

CHAPTER 24  
LOCATION AND CONSTRUCTION OF ELECTRIC POWER  
GENERATING FACILITIES

[Prior to 10/8/86, Commerce Commission[250]]

**199—24.1(476A) Authority, purpose, and policy.**

**24.1(1) Authority.** The regulations contained herein are prescribed by the Iowa utilities commission pursuant to authority granted the commission in Iowa Code chapter 476A, relating to the location and construction of electric power generating facilities.

**24.1(2) Purpose.** The purpose of these regulations is to provide guidelines for proceedings for the determination whether the proposed construction of a major electric generation facility or significant alteration thereto should be issued a certificate before such construction may commence and to state the procedures for determining compliance by the applicant with permit and licensing requirements of state regulatory agencies.

**24.1(3) Cooperative agreements.** The commission may enter into cooperative agreements pursuant to Iowa Code chapter 28E with the appropriate state agencies that will facilitate thorough review of all state issues arising in the certification process and will reduce the time and expense in determining, to the extent necessary, the environmental, economic, and social effects of the facility's construction and use. Under the auspices of these 28E agreements, the commission shall delegate to the various state agencies responsibility for the issuance of permits and licenses appropriate to the authority of the agency to ensure compliance with the steps in the certification process. The commission, where appropriate, may use a consolidated hearing process.

[Editorial change: IAC Supplement 7/24/24]

**199—24.2(476A) Definitions.** As used in this chapter:

*“Acid Rain Program”* means the sulfur dioxide and nitrogen oxides air pollution control program established pursuant to Title IV of the Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended by Pub. L. 101-549, November 15, 1990.

*“Act”* means Iowa Code chapter 476A entitled Electric Power Generators.

*“Agency”* means an agency as defined in Iowa Code section 17A.2(1).

*“Allowance”* means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide, during or after a specified calendar year.

*“Applicant”* means the person or persons who make an application for a certificate for a facility or an amendment to a certificate for a facility under the Act. For projects with more than one participant, the applicant may be that person designated by and acting on behalf of the participants.

*“Application”* means an application for a certificate or an amendment to a certificate submitted to the commission pursuant to the Act.

*“Certificate”* means a certificate as defined in Iowa Code section 476A.1.

*“Commission”* means the utilities commission.

*“Contested case proceeding”* means the contested case proceeding before the board prescribed by Iowa Code section 476A.4.

*“Facility”* means any electric power generating plant or combination of plants at a single site, owned by any person, with a maximum generator nameplate capacity of 25 megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. This term includes any generation addition that increases the total maximum generator nameplate capacity at one site to 25 megawatts or more, but does not include those transmission lines beyond the generation station's substation.

*“Interested agency”* means an agency, other than a regulatory agency, which the commission in its discretion determines to have a legitimate interest in the disposition of the application.

*“Intervenor”* means a person who received notice under 24.6(2) “b,” “c,” “d,” “e,” or “f” and has filed with the commission a written notice of intervention, or a person granted permission to intervene by the commission after filing a petition pursuant to rule 199—7.13(17A,476).

“*Participant*” means any person who either jointly or severally owns or operates a proposed facility or significant alteration thereto or who has contracted or intends to contract for a purchase of electricity produced by the subject facility.

“*Party*” means each person or agency named or admitted as a party, including the applicant, intervenors, and consumer advocate.

“*Person*” means individual, corporation, cooperative, government or governmental subdivision or agency, partnership, association or other legal entity.

“*Public utility*” means a public utility as defined in Iowa Code section 476.1.

“*Regulatory agency*” means a state agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the commission.

“*Significant alteration*” means:

- a. A change in the generic type of fuel used by the major electric generating facility; or
- b. Any change in the location, construction, maintenance, or operation of equipment at an existing facility that increases the maximum generator nameplate capacity of the facility by at least 10 percent and at least 25 megawatts.

“*Site*” means the land on which the generating unit of the facility, and any cooling facilities, cooling water reservoirs, security exclusion areas, and other necessary components of the facility, are proposed to be located.

“*Site impact area*” means the area within the state of Iowa within a ten-mile radius of the intersection of the transverse centerline axis and longitudinal centerline axis of the generator or all such generators where the proposed facility includes multiple generators.

“*Zoning authority*” means any city or county zoning authority in whose jurisdictional area a proposed facility site or portion thereof is located.

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

#### **199—24.3(476A) Form of application, place of filing.**

##### **24.3(1) *Form of application.***

a. The application, associated documents, or other papers filed with the commission in a certification proceeding shall be capable of being printed or typewritten and reproduced on sheets of 8½ inches by 11 inches (except for foldouts and special exhibits).

b. The information required by these rules shall be indexed and arranged in a sequential manner substantially similar to the outline form of the rules, with all material submitted categorized into the specific areas and sections set forth in the rules.

##### **24.3(2) *Manner and place of filing.***

a. An applicant shall file the application electronically unless otherwise permitted by the commission.

b. The commission, through the use of its electronic filing system, shall include on the service list for the application each regulatory agency listed on the application in addition to other agencies as the commission deems appropriate.

c. Any amendments to the application shall be filed in a manner similar to that required of the application.

[Editorial change: IAC Supplement 12/29/10; ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

**199—24.4(476A) Application for a certificate—contents.** Each person or group of persons proposing to construct a facility or a significant alteration to a facility shall file an application for certificate with the commission, unless otherwise provided by these rules. The applicant may file a portion of an application and, in conjunction therewith, a request that the commission accept such portion of the application pursuant to subrule 24.5(3) and conduct a separate phase of the proceeding with respect to issues presented by such portion of the application to the extent permitted pursuant to 24.5(3) and rule 199—24.9(476A). An application shall substantially comply with the following informational requirements:

**24.4(1)** In section 1, entitled “General Information,” applicant shall include the following information:

*a.* The legal name, address, telephone number, facsimile transmission number, and email address of the applicant and all other participants of the proposed facility at the time of filing, as well as the name of the person authorized to receive communications relating to the application on behalf of those persons, Iowa business address, if applicable, and principal place of business of the applicant.

*b.* The name and type of business of the applicant’s and all other participants’ parent companies and affiliates. The information must include percentages of ownership.

*c.* A complete description of the current and proposed rights of ownership in the proposed facility and current or planned purchase power contracts with respect to the proposed facility.

*d.* A general site description including a legal description of the site location, a map showing the coordinates of the site and its location with respect to state, county, and other political subdivisions, and prominent features such as cities, lakes, rivers and parks within the site impact area. Applicant shall also provide a more detailed map showing the location of the facility perimeter, utility property, railroads and other transportation facilities, abutting and adjacent properties, cities, lakes, rivers, parks, other public facilities, cemeteries and places of historical significance within one mile of the site boundary. The general site description should include a discussion of whether the proposed site is located in a flood plain.

*e.* A general description of the proposed facility including a description of the principal characteristics of the facility such as the capacity of the proposed facility in megawatts expressed by the contracted maximum generator nameplate MW rating, the net facility addition in MW, by net to the busbar rating, and the portion (in MW) of the design capacity of the proposed facility which is proposed to be available for use by each participant, the number and type of generating units, primary fuel source for each such unit, total hours of operation anticipated seasonally and annually, and output in MWH during these hours, expected capacity factors, a description of the general arrangement of major structures and equipment to provide the commission with an understanding of the general layout of the facility, and a schedule for the facility’s construction and utilization including the projected date significant site alteration is proposed to begin and the projected date the facility is to be placed into service. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available shall be considered as a single unit.

*f.* A general description of all raw materials, including fuel, used by the proposed facility in producing electricity and of all wastes created in the production process. In addition to describing the wastes created in the production process, the applicant shall determine annual expected sulfur dioxide emissions from the facility and provide a plan for acquiring allowances sufficient to offset these emissions. The applicant shall describe all transportation facilities currently operating that will be available to serve the proposed facility and shall describe any additional transportation facilities needed to deliver raw materials and to remove wastes.

*g.* Identification, general description and chronology of all financial and other contractual commitments undertaken or planned to be undertaken with respect to the proposed facility.

*h.* A general map and description of the primary transmission corridors and the approximate routing of the rights-of-way. An analysis of the existing transmission network’s capability to reliably support the proposed additional generation interconnection to the network. The analysis must also show that the interconnection to the transmission system is consistent with standard utility practices and the proposed interconnection does not degrade the adequacy, reliability, or operating flexibility of the existing transmission system in the area. A system impact analysis performed by the operator of the transmission system with which the facility will be interconnected, as well as any analysis, in applicant’s possession, submitted to an area reliability council, concerning the impact of the facility on the area grid, shall satisfy the foregoing requirements. The impact analysis must include both local area and regional impacts.

*i.* The applicant, if a public utility, must include a statement of total cost to construct the proposed facility. Such cost shall include, but shall not be limited to, the cost of all electric power generating units, all electric supply lines within the facility site boundary, all electric supply lines beyond the facility site boundary with voltage of 69 kilovolts or higher used for transmitting power from the facility to the point of junction with the distribution system or with the interconnected primary transmission system, all

appurtenant or miscellaneous structures used and useful in connection with said facility or any part thereof, and all rights-of-way, lands or interest in lands, the use and occupancy of which are necessary or appropriate in the maintenance or operation of said facility.

*j.* The names and addresses of those owners and lessees of record of real property identified in 24.6(2) “*d*” and “*e*.”

*k.* The names and addresses of those owners and lessees of record of real property for whom the applicant seeks the use of eminent domain.

**24.4(2)** In section 2, entitled “Regulatory requirements,” applicant shall include the following:

*a.* All information related to the regulatory agency and zoning authority requirements for permits or licenses necessary to construct, operate, and maintain the facility.

*b.* A listing of every state agency from which any approval or authorization concerning the proposed facility is required and a listing of zoning authorities.

*c.* Information equivalent to the information required in the rules and application forms of such state regulatory agencies and zoning authorities, to the extent such information is ready to be filed.

**24.4(3)** In section 3, entitled “Community impact,” the applicant shall include an identification and analysis of the effects the construction, operation and maintenance of the proposed facility will have on the site impact area including, but not limited to, the following:

*a.* A forecast of the permanent impact of the construction, operation, and maintenance of the proposed facility on commercial and industrial sectors, housing, land values, labor market, health facilities, sewage and water, fire and public protection, recreational facilities, schools and transportation facilities.

*b.* A forecast of any temporary impact placed upon housing, schools or other community facilities as a result of a temporary influx of workers during the construction of the proposed facility.

*c.* A forecast of the impact of the proposed facility on property taxes of affected taxing jurisdictions. The forecast shall include the effects on property taxes caused by all community development proximately related to the construction of the proposed facility.

*d.* A forecast of the impact on agricultural production and uses.

*e.* A forecast of the impact on open space areas and areas of significant wildlife habitat. Such forecast shall include identification and description of the impact of the proposed facility on terrestrial and aquatic plants and animals.

*f.* A forecast of the impact on transportation facilities.

*g.* A forecast of the impact on cultural resources including known archaeological, historical and architectural properties, which are on, or eligible for, the National Register of Historic Places.

*h.* A forecast of the impact on landmarks of historic, religious, archaeological, scenic, natural or other cultural significance. Such information shall include applicant’s plans to coordinate with the office of state archaeologist to reduce or obviate any adverse impact and the applicant’s plans to coordinate with the state office of disaster services in the event of accidental release of contaminants from the proposed facility.

**24.4(4)** Site selection methodology. In section 4, entitled “Site selection methodology,” applicant shall present information related to its selection of the proposed site for the facility. Such information shall include the following:

*a.* The general criteria used to select alternative sites and how these criteria were used to select the proposed site.

*b.* A discussion of the extent to which reliance upon eminent domain powers could be reduced by use of an alternative site, alternative generation method or alternative waste handling method.

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

**199—24.5(476A) Initial commission review: Application acceptance.**

**24.5(1)** Upon the filing of the application or a portion of the application, the commission and the appropriate regulatory agencies shall make an initial review thereof to determine if it is in substantial compliance with the requirements of rule 199—24.4(476A) which pertain thereto. If any significant deficiencies, including those noted by applicant, are determined to exist in the application, or such portion of the application by either the commission or regulatory agency, the commission shall notify the applicant specifying such deficiencies, within 45 days from the date of the filing of the application or such portion of the application.

**24.5(2)** The applicant shall have 30 days from notification of deficiencies to amend or request, for good cause, a reasonable extension of time to amend. In the event the applicant fails to amend within the time allowed or, after amendment, the application or portion thereof filed is not in substantial compliance with the requirements of rule 199—24.4(476A) which pertain thereto, the commission may reject the application or such portion thereof. Such rejection shall constitute final agency action, but shall not preclude reapplication.

**24.5(3)** If the application or portion thereof, after amendment or otherwise, is in substantial compliance with the requirements of rule 199—24.4(476A) which pertain thereto, the commission shall, within 45 days of the filing of the application or portion thereof or amendment thereto, accept the application or portion thereof and set the time and place for hearing as provided in rule 199—24.6(476A); provided, however, that upon acceptance of a partial application, the commission may order separate proceedings on particular phases of the application, pursuant to rule 199—24.9(476A), where such partial application permits a finding to be made with regard to any of the facility siting criteria contained in subrule 24.10(2).

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

**199—24.6(476A) Procedural schedule.**

**24.6(1)** Upon acceptance of the application, the commission shall establish a schedule for the certification proceeding which shall include:

*a.* A hearing to be commenced in accordance with rule 199—24.8(476A), no earlier than 90 days nor later than 150 days from the date of acceptance. This hearing shall be conducted in the county in which the construction of the greater portion of the facility is being proposed.

*b.* Provision for the publication of notice of the schedule for the hearing held by the commission in the form provided in Iowa Code section 17A.12(2), which notice shall be published in a newspaper of general circulation in each county in which the proposed site is located once each week for two consecutive weeks with the second publication being no later than 30 days after acceptance of the application.

**24.6(2)** The commission shall serve notice of the acceptance of the application and proceeding schedule upon the following:

*a.* All regulatory agencies, including Iowa department of transportation and the Iowa department of natural resources.

*b.* Interested agencies as determined by the commission, including the office of state archaeologist and the office of historical preservation of the state historical society of Iowa.

*c.* County and city zoning authorities from the area in which the proposed site is located; and

*d.* All owners of record of real property located within one mile of the intersection of the transverse center-line axis and longitudinal center-line axis of the generator, or all such generator axis intersections where the proposed facility includes multiple generators, and all owners of record of real property located within 1000 linear feet of the proposed boundary, but outside any such one-mile radius.

*e.* All lessees of record of real property of one acre or more located within the site boundary or within 1000 linear feet outside of the proposed site boundary.

*f.* Owners and lessees of real property for which the applicant seeks the power of eminent domain.

*g.* Other interested persons as determined by the commission.

**24.6(3)** Status of notice recipient.

*a.* Those receiving notice under 24.6(2) “*a*” shall be deemed parties to the proceeding.

*b.* Such notice provided under 24.6(2) “*b*,” “*c*,” “*d*,” “*e*” or “*f*” shall state that the recipient shall have the right to become an intervenor upon duly filing written notice of intervention.

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

**199—24.7(476A) Informational meeting.**

**24.7(1)** *Place of meeting.* Not less than 30 days prior to the filing of an application the applicant shall hold an informational meeting in the county of the proposed site for the facility. In the event the proposed site is in more than one county, such meeting shall be in that county containing the greatest portion of the proposed facility site.

**24.7(2) Meeting facilities.** The applicant shall be responsible for all negotiations and compensation for a suitable facility to be used for the informational meeting, including but not limited to a building or facility which is in substantial compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines, Chapter 4, where such a building or facility is reasonably available.

**24.7(3) Location.** The location of the meeting shall be reasonably accessible to all persons which may be affected by the granting of the certificate.

**24.7(4) Commission approval.** Commission approval shall be obtained for the proposed informational meeting date, time, and location.

**24.7(5) Personnel.** The prospective applicant shall provide qualified personnel to speak for the applicant in matters relating to the following:

- a. Utility planning which has resulted in the proposed construction.
- b. When the facility or significant alteration will be constructed.
- c. In general terms the physical construction, appearance and location of major structures with respect to proposed property lines.
- d. In general terms the property rights which the applicant shall seek including purchase, option to buy, and easement.
- e. Procedures to be followed in contacting affected parties for specific negotiations in acquiring property rights.
- f. Methods and factors used in arriving at offered compensation.
- g. Manner in which payments are made including discussion of conditional easements, signing fees and time of payment.
- h. Other factors or damages for which compensation is made.
- i. If the undertaking is a joint effort, other participants shall be represented at the informational meeting by qualified personnel designated to speak for them.

**24.7(6) Conduct of the meeting.** A member of the commission, or a hearing examiner designated by the commission, shall serve as the presiding officer at the meeting and present an agenda for such meeting, which shall include a summary of the legal rights of affected legal landowners. No formal record of the meeting is required. The meeting shall be considered an opportunity for interested members of the public to raise questions regarding the proposal, and an opportunity for the applicant to respond.

**24.7(7) Notice.** At least one week prior to the time set for the informational meeting, the applicant shall cause to be published a notice of such meeting in a newspaper of general circulation in each county containing a portion of the proposed site impact area. The notice of the informational meeting shall contain the following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the utilities commission at (515)725-7300 in advance of the scheduled date to request that appropriate arrangements be made. Proof of such notice shall be provided to the commission by applicant. Additional notice shall be made through press release to all newspapers of general circulation in each county containing a portion of the proposed site impact area and, as deemed appropriate by the commission, electronic media.

This rule is intended to implement Iowa Code sections 476A.2 and 476A.12.

[Editorial change: IAC Supplement 12/29/10; Editorial change: IAC Supplement 7/24/24]

### **199—24.8(476A) Hearing procedure.**

**24.8(1) General.** The proceedings conducted by the commission pursuant to this chapter shall be treated in the same manner as a contested case pursuant to the provisions of Iowa Code chapter 17A. Except where contrary to express provisions below, the hearing procedure shall conform to the commission's rules of practice and procedure, 199—Chapter 7. The proceeding for the issuance of certificate may be consolidated with the contested case proceeding for determination of applicable ratemaking principles under Iowa Code section 476.53. All filings shall be made electronically unless otherwise permitted by the commission.

#### **24.8(2) Intervention.**

a. *Notice of intervention.* An agency not receiving notice pursuant to 24.6(2)“b” may become a party to the contested case proceeding by filing a notice of intervention. Such notice shall contain a statement of the jurisdiction or interest of the particular agency with respect to the proposed facility.

*b. Petition to intervene.* Any other person wishing to become a party to the contested case proceeding may request to intervene in the proceeding by petition to intervene filed at least 30 days prior to the date of the scheduled hearing, but not afterward except for good cause shown. Such application shall specify the issues in which petitioner may contest before a regulatory agency or otherwise. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2. All other parties to the proceeding shall have the right to resist or respond to the petition to intervene within seven days subsequent to the petitioner's service thereof.

*c. Commission discretion.* The commission may, in its discretion, grant or deny such petition or may permit intervention by the petitioner limited to particular issues or to a particular phase or stage of the proceeding. The commission shall, in exercising its discretion, consider the substantiality of the petitioner's rights allegedly affected by the granting or denial of the application and whether granting the intervention will unduly delay the proceeding or have no probative value to the proceeding. The granting of any petition to intervene shall not have the effect of changing or enlarging the issues specified in the commission's notice of hearing or any prehearing order of the commission unless the commission shall, on motion, amend the same.

**24.8(3) Appearance.** If any regulatory agency fails to appear of record in the contested case proceeding conducted by the commission, the commission shall conclusively presume that the facility meets the regulatory agency's permit and licensing requirements and the regulatory agency shall immediately issue any license or permit required for the construction, operation, or maintenance of the facility.

**24.8(4) Discovery.** Discovery may begin after the commencement of the contested case proceeding. It will not be grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

**24.8(5) Application for rehearing.** All applications for rehearing will be made and processed in accordance with Iowa Code sections 17A.16(2) and 476.12. Applications for rehearing after decisions made by the commission must state the specific grounds upon which the application is based and must specify such findings of fact and conclusions of law and such terms or conditions of any certificate or amendment to certificate as are claimed to be erroneous, with a brief statement of the grounds of error. An application for rehearing shall substantially comply with the form prescribed in 199—subrule 2.2.

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

#### **199—24.9(476A) Separate hearings on separate issues.**

**24.9(1) By motion.** The commission, upon its own motion or on the motion of the applicant, may order separate phases on particular issues of the proceeding. Each phase shall be addressed to issues involved in applying one or more of the facility siting criteria set forth in subrule 24.10(2) and shall result in commission findings with respect thereto.

**24.9(2) By agreement.** In accordance with agreements made pursuant to Iowa Code chapter 28E, with regulatory agencies, the commission shall establish separate phases of the hearing process to determine whether the proposed facility will conform to the permit and licensing requirements of the regulatory agencies.

**24.9(3) Procedure.** Each such hearing phase shall be conducted in conformance with the requirements of rule 199—24.8(476A) or other rules of practice and procedure designated in the applicable chapter 28E agreement.

[Editorial change: IAC Supplement 7/24/24]

#### **199—24.10(476A) Certification decision.**

**24.10(1) Issuance of decision.** Upon the close of the record in the proceeding, the commission shall expeditiously render a written decision with complete determinations as to the facility siting criteria or portion thereof under consideration, other necessary findings of fact or conclusions of law necessary to support the commission's decision.

**24.10(2) Facility siting criteria.** In rendering its certification decision, the commission shall consider the following criteria:

*a.* Whether the service and operations resulting from the construction of the facility are consistent with the legislative intent as expressed in Iowa Code section 476.53 and the economic development policy of the state as expressed in Iowa Code Title I, Subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service. Such determination shall include whether the existing transmission network has the capability to reliably support the proposed additional generation interconnection to the network.

*b.* Whether the construction, maintenance, and operation of the proposed facility will be consistent with reasonable land use and environmental policies, and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives. Such determination shall include:

(1) Whether all adverse impacts attendant the construction, maintenance and operation of the facility have been reduced to a reasonably acceptable level;

(2) Whether the proposed site represents a reasonable choice among available alternatives;

(3) Whether the proposed facility complies with applicable city, county or airport zoning requirements and, if not, whether the location of the proposed facility at the proposed site is reasonably justified from an economic, technical, and social standpoint.

*c.* Whether the applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and the Act.

*d.* Whether the proposed facility meets the permit and licensing requirements of regulatory agencies.

*e.* Requirement for good engineering practice. The applicant shall use the applicable provisions in the publications listed below as standards of accepted good practice unless otherwise ordered by the commission:

(1) Iowa Electrical Safety Code, as defined in 199—Chapter 25.

(2) National Electrical Code, as defined in 199—Chapter 25.

(3) Power Piping-ANSI standard B31.1-2004.

**24.10(3) *Amendment.*** If the commission finds that the application and record in the proceeding does not support affirmative findings with regard to these criteria, the commission will, in its order, specify any deficiencies determined to exist. The applicant shall have 30 days from the notification of the deficiencies to amend or, for good cause, to request a reasonable extension of time to amend the application or to request reopening of the record to correct the deficiencies, or both.

**24.10(4) *Denial.*** In the event the applicant fails to amend in a timely fashion, or after amendment or reopening the record, or both, the commission is still unable to make an affirmative finding, the commission will deny the application. The applicant may request rehearing on such denial in accordance with Iowa Code sections 17A.16(2) and 476.12.

**24.10(5) *Application approval.*** If the commission finds, after amendment or record reopening, or both, or otherwise, that affirmative findings are appropriate, the commission shall approve the application and, in accordance with rule 199—24.12(476A), prepare a certificate for construction of the facility.

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

### **199—24.11(476A) Site preparation.**

**24.11(1)** In the event no certificate has been issued after 90 days from the commencement of the hearing, the commission may permit the applicant to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this rule shall have no probative value to the commission's decision concerning the actual issuance of a certificate.

**24.11(2)** In the event the commission denies an application for a certificate or an amendment to a certificate, applicants who have received permission to begin site preparation, pursuant to 24.11(1), shall restore the site, in accordance with the commission order denying the application.

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

### **199—24.12(476A) Issuance of a certificate.**

**24.12(1) *General.*** The certificate shall authorize construction, maintenance, and operation of the facility on the site designated in the certificate according to the following:

*a.* Those terms and conditions imposed by the commission and stated in the certificate.

*b.* Those terms and conditions in licenses and permits issued by regulatory agencies before and during the proceeding.

*c.* Those terms and conditions which have been specifically recommended by regulatory agencies in the proceeding and declared by those regulatory agencies or the commission as being necessary for the applicant to comply with requirements of licenses or permits then sought but not yet issued.

**24.12(2)** *Eminent domain.* The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the commission approves, prescribes, and finds necessary for the public convenience, use, and necessity, proceeding in the manner of works of internal improvement under Iowa Code chapter 6B.

**24.12(3)** *Certificate transfer.* A certificate may be transferred, subject to the approval of the commission, to a person who agrees to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument.

**24.12(4)** *Application withdrawal.* Pursuant to Iowa Code section 476.53, a rate-regulated utility shall have the option of withdrawing its application for issuance of a certificate.

[ARC 3751C, IAB 4/11/18, effective 5/16/18; Editorial change: IAC Supplement 7/24/24]

**199—24.13(476A) Exemptions from certification application; application for amendment for certificate: Contents.**

**24.13(1)** Application for amendment.

*a.* Each person or group of persons proposing a significant alteration to any facility which was constructed pursuant to a certificate issued by the commission shall file an application for an amendment to a certificate in lieu of an application for a certificate.

*b.* Each person or group of persons proposing a significant alteration to any facility which was not constructed pursuant to a certificate issued by the commission must file an application for such certificate unless:

(1) The facility has not attained full commercial rating and has not operated in excess of 80 percent of its maximum nameplate megawatt rating for ten hours daily for 45 consecutive days; and

(2) The significant alteration requires no more land than was required for the facility, is within the scope of publicly announced plans for the facility's construction, and entails no additional contracts for major components than those let for the facility.

**24.13(2)** All applications for amendment to a certificate shall be filed in accordance with rule 199—24.3(476A) and shall include:

*a.* A complete identification and discussion of the nature of the amendment proposed; and

*b.* A complete enumeration of the effects the amendment has on the accuracy of the information contained in the application for a certificate filed pursuant to rule 199—24.4(476A).

**24.13(3)** Upon commission acceptance of the application in accordance with 24.13(1), the commission shall establish a hearing schedule. At the commission's discretion, the informational meeting and prehearing conference for this proceeding may be waived. Notice shall be in accordance with 24.6(2).

**24.13(4)** In the consideration of an application for a certificate, pursuant to 24.13(1) "b," or amendment to a certificate, pursuant to 24.13(1) "a," there shall be a rebuttable presumption that the decision criteria of 24.10(2) are satisfied.

**24.13(5)** Amendment to a certificate. In determining whether an amendment to a certificate will be issued to the applicant, the commission will be guided by the criteria set forth in 24.10(2) to the extent applicable and appropriate.

This rule is intended to implement Iowa Code sections 17A.3, 474.5, 476.1, and 476.2.

[Editorial change: IAC Supplement 7/24/24]

**199—24.14(476A) Assessment of costs.** The applicant for a certificate, or an amendment to a certificate, shall pay all the costs and expenses incurred by the commission in reaching a decision on the application including the costs of examinations of the site, the hearing, publishing of notice, commission staff salaries, the cost of consultants employed by the commission, and other expenses reasonably attributable to the proceeding.

This rule is intended to implement Iowa Code chapter 476A and sections 17A.3, 474.5, 476.1, and 476.2.

[Editorial change: IAC Supplement 7/24/24]

**199—24.15(476A) Waiver.** The commission, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter. In determining whether the public interest would not be adversely affected, the commission will consider the following factors:

1. The purpose of the facility.
2. The type of facility.
3. If the facility is for the applicant's own needs.
4. The effect of the facility on existing transmission systems.
5. Any other relevant factors.

In addition to other service requirements, the applicant must serve a copy of the waiver request on all owners of record of real property that adjoins the proposed facility site. A request for a waiver shall also comply with rule 199—1.3(17A,474,476).

This rule is intended to implement Iowa Code sections 476A.1, 476A.2, 476A.4, 476A.6, 476A.7 and 476A.15.

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