ARC 9752B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4 and 476.1, Iowa Code chapter 476C, 2011 Iowa Acts, House File 672, and 2011 Iowa Acts, House File 590, the Utilities Board (Board) gives notice that on August 30, 2011, the Board issued an order in Docket No. RMU-2011-0003, In re: Renewable Energy Tax Credits, "Order Adopting Rules." The Board is adopting amendments to 199 IAC 15.19 and 15.21.

Several changes have been made to 199 IAC 15.19 and 15.21. These changes to the rules implementing Iowa Code chapter 476C include the allowance of tax credits for renewable energy produced for on-site consumption (with a minimum facility capacity size), the extension of the program's overall facility in-service deadline by three years, and allowing applicants to apply for successive 12 month in-service time limit extensions.

2011 Iowa Acts, House File 672, also made changes to both Iowa Code chapters 476B and 476C that do not require rule changes, including reducing the total eligible capacity for Iowa Code chapter 476B wind facilities from 150 MW to 50 MW and increasing the total eligible capacity for Iowa Code chapter 476C wind facilities from 330 MW to 363 MW; there is also an increase in total eligible capacity for Iowa Code chapter 476C nonwind facilities from 20 MW to 53 MW, with 10 MW reserved for "renewable energy facilities incorporated within or associated with an ethanol cogeneration plant engaged in the sale of ethanol." In addition, there is a maximum facility capacity size for new Iowa Code chapter 476C nonwind facilities. None of the changes to Iowa Code chapter 476B contained in 2011 Iowa Acts, House File 672, require amendments to the Board's rules.

The Notice of Intended Action in Docket No. RMU-2011-0003 was published in IAB Vol. XXXIV, No. 1 (7/13/2011), p. 23, as **ARC 9609B**. Written comments were received from the Consumer Advocate Division of the Department of Justice (Consumer Advocate). An oral presentation was held on August 23, 2011. Consumer Advocate was the only commenter at the presentation.

Consumer Advocate generally supported the amendments but proposed a slight modification in 15.21(1)"a"(5) by adding the phrase "claimed amount of electricity" to reflect the exact wording used in Iowa Code section 476C.4(1). The Board has adopted this change. The Board has also adopted nonsubstantive changes suggested during the Notice process including changing "other than" to "not" so that the phrase reads "not a wind energy conversion facility" in 15.19(1)"f"(2); modifying the parallel structure and changing "this" to "the signed" so that the phrase reads "For purposes of the signed statement" in 15.19(1)"g"; designating the Board as the receiver of the notification in 15.19(4)"d"; and removing the commas from an essential clause in 15.21(1)"a"(5). Finally, the Board has amended the last sentence of 15.19(1)"f"(2) by deleting the word "five" and inserting the number "60" to reflect the change in 2011 Iowa Acts, House File 590, which increased the maximum nameplate capacity rating from 5 to 60 megawatts if the facility is not a wind energy conversion facility.

The Board does not find it necessary to adopt a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these amendments.

The only substantive change to the noticed amendments reflects the new maximum capacity adopted by the General Assembly in 2011 Iowa Acts, House File 590. Therefore, no additional notice is necessary prior to adoption of these amendments.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 476.1 and chapter 476C, 2011 Iowa Acts, House File 590, and 2011 Iowa Acts, House File 672.

These amendments will become effective on October 26, 2011.

The following amendments are adopted.

ITEM 1. Amend paragraphs **15.19(1)"f"** to **"h"** as follows:

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

(1) Type of facility (that is, a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility, or refuse conversion facility, as defined in Iowa Code ~~Supplement~~ section 476C.1);

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code ~~Supplement~~ section 476C.1. For applications filed on or after July 1, 2011, the facility's combined nameplate capacity or energy production capacity equivalent must be no less than three-fourths of a megawatt if all or part of the facility's renewable energy production is used for the owners' on-site consumption, and no more than 60 megawatts if the facility is not a wind energy conversion facility;

(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, ~~2012~~ 2015, for eligibility under Iowa Code ~~Supplement~~ chapter 476C; and

(5) For eligibility under Iowa Code ~~Supplement~~ chapter 476C, demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code ~~Supplement~~ section 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code ~~Supplement~~ chapter 476C, equals no more than 2.5 MW of capacity per eligible owner.

g. A signed statement from the owners attesting that the owners intend to either sell all the renewable energy produced by the facility, consume all the renewable energy on site, or use all the renewable energy through a combination of sale and consumption. For purposes of the signed statement, renewable energy consumed on site means any renewable energy produced by the facility and not sold.

~~*g.*~~ *h.* ~~A~~ If the owners intend to sell renewable energy produced by the facility, 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; that designation shall not be subject to change.

~~*h.*~~ *i.* A statement indicating the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code ~~Supplement~~ chapter 476C (1.5 cents per kWh, wind and other renewable energy tax credits).

ITEM 2. Amend subrule 15.19(4) as follows:

15.19(4) *Loss of eligibility status.*

a. Within 30 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 30 months of board approval, the facility will lose eligibility status.

b. ~~However, if~~ If the facility is a wind energy conversion facility and is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the 30-month limit, attesting to the unavailability of necessary equipment. After granting the 12-month extension, if the board determines that the facility was not operational within 42 months of board approval, the facility will lose eligibility status.

c. Prior to expiration of the time periods specified in paragraphs 15.19(4)*"a"* and *"b,"* the applicant may apply for a further 12-month extension if the facility is still expected to become operational. Extensions may be renewed for succeeding 12-month periods if the applicant applies for the extension prior to expiration of the current extension period. If the applicant does not apply for further extension, the facility will lose eligibility status.

d. If the owners of a facility discontinue efforts to achieve operational status, the owners shall notify the board. Upon the board's receipt of such notification, the facility will lose eligibility status.

e. If the facility loses eligibility status, the ~~facility~~ applicant may reapply to the board for new eligibility.

ITEM 3. Amend rule 199—15.21(476C), introductory paragraph, as follows:

199—15.21(476C) Applications for renewable energy tax credits under Iowa Code chapter 476C. The renewable energy tax credits equal 1.5 cents per kilowatt-hour of electricity, or 44 cents per 1,000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose, generated by ~~and purchased from~~ eligible renewable energy facilities under 199—15.19(476C), which is sold or used for on-site consumption by the owners, for tax years beginning on or after July 1, 2006. ~~Either~~ For renewable energy that is sold, either the owners of an eligible facility or a designated purchaser of renewable energy from the facility may apply for renewable energy tax credits~~,~~ for up to ten tax years following the date the facility is placed in service. For renewable energy used for on-site consumption, the owners of an eligible facility may apply for renewable energy tax credits for up to ten tax years following the date the facility is placed in service. Renewable energy tax credits will not be issued for renewable energy ~~purchased~~ sold or used for on-site consumption after December 31, ~~2021~~ 2024. For purposes of this rule, renewable energy used for on-site consumption means any renewable energy produced by the facility and not sold.

ITEM 4. Amend paragraph **15.21(1)"a"** as follows:

a. Either the facility owners or the purchaser of renewable energy shall be eligible to apply for the tax credits related to renewable energy that is sold, as designated under ~~199—~~paragraph 15.19(1)*"~~g~~ h."* Only facility owners shall be eligible to apply for tax credits related to renewable energy used for on-site consumption. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199—15.21(476C)), and the following 12 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199—15.19(476C), plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199—15.19(476C).

(3) A statement attesting that the owners have not received wind energy tax credits for the facility under 199—15.20(476B).

(4) ~~A~~ For any renewable energy sold, a copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or purchaser of renewable energy will be eligible to apply for the tax credits and shall be consistent with the designation originally filed under ~~199—~~paragraph 15.19(1)*"~~g~~ h."*

(5) ~~A~~ For any renewable energy sold, the owners must provide a statement attesting that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, for which tax credits are sought, has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the renewable energy tax credits, persons are related to each other if either person owns an 80 percent or more equity interest in the other person. For any renewable energy used for on-site consumption, the owners must provide a signed statement attesting under penalty of perjury that the claimed amount of electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose for which tax credits are sought has been generated by the eligible facility and not sold.

(6) The date that the eligible facility was placed in service (that is, between July 1, 2005, and January 1, ~~2012~~ 2015).

(7) The total number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility during the tax year.

(8) ~~Invoices~~ For any renewable energy sold, invoices or other information that documents the number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility and sold to an unrelated purchaser during the tax year. For any renewable energy used for on-site consumption, the number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility during the tax year and not sold.

(9) to (12) No change.

ITEM 5. Amend subparagraph **15.21(1)"b"(3)** as follows:

(3) Whether the reported kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by ~~and purchased from~~ the facility and sold or used by the owners for on-site consumption during the tax year seem accurate and eligible for renewable energy tax credits.

[Filed 8/30/11, effective 10/26/11]
[Published 9/21/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/21/11.