

## UTILITIES AND TRANSPORTATION DIVISIONS

CHAPTER 15  
COGENERATION AND SMALL POWER PRODUCTION

[Ch 15 renumbered as Ch 7,10/20/75]  
[Prior to 10/8/86, Commerce Commission[250]]

**199—15.1(476) Definitions.** Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601, et seq., shall have the same meaning for purposes of these rules as they have under PURPA, unless further defined in this chapter.

“*AEP facility*” means any of the following: (1) an electric production facility which derives 75 percent or more of its energy input from solar energy, wind, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or wood burning; (2) a hydroelectric facility at a dam; (3) land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility; or (4) transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

“*Alternate energy purchase (AEP) program*” means a utility program that allows customers to contribute voluntarily to the development of alternate energy in Iowa.

“*Avoided costs*” means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

“*Backup power*” means electric energy or capacity supplied by an electric utility to qualifying facilities and AEP facilities to replace energy ordinarily generated by a facility’s own generation equipment during an unscheduled outage of the facility.

“*Board*” means the Iowa utilities board.

“*Interconnection costs*” means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with qualifying facilities and AEP facilities, to the extent the costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

“*Interruptible power*” means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

“*Maintenance power*” means electric energy or capacity supplied by an electric utility during scheduled outages of qualifying facilities and AEP facilities.

“*Purchase*” means the purchase of electric energy or capacity or both from qualifying facilities and AEP facilities by an electric utility.

“*Qualifying facility*” means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B.

“*Rate*” means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

“*Sale*” means the sale of electric energy or capacity or both by an electric utility to qualifying facilities and AEP facilities.

“*Supplementary power*” means electric energy or capacity supplied by an electric utility, regularly used by qualifying facilities and AEP facilities in addition to that which the facility generates itself.

“*System emergency*” means a condition on a utility’s system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

**199—15.2(476) Scope.****15.2(1) Applicability.**

a. Subrule 15.2(2) and rule 199—15.10(476) of this chapter apply to all electric utilities, all qualifying facilities, and all AEP facilities.

b. Rule 199—15.3(476) of this chapter applies to electric utilities which are subject to rate regulation by the board.

c. Rules 199—15.4(476) and 199—15.5(476) of this chapter apply to qualifying facilities and electric utilities which are subject to rate regulation by the board.

d. Rules 199—15.6(476) to 199—15.9(476) of this chapter apply to all qualifying facilities and AEP facilities, and electric utilities which are subject to rate regulation by the board.

e. Rule 199—15.11(476) of this chapter lists additional requirements that apply to AEP facilities, and electric utilities which are subject to rate regulation by the board, pursuant to Iowa Code sections 476.41 to 476.45.

**15.2(2) Negotiated rates or terms.** These rules do not:

a. Limit the authority of any electric utility, any qualifying facility, or any AEP facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by these rules; or

b. Affect the validity of any contract entered into between an electric utility and a qualifying facility or AEP facility for any purchase.

**199—15.3(476) Information to board.** In addition to the information required to be supplied to the board under 18 CFR 292.302, all rate-regulated electric utilities shall supply to the board copies of contracts executed for the purchase or sale, for resale, of energy or capacity. If the purchases or sales are made other than pursuant to the terms of a written contract, then information as to the relevant prices and conditions shall be supplied to the board. All information required to be supplied under this rule shall be filed with the board by May 1 and November 1 of each year for all transactions occurring since the last filing was made.

**199—15.4(476) Rate-regulated electric utility obligations under this chapter regarding qualifying facilities.** For purposes of this rule, “electric utility” means a rate-regulated electric utility.

**15.4(1) Obligation to purchase from qualifying facilities.** Each electric utility shall purchase, in accordance with these rules, any energy and capacity which is made available from a qualifying facility:

a. Directly to the electric utility; or

b. Indirectly to the electric utility in accordance with subrule 15.4(4).

**15.4(2) Obligation to sell to qualifying facilities.** Each electric utility shall sell to any qualifying facility, in accordance with these rules and the other requirements of law, any energy and capacity requested by the qualifying facility.

**15.4(3) Obligation to interconnect.** Any electric utility shall make the interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under these rules. The obligation to pay for any interconnection costs shall be determined in accordance with rule 199—15.8(476). However, no electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under Part II of the Federal Power Act.

**15.4(4) *Transmission to other electric utilities.*** If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from the qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which the energy or capacity is transmitted shall purchase the energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to the electric utility. The rate for purchase by the electric utility to which the energy is transmitted shall be adjusted up or down to reflect line losses and shall not include any charges for transmission.

**15.4(5) *Parallel operation.*** Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with these rules.

**199—15.5(476) Rates for purchases from qualifying facilities by rate-regulated electric utilities.** For purposes of this rule, “electric utility” or “utility” means a rate-regulated electric utility.

**15.5(1) *Rates for purchases.*** Rates for purchases shall:

*a.* Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

*b.* Not discriminate against qualifying cogeneration and small power production facilities. Nothing in these rules requires any electric utility to pay more than the avoided costs, as set forth in these rules, for purchases.

**15.5(2) *Relationship to avoided costs.*** For purposes of this subrule, “new capacity” means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

A rate for purchases satisfies the requirements of this rule if the rate equals the avoided costs determined after consideration of the factors set forth in rule 15.6(476); except that a rate for purchases other than from new capacity may be less than the avoided cost if the board determines that a lower rate is consistent with subrule 15.5(1) and is sufficient to encourage cogeneration and small power production.

Unless the qualifying facility and the utility agree otherwise, rates for purchases shall conform to the requirements of this rule regardless of whether the electric utility making purchases is simultaneously making sales to the qualifying facility.

In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for purchases do not violate this rule if the rates for the purchases differ from avoided costs at the time of delivery.

**15.5(3) *Standard rates for purchases.*** Each electric utility shall file and maintain with the board tariffs specifying standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These tariffs may differentiate between qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies. All utilities shall include a seasonal differential in these rates for purchases to the extent avoided costs vary by season. All utilities shall make available time of day rates for those facilities with a design capacity of 100 kilowatts or less, provided that the qualifying facility shall pay, in addition to the interconnection costs set forth in these rules, all additional costs associated with the time of day metering.

The standard rates set forth in this rule shall indicate what portion of the rate is attributable to payments for the utility’s avoided energy costs, and what portion of the rate, if any, is attributable to payments for capacity costs avoided by the utility. If no capacity credit is provided in the standard tariff, a qualifying facility may petition the board for an allowance of the capacity credit. The petition shall be handled by the board as a contested case proceeding, and the burden of proof shall be on the qualifying facility to demonstrate that capacity credit is warranted in the case in question.

The board may require utilities interconnected with qualifying facilities to provide metering and other equipment necessary for the collection test and monitoring of information concerning the time and conditions under which energy and capacity are available from the qualifying facility. The costs of such metering shall be treated by the utility in the same manner as any other research expenditure.

**15.5(4) *Other purchases.*** Rates for purchases from qualifying facilities with a design capacity of greater than 100 kilowatts shall be determined in contested case proceedings before the board, unless the rates are otherwise agreed upon by the qualifying facility and the utility involved.

**15.5(5) *Purchases "as available" or pursuant to a legally enforceable obligation.*** Each qualifying facility shall have the option either:

*a.* To provide energy as the qualifying facility determines the energy to be available for the purchases, in which case the rates for the purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

*b.* To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for the purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either: The avoided costs calculated at the time of delivery; or the avoided costs calculated at the time the obligation is incurred.

**15.5(6) *Factors affecting rates for purchases.*** In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

*a.* The prevailing rates for capacity or energy on any interstate power grid with which the utility is interconnected.

*b.* The incremental energy costs or capacity costs of the utility itself or utilities in the interstate power grid with which the utility is interconnected.

*c.* The time of day or season during which capacity or energy is available, including:

(1) The ability of the utility to dispatch the qualifying facility;

(2) The expected or demonstrated reliability of the qualifying facility;

(3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for noncompliance;

(4) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

(5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation; and

(6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system.

*d.* The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself.

**15.5(7) *Periods during which purchases not required.*** Any electric utility will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make the purchases, but instead generated an equivalent amount of energy itself; provided, however, that any electric utility seeking to invoke this subrule must notify each affected qualifying facility within a reasonable amount of time to allow the qualifying facility to cease the delivery of energy or capacity to the electric utility.

*a.* Any electric utility which fails to comply with the provisions of this subrule will be required to pay the usual rate for the purchase of energy or capacity from the facility.

*b.* A claim by an electric utility that such a period has occurred or will occur is subject to verification by the board.

**199—15.6(476) Rates for sales to qualifying facilities and AEP facilities by rate-regulated utilities.** For purposes of this rule, “utility” means a rate-regulated electric utility. Rates for sales to qualifying facilities and AEP facilities shall be just, reasonable and in the public interest, and shall not discriminate against qualifying facilities and AEP facilities in comparison to rates for sales to other customers with similar load or other cost-related characteristics served by the utility. The rate for sales of backup or maintenance power shall not be based upon an assumption (unless supported by data) that forced outages or other reductions in electric output by all qualifying facilities and AEP facilities will occur simultaneously or during the system peak, or both, and shall take into account the extent to which scheduled outages of qualifying facilities and AEP facilities can be usefully coordinated with scheduled outages of the utility’s facilities.

**199—15.7(476) Additional services to be provided to qualifying facilities and AEP facilities by rate-regulated electric utilities.** For purposes of this rule, “electric utility” or “utility” means a rate-regulated electric utility.

**15.7(1)** Upon request of qualifying facilities and AEP facilities, each electric utility shall provide supplementary power, backup, maintenance power, and interruptible power. Rates for such service shall meet the requirements of subrule 15.5(6), and shall be in accordance with the terms of the utility’s tariff.

The board may waive this requirement pursuant to rule 199—1.3(17A,474) only after notice in the area served by the utility and an opportunity for public comment. The waiver may be granted if compliance with this rule will:

- a.* Impair the electric utility’s ability to render adequate service to its customers, or
- b.* Place an undue burden on the electric utility.

**15.7(2)** Reserved.

**199—15.8(476) Interconnection costs.** For purposes of this rule, “utility” means a rate-regulated electric utility.

**15.8(1)** Qualifying facilities and AEP facilities shall be obligated to pay any interconnection costs, as defined in this chapter. These costs shall be assessed on a nondiscriminatory basis with respect to other customers with similar load characteristics.

**15.8(2)** Utilities shall be reimbursed by qualifying facilities and AEP facilities for interconnection costs at the time the costs are incurred. Upon petition by any party involved and for good cause shown, the board may allow for reimbursement of costs over a reasonable period of time and upon such conditions as the board may determine; provided, however, that no other customers of the utility shall bear any of the costs of interconnection.

**199—15.9(476) System emergencies.** For purposes of this rule, “electric utility” means a rate-regulated electric utility. Qualifying facilities and AEP facilities shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

**15.9(1)** Provided by agreement between the qualifying facility or AEP facility and the electric utility; or

**15.9(2)** Ordered under Section 202(c) of the Federal Power Act. During any system emergency, an electric utility may immediately discontinue:

- a.* Purchases from qualifying facilities and AEP facilities if purchases would contribute to the emergency; and
- b.* Sales to qualifying facilities and AEP facilities, provided that the discontinuance is on a non-discriminatory basis.

**199—15.10(476) Standards for interconnection, safety, and operating reliability.** For purposes of this rule, “electric utility” or “utility” means both rate-regulated and non-rate-regulated electric utilities.

**15.10(1) Acceptable standards.** Qualifying facilities and AEP facilities shall meet the applicable provisions in the publications listed below in order to be eligible for interconnection to an electric utility system:

- a. General Requirements for Synchronous Machines, ANSI C50.10-1990.
- b. Requirements for Salient Pole Synchronous Generators and Condensers, ANSI C50.12-1982.
- c. Requirements for Cylindrical-Rotor Synchronous Generators, ANSI C50.13-1989.
- d. Requirements for Combustion Gas Turbine Driven Cylindrical-Rotor Synchronous Generators, ANSI C50.14-1977.
- e. Iowa Electrical Safety Code, as defined in 199—Chapter 25.
- f. National Electrical Code, ANSI/NFPA 70-2002.
- g. IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE 519-1992.
- h. Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE 1547-2003.

For those facilities which are of such design as to not be subject to the standards noted in “a,” “b,” “c,” and “d” above, data on the manufacturer, type of device, and output current wave form (at full load) and output voltage wave form (at no load and at full load) shall be submitted to the utility for review and approval prior to interconnection. A copy of the utility decision (whether approving or disapproving), including the data specified above and the exact location of the facility, shall be filed with the board within one week of the date of the decision. The utility decision, or its failure to decide within a reasonable time, may be appealed to the board. The appeal shall be treated as a contested case proceeding.

**15.10(2) Modifications required.** Rescinded IAB 7/23/03, effective 8/27/03.

**15.10(3) Interconnection facilities.** Interconnections between qualifying facilities or AEP facilities and electric utility systems shall be equipped with devices, as set forth below, to protect either system from abnormalities or component failures that may occur within the facility or the electric utility system. Inclusion of the following protective systems shall be considered as a minimum standard of accepted good practice unless otherwise ordered by the board:

- a. The interconnection must be provided with a switch that provides a visible break or opening. The switch must be capable of being padlocked in the open position.
- b. The interconnection shall include overcurrent devices on the facility to automatically disconnect the facility at all currents that exceed the full-load current rating of the facility.
- c. Facilities with a design capacity of 100 kilowatts or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.
- d. Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

**15.10(4) Access.** Both the operator of the qualifying facility or AEP facility and the utility shall have access to the interconnection switch at all times.

**15.10(5) Inspections.** The operator of the qualifying facility or AEP facility shall adopt a program of inspection of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Representatives of the utility shall have access at all reasonable hours to the interconnection equipment specified in subrule 15.10(3) for inspection and testing.

**15.10(6) Emergency disconnection.** In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the qualifying facility or AEP facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections. If the facility and the utility are unable to agree on conditions for reconnection of the facility, a contested case proceeding to determine the conditions for reconnection may be commenced by the facility or the utility upon filing of a petition.

**199—15.11(476) Additional rate-regulated utility obligations regarding AEP facilities.** For purposes of this rule, “MW” means megawatt, “MWH” means megawatt-hour, and “utility” means a rate-regulated electric utility.

**15.11(1) Obligation to purchase from AEP facilities.** Each utility shall purchase, pursuant to contract, its share of at least 105 MW of AEP generating capacity and associated energy production. The utility’s share of 105 MW is based on the utility’s estimated percentage share of Iowa peak demand, which is based on the utility’s highest monthly peak shown in its 1990 FERC Form 1 annual report, and on its related Iowa sales and total company sales and losses shown in its 1990 FERC Form 1 and IE-1 annual reports. Each utility’s share of the 105 MW is determined to be as follows:

	Percentage Share of <u>Iowa Peak</u>	Utility Share of <u>105 MW</u>
Interstate Power and Light	47.43%	49.8 MW
MidAmerican Energy	52.57%	55.2 MW

A utility is not required to purchase from an AEP facility that is not owned or operated by an individual, firm, copartnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following: (1) is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from AEP facilities; and (2) does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

**15.11(2) Purchases pursuant to a legally enforceable obligation.** Each AEP facility shall provide electricity on a best-efforts basis pursuant to a legally enforceable obligation for the delivery of electricity over a specified contract term.

**15.11(3) Annual reporting requirement.** Beginning April 1, 2004, each utility shall file an annual report listing nameplate MW capacity and associated monthly MWH purchased from AEP facilities, itemized by AEP facility.

**15.11(4) Tariff filings.** The electric utility shall maintain a tariff schedule of standard AEP contract provisions offered. The initial tariffs and subsequent revisions shall be subject to board approval. Provisions of any individual AEP contract which differ from or exceed the utility tariff of standard AEP contract provisions shall also be subject to board approval, unless otherwise agreed upon by the individual AEP facility and utility.

**15.11(5) Net metering.** Each utility shall offer to operate in parallel through net metering (with a single meter monitoring only the net amount of electricity sold or purchased) with an AEP facility, provided that the facility complies with any applicable standards established in accordance with these rules.

In the alternative, by choice of the facility, the utility and facility shall operate in a purchase and sale arrangement whereby any electricity provided to the utility by the AEP facility is sold to the utility at the fixed or negotiated buy-back rate, and any electricity provided to the AEP facility by the utility is sold to the facility at the tarified rate.

**199—15.12(476) Rates for purchases from qualifying alternate energy and small hydro facilities by rate-regulated electric utilities.** Rescinded IAB 7/23/03, effective 8/27/03.

**199—15.13(476) Rates for sales to qualifying alternate energy production and small hydro facilities by rate-regulated utilities.** Rescinded IAB 7/23/03, effective 8/27/03.

**199—15.14(476) Additional services to be provided to qualifying alternate energy production and small hydro facilities.** Rescinded IAB 7/23/03, effective 8/27/03.

**199—15.15(476) Interconnection costs.** Rescinded IAB 7/23/03, effective 8/27/03.

**199—15.16(476) System emergencies.** Rescinded IAB 7/23/03, effective 8/27/03.

These rules are intended to implement Iowa Code sections 476.1, 476.8, 476.41 to 476.45, and 546.7, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

**199—15.17(476) Alternate energy purchase programs.**

Any consumer-owned utility, including any electric cooperative corporation or association or any municipally owned electric utility, may apply to the board for a waiver under this rule.

This rule shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

**15.17(1) *Obligation to offer programs.***

a. Beginning January 1, 2004, each electric utility, whether or not subject to rate regulation by the board, shall offer an alternate energy purchase program that allows customers to contribute voluntarily to the development of alternate energy in Iowa, and allows for the exceptions listed in paragraph 15.17(1) "c."

b. Each electric utility subject to rate regulation by the board, except for utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall demonstrate on an annual basis that it produces or purchases sufficient energy from program AEP facilities located in Iowa to meet the needs of its Iowa program. These Iowa-based AEP facilities shall not include AEP facilities for which the utility has sought cost recovery under rule 199—20.9(476) prior to July 1, 2001.

c. The electric utility may partially or fully base its program on energy produced by AEP facilities located outside of Iowa under any of the following circumstances:

(1) The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.

(2) The electric utility has a financial interest, as of July 1, 2001, in an AEP facility that is located outside of Iowa or in an entity that has a financial interest in an AEP facility located outside of Iowa; or

(3) The energy is purchased by an electric utility that is not subject to rate regulation by the board, or which elects rate regulation pursuant to Iowa Code section 476.1A, and that is required to purchase all of its electric power requirements from one or more suppliers that are physically located outside of Iowa.

**15.17(2) *Customer notification.***

a. Each electric utility shall notify eligible customer classes of its alternate energy purchase program and proposed program modifications at least 60 days prior to implementation of the program or program modification. The notification shall include, as applicable:

(1) A description of the availability and purpose of the program or program modification, clarifying that customer contributions will not involve the direct sale of alternate energy to individual customers;



- (2) The effective date of the program or program modification;
- (3) Customer classes eligible for participation;
- (4) Forms and levels of customer contribution available to program participants;
- (5) A utility telephone number for answering customers' questions about the program; and
- (6) Customer instructions that explain how to participate in the program.

*b.* In addition to the notification requirements under paragraph 15.17(2)“*a*,” each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall:

- (1) Include fuel report information described under subrule 15.17(5); and
- (2) Submit the proposed notification to the board for approval at least 30 days prior to the proposed date of issuance of the notification.

**15.17(3) *Program plan filing requirements for rate-regulated utilities.*** On or before October 1, 2003, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a plan for the utility's alternate energy purchase program. Initial program plans and any subsequent modifications will be subject to board approval. Modification filings need only include information about elements of the program that are being modified. The initial program plan filing shall include:

- a.* The program tariff;
- b.* The program effective date;
- c.* A sample of the customer notification, including a description of the method of distribution;
- d.* Customer classes eligible for participation and the schedule for extending participation to all customer classes;
- e.* Identification of each AEP facility used for the program, including:
  - (1) Fuel type;
  - (2) Nameplate capacity;
  - (3) Estimated annual kWh output;
  - (4) Estimated in-service date;
  - (5) Ownership, including any utility affiliation;
  - (6) A copy of any contract for utility purchases from the facility;
  - (7) A description of the method or procedure used to select the facility;
  - (8) Facility location; and
  - (9) If the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1)“*c*”;
- f.* The forms and levels of customer contribution available to program participants, including, but not limited to:
  - (1) kWh rate premiums applied to percentages of participant kWh usage, with an explanation of how the kWh rate premiums are derived; or
  - (2) kWh rate premiums applied to fixed kWh blocks of participant usage, with an explanation of how the kWh rate premiums are derived; or
  - (3) Fixed contributions, with an explanation of how the fixed amounts are derived;
- g.* The maximum allowable time lag between the beginning of customer contributions and the in-service date for identified AEP facilities, and the procedures for suspending customer contributions if the maximum time lag is exceeded;
- h.* The intended treatment of program participants under 199—20.9(476) energy automatic adjustment and AEP automatic adjustment clauses;

*i.* An accounting plan for identifying and tracking participant contributions and program costs, including:

(1) Identification of incremental program costs not otherwise recovered through the utility's rates, including but not limited to: program start-up and administration costs; program marketing costs; and program energy and capacity costs associated with identified AEP facilities;

(2) Methods for quantifying, assigning, and allocating costs of the program and for segregating those costs in the utility's accounts; and

*j.* Marketing and customer information plan, including schedules and copies of all marketing and information materials, as available.

**15.17(4) Annual reporting requirements for rate-regulated utilities.** On or before April 1, 2005, and annually thereafter, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a report of program activity for the previous calendar year. The annual report shall include:

*a.* Program information including:

(1) The number of program participants, by customer class;

(2) Participant contribution revenues, by customer class, by form and level of contribution, and associated participant kWh sales;

(3) Program electricity generated from each program AEP facility and the associated costs; and

(4) Other program costs, by cost type.

*b.* An annual reconciliation of participant contributions and program costs.

(1) Program costs are incremental costs associated with the utility's alternate energy purchase program not otherwise recovered through the utility's base tariff rates, and electricity costs dedicated to the program and separated from the utility's 199—20.9(476) energy or AEP automatic adjustment clauses.

(2) The excess of participant contributions over program costs is an annual program surplus, and the excess of program costs over participant contributions is an annual program deficit.

(3) Annual program surpluses and deficits are cumulative over successive years.

(4) A program deficit may be recovered through the utility's 199—20.9(476) AEP automatic adjustment clause.

(5) Any program surplus shall be used to offset prior years' program deficits previously recovered through the AEP automatic adjustment clause, and the offset amount shall be credited through the utility's AEP automatic adjustment clause.

*c.* Identification of any other AEP or renewable energy requirements being met with program AEP facilities and identification of any revenues derived from the separate sale of the renewable energy attributes of program AEP facilities.

*d.* Documentation that shows the energy produced by the utility's program AEP facilities in Iowa (whether contracted, leased, or owned), not including AEP facilities for which the utility has sought cost recovery under 199—20.9(476) prior to July 1, 2001, is sufficient to meet the requirement of the utility's Iowa alternate energy purchase program.

*e.* A description of program marketing and customer information activities, including schedules and copies of all marketing and information materials related to the program.

*f.* Program modifications and uses for any program surplus that are under consideration, including procurement or assignment of additional electricity from AEP facilities.

*g.* A copy of the utility's annual fuel report to customers under subrule 15.17(5).

**15.17(5) Annual fuel reporting requirements for rate-regulated utilities.**

*a.* Each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall annually report to all its Iowa customers its percentage mix of fuel and energy inputs used to produce electricity. The report shall, to the extent practical, specify percentages of electricity produced by coal, nuclear energy, natural gas, oil, AEP electricity produced for the utility's alternate energy purchase program, non-program AEP electricity, and resources purchased from other companies. The percentages for AEP electricity shall further specify percentages of electricity produced by wind, solar, hydropower, biomass, and other technologies.

*b.* The report shall include an estimate of sulfur dioxide (SO<sub>2</sub>), nitrogen oxide (NO<sub>x</sub>), and carbon dioxide (CO<sub>2</sub>) emissions for each known fuel and energy input type. The emission estimate shall be expressed in pounds per 1000 kWh.

**15.17(6) Tariff filing requirements for non-rate-regulated utilities.**

*a.* On or before January 1, 2004, each electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A shall file with the board a tariff for the utility's alternate energy purchase program. Initial tariff filings and any subsequent modifications shall be filed for informational purposes only. Tariff modification filings need only include information about elements of the program that are being modified. The initial tariff filings shall include, as applicable:

- (1) The program tariff;
- (2) The program effective date;
- (3) A sample of the customer notification, including a description of the method of distribution;
- (4) Customer classes eligible for participation;
- (5) Identification of any specific AEP facilities to be included in the program, including: fuel type; nameplate capacity; estimated annual kWh output; estimated in-service date; ownership, including any utility affiliation; location; and, if the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1) "c"; and
- (6) Forms and levels of customer contribution available to program participants.

*b.* Joint filings. An electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A may file its tariff jointly with other non-rate-regulated utilities or through an agent. A joint tariff filing shall contain the information required by paragraph 15.17(6) "a," separately identified for each utility participating in the joint tariff. The information for each utility may be provided by reference to an attached document or to a section of the joint tariff filing. A joint tariff filing filed by an agent shall state the agent's relationship to each utility and include a document from each utility authorizing the agent to act on the utility's behalf.

**\*199—15.18(476,81GA,SF390,HF882) Certification of eligibility for wind energy and renewable energy tax credits.** Any person applying for certification of eligibility for state tax credits for wind energy pursuant to Iowa Code section 476B.5 as amended by 2005 Iowa Acts, House File 882, section 166, or renewable energy pursuant to 2005 Iowa Acts, Senate File 390, section 9, is subject to this rule.

**15.18(1) Filing requirements.** Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the board an application that contains substantially all of the following information:

*a.* Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

\*Objection filed by the Administrative Rules Review Committee September 21, 2005. See text of Objection at end of Chapter 15.

*b.* Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner and the percentage of equity interest held by each owner, and a statement that owners meeting the eligibility requirements of either 2005 Iowa Acts, Senate File 390, section 7, or Iowa Code section 476B.5 as amended by 2005 Iowa Acts, House File 882, section 166, are not owners of more than two eligible renewable energy facilities. "The legal status of each owner" refers to the ownership requirements of 2005 Iowa Acts, Senate File 390, section 7(6), which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

- (1) A resident of Iowa;
- (2) An authorized farm corporation, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;
- (3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in Iowa Code section 9H.1;
- (4) A revocable trust as defined in Iowa Code section 9H.1;
- (5) A testamentary trust as defined in Iowa Code section 9H.1;
- (6) A small business as defined in Iowa Code section 15.102;
- (7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa;
- (8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or
- (9) A school district located in Iowa.

*c.* A description of the facility, including at a minimum the following information:

- (1) Type of facility (that is, a qualified facility as defined in Iowa Code section 476B.1 as amended by 2005 Iowa Acts, House File 882, section 163; or a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, or solar energy conversion facility, as defined in 2005 Iowa Acts, Senate File 390, section 7);
- (2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in 2005 Iowa Acts, Senate File 390, section 7;
- (3) A description of the location of the facility in Iowa, including an address or other geographic identifier;
- (4) The date the facility is expected to be placed in service (that is, placed in service on or after July 1, 2005, but before January 1, 2011, for eligibility under 2005 Iowa Acts, Senate File 390; or placed in service on or after July 1, 2005, but before July 1, 2008, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, House File 882); and
- (5) For eligibility under 2005 Iowa Acts, Senate File 390, demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in 2005 Iowa Acts, Senate File 390, section 7(7)), divided by the number of separate owners meeting the requirements of 2005 Iowa Acts, Senate File 390, section 7(6b), equals no more than 2.5 MW of capacity per eligible owner.

*d.* 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 the purchaser as eligible to apply for the renewable energy tax credit. If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; this designation shall not be subject to change.

*e.* A statement regarding the type of tax credit being sought; that is, indicating whether the applicant is applying for tax credits pursuant to Iowa Code chapter 476B as amended by 2005 Iowa Acts, House File 882, (1 cent per kWh, wind energy only) or pursuant to 2005 Iowa Acts, Senate File 390, (1.5 cents per kWh, wind and other renewable energy).

**15.18(2) *Review and notification.*** Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A, 2005 Iowa Acts, Senate File 390, section 9, and Iowa Code section 476B.5 as amended by 2005 Iowa Acts, House File 882, section 166(2). In the absence of a timely appeal, the preliminary determination shall be final.

**15.18(3) *Incomplete application and additional information.*** If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

**15.18(4) *Loss of eligibility status.*** Within 18 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 18 months of board approval, the facility will lose eligibility status. However, the facility may reapply to the board for new eligibility.

**15.18(5) *Allocation of capacity among eligible applicants.*** Iowa Code section 476B.5 as amended by 2005 Iowa Acts, House File 882, section 166(4), and 2005 Iowa Acts, Senate File 390, section 9(4), each establish the maximum amount of nameplate generating capacity of facilities eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date.

These rules are intended to implement Iowa Code sections 476.1, 476.8, 476.41 to 476.45, and 546.7, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

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[Filed emergency 6/20/05—published 7/20/05, effective 6/20/05]

## OBJECTION

At its September 13, 2005 meeting the Administrative Rules Review Committee voted to object to the provisions of **ARC 4342B**, rule 199 IAC 15.18\*. This filing was implemented on an “emergency” basis and appeared in IAB Vol. XXVIII, No. 02 (7/20/05). This filing implements the statutory provisions of both Senate File 390 and House File 882; the terms of this objection apply to this filing only to the extent that the filing implements House File 882.

The committee objects to paragraph 199 IAC 15.18(1)“d”, relating to the required documentation to demonstrate a market for the wind energy, on the grounds that it is beyond the authority of the Utilities Board. House File 882 requires, in §166: “A copy of an executed power purchase agreement or other agreement to purchase electricity...” The rule language states: “If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; this designation shall not be subject to change.” The committee believes that the language of the Act clearly demonstrates a legislative intent that only an *executed* power purchase agreement or other *executed* agreement that has a similar force and effect can be accepted in the application process.

The committee objects to the “emergency” implementation of **ARC 4342B**, as it relates to the implementation of House File 882, on the grounds that it was unreasonable to put these rules into effect without a prior opportunity for public notice and comment. The rules contain a number of significant and contentious issues relating to the tax credit; issues include the definition of an eligible applicant and the selection process for awarding credits. In addition, this is not an ongoing program; the wind project in House File 882 is limited to 450 megawatts and once the awards have been made there is no current provision for future awards. Because of the variety of issues dealt with by the rules, the level of controversy surrounding the rules and the limited duration of the program, committee members felt that the value of placing these rules in immediate effect did not outweigh the value of having public review and participation in the decision-making process. The committee also objects to this emergency implementation because it placed the rule into effect before House File 882 itself became effective. **ARC 4342B** was placed into emergency effect on June 20, 2005, the effective date of House File 882 was July 1, 2005. A rule cannot be made effective or be implemented in any way until the statute itself is effective. This action is taken pursuant to the authority of Iowa Code §17A.4. The effect of this objection is to terminate the emergency filing 180 days after this objection is filed.

The committee objects to the provisions of paragraph 199 IAC 15.18(1)“b” on the grounds that it is unreasonable. The amendments to Iowa Code §476B.5(2), as provided in House File 882, state: “[a]n owner shall not be an owner of more than two qualified facilities.” Paragraph 199 IAC15.18(1)“b” requires only “...a statement that owners meeting the eligibility requirements of Iowa Code Section 476B.5 ... are not owners of more than two eligible renewable energy facilities.” 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. The committee notes that of the seven projects awarded eligibility under the House File 882 program, credits were awarded to at least five entities with the same equity owners.

\*Objection to 199—15.18(476,81GA,SF390,HF882) filed 9/21/05.