

**STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD**

IN RE:)	
)	DOCKET NO. NOI-2015-0001
WIND AND RENEWABLE ENERGY)	
TAX CREDITS)	
)	RESPONSE TO BOARD ORDER
)	SOLICITING COMMENTS
)	
)	

The Environmental Law & Policy Center, Iowa Environmental Council, Iowa Solar Energy Trade Association (ISETA), and Winneshiek Energy District, collectively the “Joint Commenters,” jointly file these comments pursuant to the Iowa Utilities Board Order Soliciting Comments issued on August 21, 2015.

Description of the Parties

The Environmental Law & Policy Center (ELPC) is a non-profit corporation with an office in Des Moines, Iowa and members who reside in the State of Iowa. ELPC’s goals include promoting clean energy development and advocating for policies and practices that facilitate the use and development of clean energy such as solar and wind power.

The Iowa Environmental Council (IEC) is a broad-based environmental policy organization with over 70 diverse member organizations and a mission to create a safe, healthy environment and sustainable future for Iowa. IEC’s work focuses on clean water, clean air, conservation, and clean energy, including the promotion of policies that would facilitate the development of clean energy and clean energy jobs.

The Iowa Solar Energy Trade Association (ISETA) is a non-profit, professional organization for promoting solar photovoltaic and solar thermal industries in Iowa. ISETA promotes the interests of its members through education and public relations about the economic and environmental benefits of solar. ISETA advocates for policies that will facilitate and promote the development of solar photovoltaic and solar thermal energy in Iowa.

Winneshiek Energy District (WED) is a non-profit corporation organized under Iowa law. The purpose of this corporation is 1) to reduce the ecological and climate impacts of energy use within Winneshiek County, Iowa, 2) to promote economic health and sustainable development in Winneshiek County through reducing energy costs and promoting local energy sources and related economic activity, and 3) to work towards a more sustainable society in Winneshiek County and its communities. The Energy District has implemented highly successful energy efficiency programs to date reaching hundreds of households and businesses, intends to promote distributed renewable energy production going forward, and serves as a resource and model for other local efforts across Iowa.

Together, the Joint Commenters represent a coalition of the leading policy organizations and an industry association working on renewable energy policy in Iowa. We have worked on and supported legislation that established, expanded, and improved the 476B and 476C tax incentives at the Iowa legislature. We are well positioned to offer the Board input on improving the waiting list as well as other aspects of Iowa's renewable energy production tax incentive programs.

Introduction

The Joint Commenters greatly appreciate the Board's order opening this inquiry and soliciting comments. We share the Board's concern that proposed renewable energy facilities cannot receive tax credit eligibility because approved projects that are ahead in the waiting list are able to perpetually renew their place in line, even if the project does not have a reasonable potential of ever being built. Shortcomings with the waiting list mean that tax incentives are not being utilized, renewable energy projects are not being built, and the benefits of renewable energy – including job creation, cost savings, and environmental improvements – are not being realized. We anticipate that improvements in the waiting list and other aspects of the renewable energy tax incentive program will lead to much faster deployment of wind and solar projects, including those owned by utilities, farmers, and businesses.

Although the legislature has currently authorized eligibility for tax incentives of 363 megawatts (MW) of wind energy capacity in the 476C Wind program and 63 MW of renewable energy capacity in the 476C Other program, most of this renewable capacity has not been installed or become operational. As the Board noted in its order opening this inquiry, and consistent with a more recent posted waiting list on the Board's website (updated September 8, 2015), only 80.05 MW of wind capacity are operational out of the 363 MW of approved capacity, or just over 20% of approved capacity. In the 476C Other program, only 22.60 MW of renewable capacity are listed as operational, and as we discuss later, it is not clear if all of the this 22.60 MW is actually operational. The Board approved some 476C Wind projects in 2009 and some 476C Other projects in 2011 that are still not operational,. Meanwhile, many wind and other renewable projects on the respective waiting lists are much more likely to be constructed but cannot move forward without the tax credits, which cannot be approved given the limits on

overall capacity in each program, the use of ongoing extensions for operational deadlines, and the waiting lists.

There are a number of improvements that the Board could make to administration of the tax incentive programs to address these problems and enable much more of the authorized renewable capacity to be built quickly. We support the Board's interest in improving the process for granting 12-month extensions, and have responded to the specific inquiry questions in the August 21, 2015 order opening this inquiry. We also suggest additional improvements regarding a review of approved and operational projects, the application process, and the relationship of this NOI to the recently approved 10 MW reserved solar capacity for solar projects owned or contracted for by utilities.

Responses to Board Questions

1. Should the Board set conditions or milestone requirements upon which a 12-month extension of the operational deadline would be granted? Explain.

Yes. As discussed above, the automatic renewal of 12-month extensions for projects that may never be built is a key factor that keeps projects on the waiting list that are ready to move forward once approved for the tax credit. Appropriate milestones can help ensure that renewal for non-viable projects is not automatic, and the tax credit capacity can be awarded to projects that will be built.

In addition, the code implies that extensions should not be granted for facilities that are not making efforts to become operational. Iowa Code § 476C.3(3)(c) states that a facility that no longer is making efforts to become operational shall not be considered an eligible renewable energy facility. 476C.3(3)(c) relies on the owner of the facility to provide notification. It is

reasonable for the Board to verify that there are still ongoing efforts towards becoming operational before granting an extension.

2. Does the Board have the authority to adopt criteria for 12-month extensions without modifying its rules? Explain

We encourage the Board to include any such criteria in its rules rather than adopt criteria without modifying rules. This will help ensure that potential applicants and stakeholders are aware of the criteria and that there will be an opportunity for notice and comment on any proposed changes to the criteria in the future.

In Chapter 476C, there are separate statutory provisions for facilities to request the initial 12-month extension and subsequently to renew that 12-month extension. The statutory authority provides the Board with significant flexibility in determining the criteria for whether a 12-month extension will be renewed. The statute provides a more limited route for how the Board could develop criteria on the initial request for a 12-month extension.

As noted in the Gold Memo, several sections in Chapter 476C have language on the waiting list. Iowa Code § 476C.3(3)(b) states:

A facility which notifies the board prior to the expiration of the time periods specified in paragraph “a” that the facility intends to become operational and wishes to preserve its eligibility shall be granted a twelve-month extension. An extension may be renewed for succeeding twelve-month periods if the board is notified prior to the expiration of the extension of the continued intention to become operational during the succeeding period of extension.

The statute does not define intent, and the Board could develop criteria for how a facility demonstrates an intent to become operational. If a facility demonstrated an intent to become operational based on the Board’s criteria, the Board must grant the first twelve month extension based on the “shall be granted” language. The statute notes that an extension “may be renewed”,

and this provides the Board even greater discretion on whether to grant a renewal of the 12-month extension. For example, part of an intent to become operational could be the identification of barriers delaying installation and activities that are underway to overcome the barriers, as suggested by Question 3. A facility that identifies those barriers and the actions it is taking would demonstrate sufficient intent for the Board to grant the initial 12-month extension. For a renewal of the 12-month extension, the Board has additional discretion to require more than just identification of barriers and activities that are underway to address those barriers. The Board could require that those barriers be overcome within a year or that a compelling explanation be provided for why those barriers were not overcome in order to grant a renewal would be granted.

- 3. Comment on the following possible criteria to evaluate requests for a 12-month extension:**
 - a. Signed contracts to sell production**
 - b. Signed contracts to purchase equipment**
 - c. A copy of the interconnection agreement**
 - d. Estimated cost of the facility and actual expenses to date**
 - e. Identification of barriers that are delaying installation and activities that are underway to overcome the barriers**
 - f. Demonstration that a tax credit transfer agreement (if applicable) is in place.**
 - g. Any additional or different criteria you would suggest.**

We think the criteria (b), (c), (e), and (f) have merit and could be required to demonstrate an intent to become operational after a project has already been eligible for 30 months. The interconnection agreement may not need to be finalized, but only if there is a demonstration that an interconnection application is on file with the utility and there is an interconnection study currently pending. We think that if the facility plans to sell production and not utilize the energy behind the meter, there should be a demonstration that a contract negotiation is underway.

4. Should the Board limit the number of 12-month extensions for a facility? If so, how many extensions? How should the Board address those that have exceeded this number of extensions?

We would support a limit of two 12-month extensions for a total of 24 additional months beyond the initial 30 months, or a total of 54 months or 4.5 years. There should be requirements for any project that gets a renewal of an extension to demonstrate that progress towards operational status is still being made. It should not be sufficient to simply demonstrate the same set of criteria for the initial extension were met for the renewal. There are at least two areas where progress can be required. The initial barriers identified should be resolved through the activities described in the initial extension application. If the actions described to resolve barriers lead to a new barrier being identified that could potentially justify a further extension. Another example is negotiations for a contract to sell production. If negotiations are with the utility over the appropriate PURPA avoided cost rate, an additional extension could be granted if the facility has filed a complaint to officially resolve the purchase rate.

Assuming the Board adopts criteria to evaluate whether to renew a request for a 12-month extension, we support applying that criteria to all projects on the list that have exceeded two extensions and are still not operational. The Board can request needed information from these applicants. Projects that do not meet the criteria should be removed from the list, but could be allowed to reapply.

5. Board rule 199 IAC 15.19(6) provides that each applicant on the waiting list shall annually provide the Board a statement of verification attesting that the information contained in the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information. Should the rule be modified in such a way that it would only pertain to applicants on the waiting list who have not provided a periodic update during the previous 12 months?

We support the requirement for a consistent annual update from applicants on the waiting list. We prefer having a single date for the filing requirement in order to facilitate review of the updates if necessary. If an applicant has filed an update outside of this cycle, we do not believe the additional filing would be burdensome.

6. The Board's rules in 199 IAC 15.20 and 15.21 require that the tax credit applications are filed in paper format. Should the rules be modified to allow for electronic filing with the Board via e-mail, as an alternative to paper, which would allow the Board to forward information to the Iowa Department of Revenue via its secure filing system?

We strongly encourage the Board to require electronic filing of tax credit applications on the Board's EFS. It should be possible to create an automatic notification for the Iowa Department of Revenue for only tax credit application filings and to allow an additional filing of the same application information via e-mail to facilitate sharing the information with the Department. The filing on the EFS ensures transparency and the availability of tax credit application information to stakeholders and the general public.

As discussed below, we also encourage the Board to adopt and provide a standard application form for applicants to use to ensure more consistency in the format of applications as well as the information provided in applications.

7. Provide other suggestions for modification of chapter 15.19 rules.

We appreciate the opportunity to provide additional suggestions below. We note that some of our suggestions could be accomplished without a modification to the chapter 15.19 rules.

Additional Suggestions

A. The Board should use existing authority to conduct a review of approved and operational projects.

We are aware of at least one project on the 476C Other list that is listed as operational but may no longer be operational. If this project is not operational, it is taking up capacity on the 476C Other list that instead should be awarded to projects on the waiting list. As reported in the Cedar Rapids *Gazette* in 2013, BFC Electric's project ceased operations in 2013.¹ We do not have information on whether the project ever resumed operations or if it continued to collect the tax credit when it was not producing. If the project continued to collect a tax credit without producing energy, that should be identified and investigated.

The Board's rules state that the "board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits." 199 IAC 15.19(3). Using this authority, the Board should request additional information from the project owners for the 476C Other list regarding operational status and current and recent energy generation or production. Facilities that are no longer operational should lose their eligible status and be removed from the list. Such facilities could be allowed to reapply.

¹ <http://www.thegazette.com/2013/10/04/future-murky-at-waste-to-energy-plants-in-hopkinton-cedar-rapids>.

We are not aware of any facilities on the 476C Wind list that are listed as operational but no longer operating. We recognize that the Board's resources are limited in terms of requesting additional information from this much longer list of facilities. However, given that the period of eligibility is ten years, it would make sense for the Board to implement some type of periodic request for additional information from operational facilities such as annual energy production to ensure those facilities remain operational and are not claiming limited capacity that could be used by facilities on the waiting list.

B. The Board should adopt a standard application form.

We recognize that the Board's rules establish requirements for the information that must be included in an application for 476C tax credits. See 199 IAC 15.18(1). We suggest a standard form for two reasons.

First, applicants use a wide range of formats to file the required information, making it slow or difficult for stakeholders to know if required information is included or to understand the key components of the application. A standard form will improve clarity, transparency, and consistency for this renewable energy tax credit program.

Second, some required information could be clarified in a standard form. For example, the Board rules require the applicant to include total nameplate generating capacity. For solar PV, the rules are silent on whether this should be submitted as kW-AC or kW-DC capacity. Because this is a production tax incentive that provides credits based on actual generation, we support using kW-AC capacity as this is a better or more accurate indicator of actual generation. We appreciate that the Board uses kW-AC capacity when that capacity is listed by the applicant. A standard form should specify that applicants for solar PV should list the kW-AC capacity. In a

limited review of applications to the IUB for 476C Other tax incentives, many currently specify that the capacity is kW-AC, but some do not.²

We think the Board could propose a standard form based on existing rules, ask for comments in this NOI, and then finalize and begin using the standard form. The Iowa Department of Revenue has adopted a standard form for the upfront solar tax incentive based on its rules for that incentive. We would also support adopting a standard form as part of a rulemaking. The Board's interconnection rules include standard forms.

C. The Board should move forward with reviewing and approving the applications for the new 10 MW of reserved solar capacity in the 476C Other program before concluding this inquiry docket and any associated rulemaking proceedings.

We strongly supported the passage of House File 645 by the Iowa legislature earlier this year and welcomed Governor Branstad signing this bill into law in early July. HF 645 increased the capacity available in the 476C Other program from 53 MW to 63 MW and reserved 10 MW of capacity for solar facilities that are owned by eligible utilities or contracted for by eligible utilities. HF 645 also expanded the list of eligible utilities to include municipal utilities and rate-regulated utilities.

We appreciate that the Board has initiated a rulemaking in docket number RMU-2015-0001 to update the Board's rules to reflect the expanded list of eligible utilities. We also appreciate that Board staff is noting the applicants in the current waiting list that are expected to be eligible for the 10 MW reserved solar capacity (those are noted with a "****" in the Project Type column in recent updates to the waiting list). We hope that once the RMU-2015-0001

² For example, the following applications do not specify whether stated capacity for solar PV is AC or DC: City of Bloomfield filed on June 25, 2015; Muscatine Power & Water filed on July 9, 2015; Harlan Municipal Utilities filed on July 21, 2015

rulemaking is completed, the Board can expeditiously review and approve applications for the 10 MW of reserved solar capacity. Applications for the 10 MW of reserved capacity have already slightly exceeded the 10 MW capacity limit, and did so within six weeks of Governor Branstad signing the bill into law. We believe applicants for this capacity are actively pursuing project development and are interested in receiving approval as quickly as possible in order to move forward. These applications should be reviewed and approved, as appropriate, without waiting for resolution of the waiting list or other questions raised in this NOI.

Finally, we encourage the Board to allow some flexibility in the application and waiting list process for the reserved solar capacity. House File 645 included language stating that the utility has the option of owning the solar capacity or contracting for it. Applicants should have the flexibility to secure credits that would ultimately be claimed by either the utility or a third party under contract with the utility as long as there is no double counting and the project meets appropriate time frames and milestones. For example, a utility applicant should be able to identify in the application that the project owner will either be the utility or the solar developer (e.g., a small business or LLC as listed in the ownership requirements in the Board rules and the statute), pending bid award for the project. Once the ownership is finalized, the owner should be able to claim the tax credits from that application, whether it is the utility or the solar developer.

Conclusion

We appreciate the Board's interest in improving the 476C tax credit programs in ways that will result in more renewable energy projects being built. We look forward to next steps in the process.

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Respectfully submitted,

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