**ARC 7091B**

# UTILITIES DIVISION[199]

**Adopted and Filed**

Pursuant to Iowa Code sections 17A.4, 17A.7, chapter 476B, and 2008 Iowa Acts, Senate File 2405, the Utilities Board (Board) gives notice that on July 31, 2008, the Board issued an order in Docket No. RMU-08-4, In re: Wind Energy Tax Credits, "Order Amending Rule." The Board is adopting amendments to 199 IAC 15.18(476B) and 15.20(476B). The amendments affect both facility eligibility and the tax credits applications for facilities qualified under Iowa Code chapter 476B.

The adopted amendments reflect changes made to Iowa Code chapter 476B in Senate File 2405, which was passed during the 2008 General Assembly. Senate File 2405 amended Iowa Code chapter 476B by allowing tax credits for electricity generated for on-site consumption, setting a minimum nameplate capacity of 2 megawatts for eligibility applications filed after March 1, 2008, and extending the in-service deadline for eligible projects by three years (from July 1, 2009, to July 1, 2012).

Notice of Intended Action in Docket No. RMU-08-4 was published in IAB Vol. XXX, No. 26 (6/18/2008), p. 1799, as **ARC 6847B**. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) and Interstate Power and Light Company (IPL) filed written comments and offered oral comments at the oral presentation on July 15, 2008. The Iowa Association of Electric Cooperatives (IAEC) also offered oral comments.

Consumer Advocate supported the proposed rules. IPL was generally supportive, but was concerned that the new rules could potentially cause a facility owner to believe that the amendments to Iowa Code chapter 476B and the proposed rules expanded the opportunities for net metering. IPL also suggested that it might not be necessary to differentiate the tax credits for energy sales from those awarded for on-site consumption and, therefore, total generation alone would be sufficient for awarding the tax credits pursuant to 199 IAC 15.20(476B). IPL suggested changes to the proposed rules to address these issues, but the changes suggested in its written comments were problematic because Iowa Code chapter 476B differentiates between on-site consumption and energy sales (requiring a total for each). In addition, IPL's suggestion to always require an executed purchase power agreement or interconnection agreement is not workable because Iowa Code chapter 476B requires no such agreement for on-site consumption, and such a requirement would pose an unnecessary barrier for eligibility.

The issues raised by IPL were discussed at the oral presentation and it was determined that both of IPL's issues could be addressed by clarifying that the term "on-site consumption" refers to wind energy production that is not sold. No objections were made to this change to the proposed rules. It is important to note that rules proposed by the Board were not intended to change in any way the net metering tariffs that have been approved for Iowa's rate-regulated electric utilities; Iowa Code chapter 476B relates only to tax credits, not net metering policy or practice.

The IAEC pointed out that it might not always be appropriate to classify "excess generation" from net metering as "on-site consumption" because under the net metering tariffs in effect for IPL and MidAmerican Energy Company, excess generation is carried forward for future months and may never actually be consumed. Consumer Advocate pointed out that the proposed change to the definition of "on-site consumption" appears to fulfill the broad intent of Senate File 2405 by encouraging wind energy production by extending the tax credits to wind energy that is produced but not sold.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these adopted amendments.

These amendments will become effective on October 1, 2008.

These amendments are intended to implement Iowa Code chapter 476B as amended by 2008 Iowa Acts, Senate File 2405.

The following amendments are adopted.

ITEM 1. Amend subparagraph **15.18(1)"c"(2)** as follows:

(2) Total nameplate generating capacity rating~~;~~. For applications filed on or after March 1, 2008, the facility must have a combined nameplate capacity of no less than 2 megawatts;

ITEM 2. Amend subparagraph **15.18(1)"c"(4)** as follows:

(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, 2009~~ July 1, 2012, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179).

ITEM 3. Reletter paragraphs **15.18(1)"d"** and **15.18(1)"e"** as **15.18(1)"e" 15.18(1)"f."**

ITEM 4. Adopt the following **new** paragraph **15.18(1)"d"**:

*d.* A signed statement from the owner attesting that the owner intends to either sell all the electricity generated by the facility, consume all the electricity on site, or a combination of both. For purposes of this rule, electricity consumed on site means any electricity produced by the facility and not sold.

ITEM 5. Amend relettered paragraph **15.18(1)"e"** as follows:

*e.* ~~A~~ If the owner intends to sell electricity generated by the facility, a copy of the executed power purchase agreement or other agreement to purchase electricity. If the power purchase agreement has not yet been finalized and executed, the board will accept as an other agreement an executed agreement signed by at least two parties that includes both a commitment to purchase electricity from the facility upon completion of the project and most of the essential elements of a contract.

The board will also accept a copy of an executed interconnection agreement ~~or transmission~~ service agreement, in lieu of a power purchase agreement, if the facility owner has instead agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

ITEM 6. Amend rule **199—15.20(476B)**, as follows:

**199—15.20(476B) Applications for wind energy tax credits under Iowa Code chapter 476B.** The wind energy tax credits equal one cent per kilowatt-hour of electricity generated by ~~and purchased from~~ eligible wind energy facilities under 199 IAC 15.18(476B), which is sold or used for on-site consumption by the owner, for tax years beginning on or after July 1, 2006. The owners of an eligible facility may apply for wind energy tax credits for up to ten tax years following the date the facility is placed in service. Wind energy tax credits will not be issued for wind energy ~~purchased~~ sold or used for on-site consumption after June 30, ~~2019~~ 2022. For purposes of this rule, wind energy used for on-site consumption means any electricity produced by an eligible facility and not sold.

ITEM 7. Amend subparagraph **15.20(1)"a"(6)** as follows:

(6) ~~A~~ For any electricity sold, a copy of the executed power purchase agreement or other agreement to purchase electricity. Alternatively, a copy of an executed interconnection agreement or transmission service agreement is acceptable if the owners have elected to sell electricity from the facility directly or indirectly to a wholesale power pool market.

ITEM 8. Amend subparagraph **15.20(1)"a"(7)** as follows:

(7) ~~A~~ For any electricity sold, the owner must provide a statement attesting that the electricity for which tax credits are sought has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the wind energy tax credits, the definition of "related person" is the same as specified in department of revenue subrules 701 IAC 42.25(2) and 52.26(2). That is, the definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

For any electricity used for on-site consumption, the owner must provide a signed statement attesting under penalty of perjury that the electricity for which tax credits are sought was generated by the eligible facility and not sold.

ITEM 9. Amend subparagraph **15.20(1)"a"(8)** as follows:

(8) The date that the eligible facility was placed in service (that is, between July 1, 2005, and ~~January 1, 2009~~ July 1, 2012).

ITEM 10. Amend subparagraph **15.20(1)"a"(10)** as follows:

(10) ~~Invoices~~ For any electricity sold, invoices or other information that documents the number of kilowatt-hours of electricity generated by the eligible facility and sold to an unrelated purchaser during the tax year.

For any electricity used for on-site consumption, the number of kilowatt-hours of electricity generated by the eligible facility during the tax year and not sold.

ITEM 11. Amend subparagraph **15.20(1)"b"(3)** as follows:

(3) Whether the reported kilowatt-hours of electricity generated by ~~and purchased from~~ the facility and sold or used by the owner for on-site consumption during the tax year seem accurate and eligible for wind energy tax credits.

[Filed 7/31/08, effective 10/1/08]
[Published 8/27/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/27/08.