions of the operational deadline. As of August 19, 2015, there were 19 facilities on the Chapter 476C waiting list.

In the Chapter 476C program for renewables other than wind, three facilities have received eligibility approval and become operational and one received its preliminary approval in 2011 but has not become operational. There is one facility on the waiting list. Study bills regarding operational deadlines were proposed during the 2015 legislative session (Senate Study Bill 1193 and House Study Bill 243) but no legislation regarding operational deadlines was passed.

On August 21, 2015, the Board issued an order opening an inquiry and soliciting comments on possible conditions or milestones requirements under which a 12-month extension of the operational deadline for an eligible facility under Iowa Code chapter 476C would be granted. The Board also invited comments on the annual attesting rule for applications on the waiting list and whether electronic filing of annual tax credit applications should be available.

From the comments, it appears commenters generally favor some sort of milestone approach to ensure that a project that seeks an extension is moving

towards completion. However, in examining the issues surrounding Chapter 476C, the Board believes there are two additional issues that might be appropriate to address in any rulemaking. The first is an interpretation of the ownership limits in Chapter 476C and the second is whether the project's progress towards completion should be made a filing requirement for the initial eligibility application.

With respect to ownership limits, there are several projects that appear to have common owners. While each individual project is owned by a separate limited liability company (LLC), as allowed by Iowa Code § 476C.1(6), the Board is concerned that the owners of the various LLCs may be in violation of Iowa Code § 476C.3(7), which provides that an owner shall not own more than two eligible renewable energy facilities. The statute further provides that “[a] person that has an equity interest equal to or greater than fifty-one percent in an eligible renewable energy facility shall not have an equity interest greater than ten percent in any other eligible renewable energy facility.”

The second issue is whether the Board should consider steps already taken by the project's owners when determining initial eligibility. Those that have taken at least some preliminary steps arguably are in a better position to complete their projects within the appropriate time. This is another attempt to weed out those who are not able to complete projects, freeing up tax credits for those who can.

The Board invites comments on the following questions as it considers whether to propose additional amendments to 199 IAC 15.19:

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.
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.
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?
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:
 - a. Financial statements or other documentation to establish the owner's financial capability to complete the project.
 - b. A timeline for completion of the project.
 - c. Information regarding the contractors or others working on the project to establish the owner's operational capability to complete the project.
 - d. Information on project steps taken prior to filing the eligibility application.
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.

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"?

IT IS THEREFORE ORDERED:

The Board invites interested persons to comment on the questions contained in this order. Comments are due within 20 days from the date of this order.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 3rd day of November 2015.