

IOWA UTILITIES BOARD
Policy Development Section

Docket No.: RMU-2009-0010

Due Date: June 30, 2010

Memo Date: May 27, 2010

TO: The Board

FROM: John Pearce

SUBJECT: Small Wind Innovation Zones – Proposed Adoption of Final Rules

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I. BACKGROUND

In 2009, the General Assembly enacted HF 810 (i.e., Iowa Code § 476.48 – see **APPENDIX A**), which directs the Board to establish and administer a small wind innovation zone program. The main purpose of the program is “to facilitate and expedite interconnection of small wind energy systems with electric utilities,” within areas designated as “small wind innovation zones.”

To be designated as a “small wind innovation zone,” an area must be:

[A] political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the **model ordinance**.... (Iowa Code § 476.48(1)(c), emphasis added).

In March 2010, the **model ordinance** was completed by the Iowa League of Cities, the Iowa State Association of Counties, the Iowa Environmental Council, the Iowa Wind Energy Association, and representatives from the utility industry; and is posted on the Web sites of the Iowa League of Cities¹ and the Iowa State Association of Counties² (see **APPENDIX B**). Iowa Code § 476.48(3) states that a local government adopting the ordinance “shall establish an expedited approval process with regard to small wind energy systems in compliance with the ordinance.”

In addition to adopting the model ordinance, an area seeking to be designated as a small wind innovation zone must also be served by an electric utility that

[H]as agreed to utilize the **model interconnection agreement** to contract with the small wind energy system owners who agree to its terms. (Iowa Code § 476.48(2)(b), emphasis added)

The **model interconnection agreement** was developed in a separate rulemaking docket (Docket No. RMU-2009-0008 “Electric interconnection of distributed generation facilities”). The rules in Docket No. RMU-2009-0008 are

¹<http://www.iowaleague.org/downloads/resources/QandA/2010/SmallWindInnovationZoneModelOrdinance-FinalCommitteeVersionasof3-04-10.doc>

²<http://www.iowacounties.org/News/Misc%20Recent/2010/Small%20Wind%20Innovation%20Zone%20Model%20Ordinance%20-%20Final%20Committee%20Version%20as%20of%203-04-10.doc>

mandatory for rate-regulated electric utilities and voluntary for non-rate-regulated electric utilities.

The **proposed rules** in this docket include: 1) new rule 199 IAC 15.22 “Small wind innovation zones”; and 2) changes to 199 IAC 15.19 “Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C” (see **APPENDIX C**).

The definitions in proposed subrule **199 IAC 15.22(1)** are mostly based on the definitions and descriptions in Iowa Code § 476.48. The definition of “model interconnection agreement” is explicitly tied to the standard interconnection agreements separately developed in Docket No. RMU-2009-0008.

Proposed subrule **199 IAC 15.22(2)** describes the form and content of the application filing requirements for the Board’s designation of small wind innovation zones under Iowa Code § 476.48(2)(b).

In addition to requiring development of the model interconnection agreement (again, separately developed in Docket No. RMU-2009-0008), Iowa Code § 476.48(4) also requires the Board to develop a procedure for modifying the model interconnection agreement, based on changes mutually agreeable to the utility and interconnecting generator. This procedure and associated filing requirements are described in proposed subrule **199 IAC 15.22(3)**.

Iowa Code § 476.48(6) requires the Board to file a report with the General Assembly before January 1 each year, providing annual information about the small wind innovation zones created, and about the energy produced by small wind energy systems in each zone. Proposed subrule **199 IAC 15.22(4)** requires utilities (including non-rate-regulated utilities) that serve small wind innovation zones to annually report on active small wind energy systems in each zone for the previous calendar year. The first utility reports, due April 1, 2011, would be for calendar 2010; and IUB staff would include the information in its third report to the General Assembly, due before the end of 2011. The first report, presented to the General Assembly at the end of 2009, described the progress of the model ordinance being developed by the Iowa League of Cities, et al, and progress of the relevant IUB rule making dockets (i.e., RMU-2009-0008 and RMU-2009-0010).

Iowa Code § 476.48(5) states:

The owner of a small wind energy system operating within a small wind innovation zone shall qualify for the renewable energy tax credit pursuant to chapter 476C.

In effect, this seems to create a new ownership category for 476C eligibility, separate from the current ownership requirements of Iowa Code § 476C.1(6)(b).

Although separate, the new ownership category in Iowa Code § 476.48(5) seems neither superior nor subordinate to the ownership requirements of Iowa Code § 476C.1(6)(b), which means it would not affect the queue order of eligible applicants or applicants in the waiting list, nor be subject to the ownership restriction specifically attached to Iowa Code § 476C.1(6)(b).³ The proposed amendments to paragraphs **199 IAC 15.19(1)“b,” 199 IAC 15.19(1)“d,” and 199 IAC 15.19(1)“e,”** would clarify these points.

Initial written comments were filed on December 22, 2009, by Interstate Power and Light Company (IPL); MidAmerican Energy Company (MidAmerican); the Iowa Association of Electric Cooperatives (IAEC); and the Office of Consumer Advocate (Consumer Advocate). An oral comment hearing was conducted on January 11, 2010. Additional written comments were filed on February 11 and February 12, 2010 by IPL, MidAmerican, and IAEC. No further comments have been filed.

II. ANALYSIS OF ISSUES

A. Definitions – 15.22(1)

IAEC Position

IAEC Comments, pp. 2-4

IAEC notes there is nothing in Iowa Code § 476.48 or the proposed rules that requires electric utilities to adopt the model interconnection agreement. IAEC further notes that the definition of “model interconnection agreement” in the proposed rules refers to the applicable standard interconnection agreements currently under development in Docket No. RMU-2009-0008;⁴ and that the “model ordinance” is still under development. IAEC recommends postponing further action on the proposed rules until the “model ordinance” and the RMU-2009-0008 rules are completed.

Consumer Advocate Position

Consumer Advocate supports the proposed rules.

³ That is, the restriction that limits ownership to no more than two eligible facilities.

⁴ Staff Note: IAEC incorporates its comments in RMU-2009-0008 by reference, which include the position that the standard interconnection agreements under 199 IAC 45 should not apply to non-rate-regulated utilities.

Staff Analysis

The proposed definition of “model interconnection agreement” incorporates, by reference, “the applicable standard interconnection agreement under 199 IAC 45” adopted by the Board in Docket No. RMU-2009-0008; and the proposed definition of “model ordinance” incorporates, by reference, the model ordinance developed by the Iowa League of Cities, et al.

Regarding IAEC’s comments, the proposed definition of “model interconnection agreement” includes an unnecessarily detailed reference to:

[T]he standard interconnection agreement for review Level 1 under 199 IAC 45.14 and the standard interconnection agreement for review Levels 2 to 4 under 199 IAC 45.17.

The review levels and their criteria were issues in Docket No. RMU-2009-0008 and may be subject to changes in future rulemakings. Thus, future complications can be avoided by simplifying the definition of “model interconnection agreement” as follows:

“Model interconnection agreement” means the applicable standard interconnection agreement under 199 IAC 45, ~~including the standard interconnection agreement for review Level 1 under 199 IAC 45.14 and the standard interconnection agreement for review Levels 2 to 4 under 199 IAC 45.17.~~

The model ordinance was adopted in March 2010 (see **APPENDIX B**), and the Board adopted final rules in Docket No. RMU-2009-0008 on May 26, 2010. There seems no reason to postpone adoption of final rules in this docket.

Staff Recommendation: Amend the proposed definition of “Model interconnection agreement,” as indicated above.

B. Application for Small Wind Innovation Zone Designation – 15.22(2)

IPL Position

IPL Comments, pp. 2-3

15.22(2)“a”. To better enable utilities and the general public to identify which customers will fall within designated small wind innovation zones, IPL suggests that applicants be required to include legal boundary descriptions in their descriptions of the political subdivisions seeking designation as small wind innovation zones.

15.22(2)“f”. IPL suggests that applicants should be required to notify the electric utilities that serve them when they file their applications. Alternatively, the Board could notify affected electric utilities when small wind innovation zones are designated.

MidAmerican Position

MidAmerican Comments, p. 2

15.22(2)“g”. The proposed paragraph requires applicants to include documentation from electric utilities serving the political subdivision that they are either: a) rate-regulated utilities subject to the provisions of 199 IAC 45, or b) non-rate-regulated utilities that agree to the provisions of 199 IAC 45. MidAmerican suggests it is not necessary for rate-regulated utilities to provide applicants this documentation, since rate-regulated utilities will be subject to the provisions of 199 IAC 45 in all cases.

IAEC Position

IAEC Comments, pp. 4-6

15.22(2)“c”. IAEC suggests that it might not always be clear whether the applicable local governments have adopted the model ordinance. For example, a political subdivision that is a school district might be within the boundaries of more than one local government (i.e., the school district might have buildings in more than one town or county). Unless all the applicable local governments adopt the model ordinance, it is not clear from paragraph 15.22(2)“c” whether the school district would be approved as a small wind innovation zone; nor is it clear how the Board would even know whether more than one local government is involved.

The approval criteria also allow for local governments that are “in the process of amending an existing zoning ordinance to comply with the model ordinance.” However, IAEC suggests it is not clear what happens if the proposed amendment is substantially changed or never adopted.

15.22(2)“f”. IAEC notes that this paragraph requires applicants to identify the “electric utilities that serve the political subdivision,” and suggests a better wording would be “electric utilities that serve-provide electric service within the political subdivision.” Otherwise, the current wording could lead to narrow interpretations such as identifying only those utilities that serve city or county-owned facilities rather than the city or county as a whole.

15.22(2)“g”. IAEC notes that use of the word “and” in the following phrase is unnecessary and should be deleted as shown: “Documentation from the electric utilities serving the political subdivision ~~and~~ confirming that they are either....”

IAEC also notes that this paragraph seems to condition approval of a political subdivision's application based on ALL utilities in the political subdivision using the standard procedures and agreements of 199 IAC 45. IAEC suggests this interpretation is too restrictive, pointing out the statute seems to provide for approval based on only ONE of the utilities using the standard procedures and agreements of 199 IAC 45.⁵

Consumer Advocate Position

Consumer Advocate supports the proposed rules.

Staff Analysis and Recommendation:

15.22(2)"a". IAEC suggests political subdivisions should be required to provide legal boundary descriptions when they seek small wind innovation zone status. This proposed change seems reasonable, as follows:

- a. The name, location, description, and legal boundary description of the political subdivision seeking designation as a small wind innovation zone;

15.22(2)"c". IAEC notes the possibility that a political subdivision might span the boundaries of more than one local government, and states it is not clear from the proposed rules whether the designation of small wind innovation zones would require adoption of the model ordinance by ALL applicable local governments, or only one of them. IAEC also states it is not clear how the Board would be made aware of the existence of more than one applicable local government.

Iowa Code § 476.48(1)(c) defines a "small wind innovation zone" as a political subdivision that either adopts, or is "***encompassed within a local government***" that adopts, the model ordinance. Also, in describing the approval criteria for designating small wind innovation zones, Iowa Code § 476.48(2)(b) refers to adoption of the model ordinance by "***the applicable local government***." Thus, for a political subdivision that spans more than one local government, the statutory language seems to suggest that the model ordinance must be in place for all applicable local governments.

Thus, paragraphs 15.22(2)"c" through "e" should be revised to clarify the requirements for political subdivisions that are not local governments (including a

⁵ Staff Note: Iowa Code § 476.48(2)(b) states, in part:

The division shall approve an application which documents that...***an*** electric utility operating within the political subdivision has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms. (Emphasis added).

requirement to identify all applicable local governments), and to distinguish them from the requirements that apply to local governments, as follows:

- c. If the political subdivision is other than a local government;
 - (1) Identification of the local government (or governments) that encompass the political subdivision;
 - (2) Confirmation that all identified local governments have that has either adopted or are about to adopt the model ordinance, including copies of model ordinances adopted by the local governments, or copies of pending amendments to existing zoning ordinances intended to comply with the model ordinance or is in the process of amending an existing zoning ordinance to comply with the model ordinance, and the relationship of the political subdivision to the local government; and
 - (3) Dates the model ordinances were adopted, or anticipated dates of adoption of pending amendments to existing zoning ordinances intended to comply with the model ordinance;
- d. If the political subdivision is a local government:
 - (1) A copy of the model ordinance adopted by the local government, or copy of a pending amendment to an existing zoning ordinance intended to comply with the model ordinance; and
 - (2) e- Date the model ordinance was adopted, or anticipated date of adoption of the pending amendment to an existing zoning ordinance intended to comply with the model ordinance;

Regarding local governments that were “in the process of amending an existing zoning ordinance to comply with the model ordinance,” but later substantially modified or failed to adopt the model ordinance, the proposed rules reflect the statutory language on this point verbatim, without qualification. Iowa Code § 476.48(2)(b) states in relevant part:

The division shall approve an application which documents that the applicable local government has adopted the model ordinance ***or is in the process of amending an existing zoning ordinance to comply with the model ordinance*** and that an electric utility operating within the political subdivision has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms. (Emphasis added).

Apparently, a demonstration of intent at the time of the application is sufficient for designating a political subdivision as a small wind innovation zone; and the statute makes no provision for later revoking the status of a small wind innovation zone.

15.22(2)“f” and “g”. IPL suggests that political subdivisions should notify their electric utilities when they file applications; or alternatively, the Board should notify the utilities when it designates small wind innovation zones. Presumably, utilities would receive notification in the form of Board orders when the Board designates political subdivisions as small wind innovation zones. Also, the utilities would receive notification in the form of political subdivisions contacting them for the documentation required under proposed paragraph 15.22(2)“g,” regarding utility adherence (voluntary or otherwise) to the provisions of 199 IAC 45. To ensure broader coverage with this form of notification, staff recommends expanding it to include all utilities that serve the political subdivision, including those that do not adhere to the provisions of 199 IAC 45. MidAmerican objects to having rate-regulated utilities provide this sort of documentation, but it would require nothing more than a form letter of acknowledgement from the utility. Utilities should be required to provide this documentation whenever political subdivisions request it.

IAEC’s wording changes for proposed paragraphs 15.22(2)“f” and “g” seem reasonable. Also, IAEC points out a valid concern about the potential conflict between the statute and proposed paragraph 15.22(2)“g,” regarding whether designation as a small wind innovation zone should depend on all or only one of the utilities in the political subdivision adhering to 199 IAC 45. This is similar to IAEC’s earlier point about the possibility of more than one applicable local government. However, in this case, the statute seems to suggest that if only one of the utilities serving the political subdivision adheres to 199 IAC 45, then this should be sufficient for designation as a small wind innovation zone. Iowa Code § 476.48(2)(b) states, in part:

The division shall approve an application which documents that...***an*** electric utility operating within the political subdivision has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms. (Emphasis added).

This determination could be made by comparing the electric utilities identified in proposed paragraph 15.22(2)“f” with the documentation required in proposed paragraph 15.22(2)“g.”

Thus, paragraphs 15.22(2)“f” and “g” (re-numbered as paragraphs 15.22(2)“e” and “f”) should be revised as follows:

- e. f– Identification of the electric utilities that ~~serve~~ provide service within the political subdivision; and
- f. g– Documentation from each ~~the~~ electric utility ~~utilities~~ serving that provides service within the political subdivision, that the utility is confirming that they are either:

(1) A utility ~~Rate-regulated utilities~~ subject to the provisions of 199 IAC 45; ~~or~~

(2) A utility ~~Non-Rate-Regulated utilities~~ not subject to the provisions of 199 IAC 45, but which nonetheless agrees to use ~~utilize~~ the standard forms, procedures, and standard interconnection agreements of 199 IAC 45 for small wind energy systems in its service territory within the political subdivision, ~~to contract with small wind energy system owners who agree to their terms; or~~

(3) A utility that is not subject to the provisions of 199 IAC 45 and does not adopt them.

Also, under new paragraph 15.22(2)“g,” utilities should be required to provide political subdivisions the documentation required in revised paragraph 15.22(2)“f” whenever political subdivisions request it, as follows:

g. Electric utilities shall provide political subdivisions the documentation required in paragraph 15.22(2)“f.”

C. Modification of Model Interconnection Agreements in Small Wind Innovation Zones – 15.22(3)

MidAmerican Position

MidAmerican Comments, p. 2

MidAmerican suggests the proposed process for modifying the model interconnection agreement will apply only to non-rate-regulated utilities, since rate regulated utilities will be required to use the standard interconnection agreements in 199 IAC 45 subject only to the standard rule waiver provisions of rule 199 IAC 1.3.

IAEC Position

IAEC Comments, pp. 6-7

IAEC believes the modifications of the model interconnection agreement allowed for in the subrule might carry over and alter the standard interconnection agreements in 199 IAC 45, and suggests the subrule should be clarified in this regard.

Consumer Advocate Position

Consumer Advocate supports the proposed rules.

Staff Analysis and Recommendation: Staff believes the concern identified by IAEC can be resolved by making the following changes to subrule 15.22(3):

15.22(3) Motion for modification of a model interconnection agreement in a small wind innovation zone. An electric utility that uses the standard interconnection agreements of 199 IAC 45 and the owner of a small wind energy system in a small wind innovation zone may jointly seek to modify ~~a~~ their version of the model interconnection agreement by jointly filing a motion for Board approval. The motion must include the following information:

- a. The name, location, and description of the political subdivision designated as a small wind innovation zone;
- b. The interconnecting electric utility;
- c. Information regarding the owner of the small wind energy system, including legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address; ~~-~~
- d. Description of the small wind energy system, including location and nameplate generating capacity;
- e. A copy of the modified ~~model~~ interconnection agreement, clearly identifying the proposed modifications;
- f. A description of the reasons and circumstances that require the modifications; and
- g. Signed statements from the electric utility and the owner of the small wind energy system attesting that the proposed modifications to the ~~model~~ interconnection agreement are mutually agreeable.

Also, it should be clarified in the order adopting final rules that any rule waiver requests for this purpose under rule 199 IAC 1.3 (as suggested by MidAmerican) should include the same information listed in subrule 15.22(3).

D. Utility Annual Reporting Requirements – 199 IAC 15.22(4)

The proposed reporting requirements would require utilities to annually report the kW capacity and annual kWh production of each interconnected small wind energy system, for each small wind innovation zone served by the utility.

IPL Position

IPL Comments, pp. 1-2, 3-4

IPL suggests a problem with the reporting requirement is that the utility will have no way of knowing the total kWh production of small wind energy systems that engage in net metering. The utility will know the metered kWh sent out to the

utility, but not the kWh produced for self-use. If total kWh production is metered, it is metered by the customer, not the utility.

IPL encourages the Board to establish format standards for the annual report.

IPL also suggests that it will have no way of knowing when new small wind systems in small wind innovation zones apply for interconnection, and suggests modification of the proposed interconnection rules in 199 IAC 45 to require small wind systems applying for interconnection to identify whether their facilities will be in small wind innovation zones.

MidAmerican Position

MidAmerican Comments, p. 3

MidAmerican suggests a problem with the reporting requirement is that the utility will have no way of knowing the total kWh production of small wind energy systems that engage in net metering. The utility will know the metered kWh sent out to the utility, but not the kWh produced for self-use.

Also, MidAmerican believes the information would be a duplication of information provided in other reports.⁶ MidAmerican suggests amending the requirements of 199 IAC 15.11(3) to include identification of which facilities are located in small wind innovation zones.

IAEC Position

IAEC Comments, pp. 7-8

IAEC notes that the proposed subrule would require electric utilities to report the annual kWh produced by each interconnected small wind facility, for each small wind innovation zone served by the utility. A utility will have metering information for kWh delivered to the utility, but not for the facility's total kWh production, which includes kWh produced for the facility's own use. Any reporting by the utility should be limited only to kWh delivered to (and metered by) the utility.

IAEC also notes that the proposed subrule requires all utilities to file their initial annual reports by April 1, 2010, for calendar 2009. However, since no small wind innovation zones were designated in 2009, there will be nothing for the utilities to report in 2010. The first utility reports should not be required until April 1, 2011.

⁶ MidAmerican specifically points to: a) the filing of new AEP contracts under 199 IAC 15.3, b) the annual reporting of AEP nameplate capacity and kWh production under 199 IAC 15.11(3), and c) the annual reporting of interconnection requests under proposed 199 IAC 45.13.

Consumer Advocate Position

Consumer Advocate supports the proposed rules.

Staff Analysis

Utility commenters raise a valid point about the limitations of what is available from utility-metered data. IPL, MidAmerican, and IAEC all state that the utility will have information on metered kWh received from small wind facilities, but not necessarily on what the facility owners produce for self use. This issue was the main topic of discussion at the Oral Comment Hearing. (Tr. 6-20). The discussion seemed to suggest that, without consistent availability of metering that specifically measures what small wind facilities produce (i.e., before energy related to customer self-use is subtracted), the metered information available from utilities would be partial at best. This limitation potentially conflicts with the statute (Iowa Code § 476.48(6)), which requires a reporting of “the amount of wind energy produced.” On February 11 and 12, 2010, IPL, MidAmerican, and IAEC filed additional information on the potential cost of additional metering for measuring a facility’s total energy production. The estimates ranged from about \$100 to more than \$500, depending on a number of variables, including whether the customer or utility would be responsible for providing the metering data. Staff believes that requiring small wind customers to meter and provide this information, either directly to the Board or indirectly through the utilities, would end up being unenforceable, thus producing an unreliable result; and would likely be regarded as a time and cost burden by those small wind customers that comply.⁷

In its additional information filed February 11, 2010, IAEC suggested an alternative approach, in which the Board could estimate the total kWh production of the small wind facilities based on their kW nameplate capacities and assumptions about their average wind speeds. Staff believes this is the most reasonable approach for meeting the Board’s statutory obligations to: 1) report “the amount of wind energy produced” by small wind facilities in small wind innovation zones (Iowa Code § 476.48(6)); and 2) “facilitate and expedite interconnection of small wind energy systems with electric utilities” (Iowa Code § 476.48(2)(a)). In addition to knowing the facility’s kW nameplate capacity, it would also be necessary to know whether the facility had been actively producing electricity during the previous year.

⁷ At the Oral Comment Hearing, a small wind vendor reported they sell facilities equipped with metering that measures total energy production and automatically uploads it to an internet Web site. (Tr. 15). However, there is no way of knowing how many of the small wind generators installed in small wind innovation zones would be facilities of this type.

Staff also believes it is reasonable to modify the proposed subrule to provide a detailed format for the utility's annual reporting requirement, as suggested by IPL. Staff suggests the following reporting format:

<u>Small Wind Innovation Zone</u>	<u>Customer Name</u>	<u>Nameplate kW Capacity</u>
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IPL suggests that it will have no way of knowing what small wind systems are located in the small wind innovation zones in its service territory. This suggestion does not seem valid, especially if utilities know the legal boundary definitions of the small wind innovation zones in their service territories. IAEC is seeking inclusion of this information in the applications for small wind innovation zone designation, in paragraph 15.22(2)"a" above, and staff supports this change. With the availability of this information, it seems more likely that utilities will be in a better position than their customers to know what facilities are located within small wind innovation zones. In addition, nothing prohibits the utility from seeking this information orally from its interconnection customers.

MidAmerican suggests the reporting requirement would be a duplication of information provided in other reports. Staff disagrees. None of the reports currently filed by utilities could be used to specifically identify the small wind energy systems that are located in small wind innovation zones. If a utility is concerned about filing multiple reports, it could augment an existing report (such as the report required under subrule 199 IAC 15.11(3)) to include the additional information required under proposed subrule 15.22(4).

IAEC makes a valid point that since no small wind innovation zones were designated in 2009, there will be nothing for utilities to report in 2010. Therefore, the first utility reports should be required no sooner than April 1, 2011.

Staff Recommendation: Amend proposed subrule 15.22(4), as follows:

15.22(4) Annual reporting requirement. A current listing of small wind innovation zones shall be maintained on the Board's Web site at www.state.is.us/iub. Beginning April 1, ~~2010~~ 2011, each electric utility that has one or more small wind innovation zones in its service territory shall file an annual report for the previous calendar year, listing the nameplate kW capacity and annual kWh production of each interconnected small wind energy system that was interconnected (or previously interconnected) with the utility and produced electricity, for in each of the small wind innovation zones served by the electric utility. The information shall be provided in the following format:

<u>Small Wind Innovation Zone</u>	<u>Customer Name</u>	<u>Nameplate kW Capacity</u>
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E. Amendments to Iowa Code 476C Eligibility Requirements – 199 IAC 15.19

IAEC Position

IAEC Comments, p. 2

IAEC notes the Board's interpretation that Iowa Code § 476.48 creates a new category of eligibility under Iowa Code chapter 476C. However, IAEC is uncertain about how this new eligibility category interacts with the other eligibility requirements of Iowa Code chapter 476C. For example, do the same capacity size limits apply; and do the same time limits for reaching operational status apply?

Consumer Advocate Position

Consumer Advocate supports the proposed rules.

Staff Analysis

In its Order Commencing Rule Making issued November 10, 2009, the Board stated that it regarded the new ownership category for Iowa Code 476C tax credit eligibility described in Iowa Code § 476.48(5) (i.e., "[t]he owner of a small wind energy system operating within a small wind innovation zone"), as being neither superior nor subordinate to the ownership requirements of Iowa Code § 476C.1(6)(b). This means that, aside from the restriction specifically attached to the ownership requirements of Iowa Code § 476C.1(6)(b),⁸ all other eligibility limitations would also apply to the owners of small wind energy systems in small wind innovation zones. Specifically responding to IAEC, small wind energy systems in small wind innovation zones would have the same time limits for reaching operational status. However, the size limits under Iowa Code 476C would have no practical application, since the capacities of small wind energy systems in small wind innovation zones are 100 kW or less by definition, and the maximum facility size under Iowa Code 476C is 2.5 MW per eligible owner.

Staff Recommendation: Make no changes based on this issue.

⁸ That is, the restriction that limits ownership to no more than two eligible facilities.

III. RECOMMENDATION

Ask General Counsel to draft, for the Board's consideration, an order:

1. Adopting final rules based on staff's recommendations contained in the body of this memo, and as shown in **APPENDIX C**; and
2. Clarifying that if a utility and customer seek to modify their version of the model interconnection agreement, by rule waiver under rule 199 IAC 1.3 rather than by motion under subrule 15.22(3), the rule waiver request should include the same information listed in subrule 15.22(3).

RECOMMENDATION APPROVED

IOWA UTILITIES BOARD

/jjp

/s/ Robert B. Berntsen 6/8/10
Date

/s/ Krista K. Tanner 6/29/10
Date

/s/ Darrell Hanson 6/25/10
Date

Board member Hanson had a concern that the rules did not reflect the definition of electric utility, which is defined for purposes of § 476.48 as a "public utility that furnishes electricity to the public for compensation and which enters into a model interconnection agreement with the owner of a small wind facility as provided in subsection 4." This definition only comes into play once, in § 476.48(2), which provides, in part, that "[p]ursuant to the program, the owner of a small wind facility located within a small wind innovation zone desiring to interconnect with an electric utility shall benefit from a streamlined application process. . . ." (emphasis added).

The streamlined application process referred to is the Level 1 review process in the interconnection rules recently adopted by the Board. However, those rules only apply to rate-regulated utilities, although municipals and cooperatives could choose to adopt the forms. Board member Hanson wanted to clarify that if an electric utility had not adopted the interconnection rules, the small wind owner would not benefit from a streamlined application process. Therefore, Board member Hanson proposes the following addition to the definition of "Small wind energy system" in 199 IAC 15.22(1):

"Small wind energy system" means a wind energy conversion system that collects and converts wind into energy to generate electricity, which has a nameplate generating capacity of one hundred kilowatts or less. A small wind energy system located in a small wind innovation zone but in the exclusive service territory of an electric utility that is not subject to 199 IAC 45 and has

not adopted the standard forms, procedures, and interconnection agreements in 199 IAC 45 is not eligible for the streamlined application process referred to in Iowa Code section 476.48(2)"a."

This addition clarifies that if the utility is not subject to or has not adopted the procedures in 199 IAC 45, there is no streamlined application process. The small wind energy system will still be eligible for the tax credits and will be interconnected, but the interconnection will be through the utility's own process (in the event no agreement on interconnection can be reached, FERC would have jurisdiction with respect to non-rate regulated utilities).

I am ok with this change/addition. RB 6/24/10

I agree. DAH 6/25/10

I also agree. KKT 6/29/10

APPENDIX A

Iowa Code § 476.48 – Small Wind Innovation Zone Program

1. DEFINITIONS. For purposes of this section, unless the context otherwise requires:

- a. "Electric utility" means a public utility that furnishes electricity to the public for compensation and which enters into a model interconnection agreement with the owner of a small wind energy system as provided in subsection 4.
- b. "Small wind energy system" means a wind energy conversion system that collects and converts wind into energy to generate electricity which has a nameplate generating capacity of one hundred kilowatts or less.
- c. "Small wind innovation zone" means a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance as provided in subsection 3.

2. PROGRAM ESTABLISHED.

- a. The utilities division shall establish and administer a small wind innovation zone program to optimize local, regional, and state benefits from wind energy and to facilitate and expedite interconnection of small wind energy systems with electric utilities throughout this state. Pursuant to the program, the owner of a small wind energy system located within a small wind innovation zone desiring to interconnect with an electric utility shall benefit from a streamlined application process, may utilize a model interconnection agreement, and can qualify under a model ordinance.
- b. A political subdivision seeking to be designated a small wind innovation zone shall apply to the division upon a form developed by the division. The division shall approve an application which documents that the applicable local government has adopted the model ordinance or is in the process of amending an existing zoning ordinance to comply with the model ordinance and that an electric utility operating within the political subdivision has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms.

3. MODEL ORDINANCE. The Iowa league of cities, the Iowa association of counties, the Iowa environmental council, the Iowa wind energy association, and

representatives from the utility industry shall consult and develop a model ordinance to be offered on both the Iowa League of Cities' and the Iowa Association of Counties' internet sites and made available for use by a local government which constitutes or encompasses a political subdivision that is applying for designation as a small wind innovation zone. A local government adopting the model ordinance shall establish an expedited approval process with regard to small wind energy systems in compliance with the ordinance in order to qualify as a small wind innovation zone.

4. **MODEL INTERCONNECTION AGREEMENT.** The utilities board shall develop a model interconnection agreement by June 1, 2010, for utilization within a small wind innovation zone by the owner of a small wind energy system seeking to interconnect with an electric utility. The interconnection agreement shall ensure that the energy produced can be safely interconnected with the utility without causing any adverse or unsafe consequences and is consistent with the electric utility's resource needs. The board shall establish by rule procedures for modification of the model interconnection agreement upon mutually agreeable terms and conditions in unique or unusual circumstances, subject to board approval. Electric utilities shall consider adopting the model interconnection agreement.

5. **TAX CREDIT INCENTIVES.** The owner of a small wind energy system operating within a small wind innovation zone shall qualify for the renewable energy tax credit pursuant to chapter 476C.

6. **REPORTING REQUIREMENTS.** The division shall prepare a report summarizing the number of applications received from political subdivisions seeking to be designated a small wind innovation zone, the number of applications granted, the number of small wind energy systems generating electricity within each small wind innovation zone, and the amount of wind energy produced, and shall submit the report to the members of the general assembly by January 1 annually.

APPENDIX B

Small Wind Innovation Zone Model Ordinance

Section 1. Purpose. The purpose of this regulation is to promote the safe, effective, and efficient use of small wind energy systems installed to reduce the on-site consumption of utility-supplied electricity.

Section 2. Findings. The [city or county] finds that wind energy is an abundant, renewable, and nonpolluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of nonrenewable energy sources. Distributed small wind energy systems will help diversify the state's energy portfolio. Small wind energy systems also make the electricity supply market more competitive by promoting customer choice. The State of Iowa has enacted a number of laws and programs to encourage the use of small-scale renewable energy systems, including net metering, sales tax exemptions, property tax exemptions, production tax credits, and the Small Wind Innovation Zone program.

Section 3. Definitions.

Small Wind Energy System. A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kilowatts (kW) and which is intended to primarily reduce on-site consumption of utility-supplied electricity.

Tower Height. The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Total Extended Height. The height above grade to a blade tip at its highest point.

Section 4. Permitted Use. Small wind energy systems shall be a permitted use in all zoning classifications where structures of any sort are allowed, subject to certain requirements as set forth below. The [city or county] may require the installer of the small wind energy system, or the owner of the property upon which the system will be installed, to obtain a building permit for the system, if required by [city or county] code.

4.1 Tower height and setback. The base of the small wind energy system tower shall be set back from all property lines, public right of ways, and above ground public utility lines at a distance no less than 115% of the total extended height of the tower. Towers shall be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission,

provided that the tower installation complies with the other applicable setbacks herein provided. As long as the total extended height meets the setback requirements in this section, there shall be no specific height limitation, except as imposed by Federal Aviation Administration regulations as stated in section 4.3.

4.2 Requirement for engineered drawings/approval and soil studies.

A small wind energy system of greater than 20 kW, or a small wind energy system mounted on a structure other than a free-standing tower, shall not be erected in the [city or county] of _____, unless the plans and specifications for the system have received the stamped approval of an Iowa registered engineer. In lieu of obtaining the stamped approval of an Iowa registered engineer for each small wind energy system of 20 kW or less mounted on a free-standing tower, a manufacturer may submit its standard plans and specifications for a 20 kW system on a free-standing tower, including its soils study and foundation plans for such system, for a one-time review and stamped approval by an Iowa registered engineer as suitable for construction in any soil condition that exists in the State of Iowa. If such one-time stamped approval is obtained, that manufacturer may thereafter construct such small wind energy systems of 20kW or less in the [city or county] of _____, utilizing the approved soils study and foundation plans for the 20 kW small wind energy system, without obtaining and presenting the stamped approval of an Iowa registered engineer for each such installation.

4.3. Compliance with Federal Aviation Administration Regulations (FAA). No small wind energy system shall be constructed, altered, or maintained so as to project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection.

4.4. Safety. Any climbing foot pegs or rungs below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, sheets of metal or wood may be fastened to the bottom tower section such that it cannot readily be climbed.

4.5. Sound. Sound produced by the small wind energy system under normal operating conditions, as measured at the property line, shall: a) not produce sound at a level that would constitute a nuisance; b) shall comply with any local ordinance regulating the volume of sound as a nuisance, if applicable. Sound levels, however, may be exceeded during short-term events out of anyone's control, such as utility outages and/or severe wind storms.

4.6. Compliance with National Electric Code. Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the design and manner of installation conforms to the National Electric Code.

4.7. Utility Notification: No small wind energy system shall be installed until evidence has been given that the utility company has authorized interconnection of the small wind energy system to its electric distribution or transmission, under an agreement approved by and subject to regulation adopted by the Iowa Utilities Board. Properties not connected the public utility system shall be exempt from this requirement.

4.8. Insurance. A person seeking a building permit to erect a small wind energy system shall provide evidence, in the form of a certificate of insurance satisfactory to the [city or county], showing general liability insurance coverage for the installation and operation of the system under a standard homeowner's or standard business owner's insurance policy, separate and distinct from any insurance requirements of a public utility.

4.9. Abandonment. If a wind turbine is inoperable for six consecutive months, the owner shall be notified that they must, within six months of receiving the notice, restore the small wind energy system to operating condition. If the owner fails to restore the system to operating condition within the six month time frame, it shall be considered abandoned and the owner shall be required, at owner's expense, to remove the small wind energy system. A small wind energy system that has been abandoned may be abated as a public nuisance.

4.10. Signage. No signs, other than appropriate warning signs, or standard manufacturer's or installer's identification signage, shall be displayed on a wind generator, tower, building, or other structure associated with a small wind energy system, subject to local sign regulation if any.

4.11. Lighting. No illumination of the turbine or tower shall be allowed unless required by the FAA or unless allowed by applicable [city or county] ordinance.

APPENDIX C

Proposed Final Rules

1. New Rule 199 IAC 15.22 – “Small wind innovation zones”

15.22(1) Definitions. For purposes of this rule:

"Electric utility" means a public utility that furnishes electricity to the public for compensation.

"Model interconnection agreement" means the applicable standard interconnection agreement under 199 IAC 45, ~~including the standard interconnection agreement for review Level 1 under 199 IAC 45.14 and the standard interconnection agreement for review Levels 2 to 4 under 199 IAC 45.17.~~

"Model ordinance" means the model ordinance developed pursuant to Iowa Code § 476.48(3), which when adopted will be posted on the Web sites of the Iowa League of Cities at www.iowaleague.org and the Iowa State Association of Counties at www.iowacounties.org.

"Small wind energy system" means a wind energy conversion system that collects and converts wind into energy to generate electricity, which has a nameplate generating capacity of one hundred kilowatts or less.

"Small wind innovation zone" means a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance.

15.22(2) Application for small wind innovation zone designation. A political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council, may apply to the Board for designation as a small wind innovation zone under Iowa Code Supplement section 476.48. The application must include the following information:

a. The name, location, description, and legal boundary description of the political subdivision seeking designation as a small wind innovation zone;

b. Contact information for the applicant filing on behalf of the political subdivision, including legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address.

c. If the political subdivision is other than a local government;

(1) Identification of the local government (or governments) that encompass the political subdivision;

(2) Confirmation that all identified local governments have ~~that has~~ either adopted or are about to adopt the model ordinance, including copies of model ordinances adopted by the local governments, or copies of pending amendments to existing zoning ordinances intended to comply with the model ordinance or is in the process of amending an existing zoning ordinance to comply with the model ordinance, and the relationship of the political subdivision to the local government; and

(3) Dates the model ordinances were adopted, or anticipated dates of adoption of pending amendments to existing zoning ordinances intended to comply with the model ordinance;

d. If the political subdivision is a local government:

(1) A copy of the model ordinance adopted by the local government, or copy of a pending amendment to an existing zoning ordinance intended to comply with the model ordinance; and

(2) e. Date the model ordinance was adopted, or anticipated date of adoption of the pending amendment to an existing zoning ordinance intended to comply with the model ordinance;

e. f. Identification of the electric utilities that ~~serve~~ provide service within the political subdivision; and

f. g. Documentation from ~~each the~~ electric utility ~~utilities serving that~~ provides service within the political subdivision, ~~that the utility is confirming that they are~~ either:

(1) A utility ~~Rate-regulated utilities~~ subject to the provisions of 199 IAC 45; or

(2) A utility ~~Non-Rate-Regulated utilities~~ not subject to the provisions of 199 IAC 45, but which nonetheless agrees to ~~use~~ utilize the standard forms, procedures, and standard interconnection agreements of 199 IAC 45 ~~for small wind energy systems in its service territory within the political subdivision, to contract with small wind energy system owners who agree to their terms;~~ or

(3) A utility that is not subject to the provisions of 199 IAC 45 and does not adopt them.

g. Electric utilities shall provide political subdivisions the documentation required in paragraph 15.22(2)"f."

15.22(3) Motion for modification of a model interconnection agreement in a small wind innovation zone. An electric utility that uses the standard interconnection agreements of 199 IAC 45 and the owner of a small wind energy system in a small wind innovation zone may jointly seek to modify a their version of the model interconnection agreement by jointly filing a motion for Board approval. The motion must include the following information:

a. The name, location, and description of the political subdivision designated as a small wind innovation zone;

b. The interconnecting electric utility;

c. Information regarding the owner of the small wind energy system, including legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address; -

- d. Description of the small wind energy system, including location and nameplate generating capacity;
- e. A copy of the modified ~~model~~ interconnection agreement, clearly identifying the proposed modifications;
- f. A description of the reasons and circumstances that require the modifications; and
- g. Signed statements from the electric utility and the owner of the small wind energy system attesting that the proposed modifications to the ~~model~~ interconnection agreement are mutually agreeable.

15.22(4) Annual reporting requirement. A current listing of small wind innovation zones shall be maintained on the Board's Web site at www.state.is.us/iub. Beginning April 1, ~~2010~~ 2011, each electric utility that has one or more small wind innovation zones in its service territory shall file an annual report for the previous calendar year, listing the nameplate kW capacity and annual kWh production of each interconnected small wind energy system that was interconnected (or previously interconnected) with the utility and produced electricity, for in each of the small wind innovation zones served by the electric utility. The information shall be provided in the following format:

<u>Small Wind</u>	<u>Customer</u>	<u>Nameplate</u>
<u>Innovation Zone</u>	<u>Name</u>	<u>kW Capacity</u>

2. Amendments to 199 IAC 15.19 – “Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code 476C”

15.19(1) Filing requirements. Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the board an application that contains substantially all of the following information:

- a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

- b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner. The "legal status of each owner" refers to either ownership of a small wind energy system operating in a small wind innovation zone as defined in Iowa Code Supplement section 476.48(1) and 199 IAC 22.1; or, alternatively, the ownership requirements of Iowa Code Supplement section 476C.1(6)"b," which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

- (1) A resident of Iowa;
 - (2) An authorized farm corporation, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;

- (3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in Iowa Code section 9H.1;
- (4) A revocable trust as defined in Iowa Code section 9H.1;
- (5) A testamentary trust as defined in Iowa Code section 9H.1;
- (6) A small business as defined in Iowa Code section 15.102;
- (7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499;
- (8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or
- (9) A school district located in Iowa.

c. A statement attesting that each owner meeting the eligibility requirements of Iowa Code Supplement section 476C.1(6)"b" does not have an ownership interest in more than two eligible renewable energy facilities.

d. For any owner meeting the eligibility requirements of Iowa Code Supplement section 476C.1(6)"b" with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

e. For any owner meeting the eligibility requirements of Iowa Code Supplement section 476C.1(6)"b" with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

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;
- (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, 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 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. 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).