

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

IN RE:)	
)	DOCKET NO. NOI-2015-0001
WIND AND RENEWABLE ENERGY)	
TAX CREDITS)	
)	ADDITIONAL COMMENTS
)	

The Environmental Law & Policy Center, the Iowa Environmental Council, the Iowa Solar Energy Trade Association, and the Winneshiek Energy District, collectively the “Joint Commenters,” submit these Additional Comments pursuant to the Iowa Utilities Board’s Order Soliciting Additional Comments on November 3, 2015. The Joint Commenters answer the questions posed by the Board as follows:

- 1. In determining whether the ownership limits in Chapter 476C are met, does the statute allow or require the Board to consider not only the legal entity that owns the utility (if not a natural person) but also the equity owners of the legal entity? Explain your legal analysis in reaching your conclusion.**

Iowa Code § 476C.3 addresses eligibility determinations by the Board. Iowa Code 476C.3(1)(a) requires the application include: “[i]nformation regarding the ownership of the facility including the percentage of equity interest held by each owner”; and subsection (f) requires the application include: “[a]ny other information the board may require.” Iowa Code 476C.3(7) includes ownership and equity interest requirements and states that “[a]n owner . . . shall not be an owner of more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than fifty-one percent in an eligible renewable energy facility shall not have an equity interest greater than ten percent in any other eligible renewable energy facility.” The statute allows, but does not require, the Board to consider the equity owners of a

legal entity that owns an eligible renewable energy facility. Iowa Code § 476C.1(6)(b) defines the persons that can own a renewable energy facility. The statute does not impose nor preclude a specific requirement that the Board consider equity interests of an entity considered an owner of a renewable energy facility.

If the Board decides to look at the equity interests of legal entities, we think the Board should consider the intent of the legislature to create options for smaller scale renewable development. Smaller scale development might only be viable as a group of investors with multiple facilities.

- 2. If the equity owners of a chapter 476C facility are not natural persons but another legal entity, does the statute allow or require the Board to drill down through the various legal entities to determine whether the Chapter 476C ownership limits are violated? Explain your legal analysis in reaching your conclusion.**

Iowa Code § 476C.1(6)(b) and 476C.3(7) read together do not impose nor preclude a specific requirement that the Board drill down through various legal entities to determine whether ownership limits are violated. If the Board decides to look at the equity interests of legal entities, we think the Board should consider the intent of the legislature to create options for smaller scale renewable development. Smaller scale development might only be viable as a group of investors with multiple facilities.

- 3. If the Board determines it has the obligation or authority to consider equity owners of the legal entity, what kind of documentation should be required as part of the filing requirements for certification of eligibility in 199 IAC 15.19 to establish who the equity owners are? For example, do you believe an attestation from the equity owners would be sufficient to establish that the ownership limits are satisfied?**

The Board's current rules require a statement attesting to ownership and equity interest requirements in the filing requirements for an application for 476C credits. *See* 199 Iowa Admin.

Code 15.19(1)(c) – (e). We think that standardization of the application process could help make attestation more clear and ensure that every applicant sufficiently addresses ownership and equity interests in the initial application. We think that the attestation requirement should be followed. We are not aware of any instances where attestation was not accurate or not sufficiently included, but we have never conducted any investigation into the matter.

- 4. Concerns have been expressed about entities that apply for eligibility but do not appear to be moving forward with their projects. Does the statute allow the Board to require evidence of the applicant's capability to complete the project and to use this evidence in the Board's initial determination of eligibility? Explain your legal analysis. If your answer is yes, what should the additional filing requirements be? Also, comment on whether the following should be made part of those requirements:**
 - a. Financial statements or other documentation to establish the owner's financial capability to complete the project.**
 - b. A timeline for completion of the project.**
 - c. Information regarding the contractors or others working on the project to establish the owner's operational capability to complete the project.**
 - d. Information on project steps taken prior to filing the eligibility application.**

The Board has authority to adopt rules to administer and enforce Chapter 476C. Iowa Code § 476C.7. The Board has authority to require evidence of the applicant's capability to complete the project and to use that in its initial determination. Iowa Code § 476C.3(1) states “[a] producer or purchaser of renewable energy may apply to the board for a written determination regarding whether a facility is an eligible renewable energy facility by submitting to the board written application containing all of the following” including 476.3(1)(f), which states “[a]ny other information the board may require.” This code section gives the Board

significant discretion to require information from applicants including information about their ability to complete projects.

We support including the timeline in the Board's Question 4(b) above and information on steps taken prior to filing in the Board's Question 4(d) above. This information would be useful in reviewing initial eligibility and for establishing review of milestones subsequent to a determination of eligibility. The Board could require the applicant to identify milestones in the timeline, such as projected dates to sign contracts to purchase equipment, to sign an interconnection agreement, and to sign a tax credit transfer agreement (if applicable). This initial information would provide a useful comparison point for similar information evaluated with extension applications and used to determine whether a facility has an intent to become operational.

Financial demonstrations in the Board's Question 4(a) above are potentially premature in the initial application stage, since many developers will want to get tax credit approval to help them secure financing. Similarly, a demonstration of contractors in the Board's Question 4(c) above is potentially premature in the initial application stage.

- 5. Should the determination of initial eligibility be conditioned upon the applicant demonstrating a minimum level of progress prior to the application? If yes, what minimum level of progress should be required? Note that the minimum level of progress should relate to any additional filing requirements you identified in response to the prior question.**

Please see our answer to Question #4.

- 6. Does Chapter 476C allow a completed project to obtain eligibility after it is operational, or does the statute prohibit what could be termed "free riders"?**

Chapter 476C provides the Board with discretion in determining the application requirements for eligibility. Iowa Code 476C.3(1)(f). The statute does not explicitly prohibit or

allow projects that are already in operation from applying to be an eligible renewable energy facility, therefore the Board could use its discretion under 476C.3(1)(f) to include such a requirement. If a project has filed its application with the Board and has been placed on the waiting list and then becomes operational, it should be eligible to receive 476C tax credits. Investors may reasonably expect a project to receive the credits in the future based on waiting list status as part of their decision to invest and get the project operational before the project is determined to be eligible. There may be other factors that push a project on the waiting list to become operational as well, such as energy or capacity needs of a utility or contract requirements. Eligibility should not be revoked later. However, if a project has never been on the waiting list, becomes operational, and then applies for eligibility, it is appropriate to consider this project a free rider and deny eligibility so long as the Board clarifies in the rules that such projects will not be eligible.

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Respectfully submitted,

/s/ Joshua T. Mandelbaum
Joshua T. Mandelbaum (AT0010151)
Environmental Law & Policy Center
505 5th Avenue, Suite 333
Des Moines, Iowa 50309
P: (515) 244-0253
jmandelbaum@elpc.org

/s/ Tim Dwight
Tim Dwight, President
Barry Shear, Treasurer
Iowa Solar Energy Trade Association
900 Jackson Street, Suite 108
Dubuque, IA 52001
Phone: 415-884-5555
tim.dwight@ipowercorp.com

/s/ Nathaniel Baer
Nathaniel Baer
Iowa Environmental Council
521 East Locust, Suite 220
Des Moines, Iowa 50309
P: (515) 244-1194 x206
baer@iaenvironment.org

/s/ Andrew Johnson
Andrew Johnson
Winneshiek Energy District
P.O. Box 14
Decorah, Iowa 52101
P: (563) 382-4207 x1#
andy@energydistrict.org