

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RULE MAKING FOR LOCATION AND CONSTRUCTION OF RENEWABLE ELECTRIC POWER GENERATING FACILITIES AND STORAGE FACILITIES	DOCKET NO. RMU-2020-0028
IN RE: RULE MAKING FOR LOCATION AND CONSTRUCTION OF ELECTRIC POWER GENERATING FACILITIES [199 IAC CHAPTER 24]	DOCKET NO. RMU-2019-0024

ORDER OPENING DOCKET AND REQUESTING STAKEHOLDER COMMENT ON PROPOSED RULE

On August 9, 2019, the Utilities Board (Board) issued an order in Docket No. DRU-2019-0001 declining to issue a declaratory order regarding regulatory requirements for solar generating facilities and instead opening a rule making to consider adopting new rules for requirements related to the location and construction of renewable electric power generating facilities pursuant to Iowa Code chapter 476A. The new rule-making docket was identified as Docket No. RMU-2019-0024 and the Board considered amending its current rules in 199 Iowa Administrative Code (IAC) chapter 24 to address filing and procedural requirements for renewable generating facilities. After review of the current requirements in 199 IAC chapter 24 and the amendments that the Board is proposing for renewable generating facilities, the Board

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has determined that the new rules should be proposed in a separate chapter rather than in chapter 24.

This order proposes a new 199 IAC chapter 28 to govern the location and construction of renewable electric power generating facilities and storage facilities. The proposed new chapter 28 rules are largely based off of the existing framework found in 199 IAC chapter 24. The new chapter 28 is rearranged to reflect general chronology of the generating certificate process and more tailored to siting renewable energy facilities than the existing chapter 24 rules. The proposed rules suggest a more streamlined application process for renewable energy and storage generating facilities and are designed to require all generating facilities and storage facilities that have a total operating capacity of 25 megawatts (MW) or more to file for a certificate of public convenience, use, and necessity.

The Board proposes to include storage facilities and facilities that fall under the definition of “alternate energy production facility” found in Iowa Code § 476.42(1)(a) to use the more streamlined application process proposed in new chapter 28. The proposed rules will balance the interests of area landowners and lessees of record by allowing for community input for renewable energy generating facilities with a total operating capacity of 25 MW or more while also reducing the regulatory burden to encourage development of renewable energy generating facilities.

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Interested persons are invited to comment on any of the Board's proposed rules in this chapter as well as any other issues or proposed rules they believe should be addressed or included in this chapter.

Attached to this order is a draft Notice of Intended Action (NOIA) proposing a new 199 IAC chapter 28 of the Board's rules.

PROPOSED RULES

The proposed 199 IAC chapter 28 rules are largely based off of the existing 199 IAC chapter 24 rules. A detailed discussion of the major changes as compared to 199 IAC chapter 24 is below. The proposed rules also make some editorial clarifications throughout the chapter, which will be included in edits to 199 IAC chapter 24 at a later date. For example, the proposed rules define MW in proposed 199 IAC 28.1 and then change all instances of "megawatt" to MW throughout the rest of the chapter. The proposed rules also make some changes to wording to be consistent with the language of Iowa Code chapter 476A. For example, the proposed rules change all mentions of "generating unit" to "generating plant" to be consistent with the definition of "facility" provided in Iowa Code § 476A.1(5).

A. Rule 28.1 Authority and purpose.

The proposed 199 IAC 28.1 makes minor editorial changes to the purpose of 199 IAC chapter 28 as compared to 199 IAC chapter 24 and does not include the equivalent to 199 IAC 24.1(3), as it is unclear whether the Board is truly permitted to delegate its statutory review authority under Iowa Code chapter 476A.

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B. Rule 28.2 Definitions.

The proposed 199 IAC 28.2 introduces new definitions for “grandfathered facility,” “non-participating landowner,” “participating landowner,” “renewable energy facility,” and “storage facility.”

The proposed rule makes changes to the definitions of “applicant,” “intervenor,” “person,” and “zoning authority” to clarify the definitions.

The proposed rule cleans up the definition of “facility” and adds language to the definition to clarify that “facility” includes any solar, wind, or storage generating plants, or combinations of plants that have a total generating capacity of 25 MW or more.

The proposed rule adds parameters to the definition of “significant alterations” to capture (1) changes in facilities with certificates of public convenience, use, and necessity and (2) changes in facilities that did not require a certificate of public convenience, use, and necessity for construction that is being uprated to 25 MW or more.

The proposed amendments change the definition of “site” to clarify that the entire area of a proposed project where there are multiple generating plants is considered a facility, regardless of the number of MW included on each gathering line.

C. Rule 28.3 Pre-application activities and comment meeting.

The proposed 199 IAC 28.3, based off of 199 IAC 24.7, proposes potential applicants provide potential participating landowners with a copy of the Iowa Attorney General’s Statement of Rights found in 61 IAC chapter 34 prior to seeking to obtain land

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rights. Once potential applicants have obtained land rights or the majority of land rights necessary to pursue a renewable energy facility or storage facility, then applicants will file their application with the Board. The proposed rules then propose a comment meeting in the county where the renewable energy facility or storage facility is to be located.

The proposed rule is designed to avoid the unnecessary filing of speculative projects with the Board, while protecting landowner rights. Instead of an informational meeting to discuss landowner rights, as used in 199 IAC chapters 10 and 11, the potential applicant is required to provide potential participating landowners with the Acquisition Negotiation Statement of Rights. Then, once the project is more developed, applicants will file the application and hold a public comment meeting in the county where the majority of the proposed project is to be located.

The proposed rule provides for two approaches to notice for area landowners that may be impacted by the proposed project. For most renewable energy facilities and all storage facilities, the proposed rule requires the applicant to provide notice to all participating and non-participating landowners, as well as notice of the public comment meeting in a newspaper of general circulation in the county or counties where the proposed facility will be located. For wind renewable energy facilities, which have a much larger footprint than other facilities, the notice is only required in a newspaper of general circulation in the county or counties where the proposed facility will be located.

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The proposed rule also updates the reference to the Americans with Disabilities Act from 199 IAC 24.7.

D. Rule 28.4 Form of application, place of filing.

Proposed 199 IAC 28.4 is modified from 199 IAC 24.3 to require filing in the Board's electronic filing system.

E. Rule 28.5 Application for a certificate — contents.

The proposed 199 IAC 28.5 follows the overall structure of the application used in 199 IAC 24.4 but tailors the requirements to renewable energy facilities and storage facilities. Proposed 199 IAC 28.5 contains four sections of the application: Proposed 199 IAC 28.5(1) is the requirements for Section 1 of the application, entitled "General Information." Proposed 199 IAC 28.5(2) is the requirements for Section 2 of the application, entitled "Regulatory Requirements." Proposed 199 IAC 28.5(3) is the requirements for Section 3 of the application, entitled "Community Impacts." Proposed 199 IAC 28.5(4) is the requirements for Section 4 of the application, entitled "Site Evaluation Methodology."

1. Rule 28.5(1) – General Information

Proposed 199 IAC 28.5(1), based off of 199 IAC 24.4(1), is more tailored to renewable energy facility and storage facility applications. In proposed 199 IAC 28.5(1)(c) the additional language, "an explanation of the need and purpose of the proposed rule," is proposed to help the Board evaluate whether the intent is consistent with the legislative intent in Iowa Code § 476.53(1). In proposed 199 IAC 28.5(1)(f), the additional language related to fuel choice is to help the Board evaluate consistency with the legislative intent in Iowa Code § 476.53(2)(b).

Proposed 199 IAC 28.5(1)(l) requires applicants file information related to seeking to obtain easements or obtained easements, including copies of correspondence with potential participating landowners and an affidavit confirming that

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all potential participating landowners were provided with a copy of the Acquisition Negotiation Statement of Rights found in 61 Iowa Administrative Code chapter 34 prior to seeking to obtain land rights.

Proposed 199 IAC 28.5(1)(m), requiring applicants to provide a general description of the economic impact of a project, is to help the Board evaluate consistency with the legislative intent in Iowa Code § 476.53(1). The proposed 199 IAC 28.5(1)(n) requires a decommissioning plan for all projects. The Board is proposing to add this requirement to make sure project developers have a plan to remove the facilities and restore the Iowa farm land once the generating plants are retired.

2. Rule 28.5(2) – Regulatory Requirements

The proposed 199 IAC 28.5(2), based off of 199 IAC 24.4(2), clarifies information that applicants need to include in section 2 of the application in order to be issued a certificate. Specifically, proposed 199 IAC 28.5(2)(a) specifies that applicants need to list all permits, licenses, or waivers necessary to construct, operate, and maintain a renewable energy facility or storage facility and indicate whether the applicant intends to obtain any of the listed permits through the issued certificate. Proposed 199 IAC 28.5(2)(b) requires applicants include all information required in the rules and application forms of regulatory agencies or zoning agencies for any permits, licenses, or waivers that the applicant seeks to obtain through the issued certificate.

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3. Rule 28.5(3) – Community Impacts

The proposed 199 IAC 28.5(3), based off of 199 IAC 24.4(3), proposes a more tailored list of required information to be included in the community impacts section of applications for renewable energy facilities or storage facilities.

4. Rule 28.5(4) – Site Evaluation Methodology

The proposed 199 IAC 28.5(4), based off of 199 IAC 24.4(4), makes minor non-substantive editorial changes to rule 24.4(4).

F. Rule 28.6 Initial board review — application acceptance.

The proposed 199 IAC 28.6, based off of 199 IAC 24.5, proposes to reduce the initial review time for renewable energy facility and storage facility applications to 30 days and reduce the time allowed to respond to any deficiencies to 15 days. The proposed rule is designed to provide applicants with more certain timelines and condense the regulatory review period.

G. Rule 28.7 Procedural schedule and hearing procedure.

The proposed 199 IAC 28.7, based off of 199 IAC 24.6 and 199 IAC 24.8, consolidates procedural elements to allow for a more condensed regulatory review. Proposed 199 IAC 28.7(2) requires the Board to issue a notice of the filing of the application with a 30-day intervention deadline within 15 days of the filing of the application. Under 199 IAC chapter 24, the intervention deadline is not issued until after the initial board review and application acceptance.

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Proposed 199 IAC 28.7(4) provides the Board with more flexibility to determine the appropriate procedures after reviewing the completeness of the application and after considering any interventions. The proposed rule is designed to provide a more expedited procedural schedule for renewable energy facilities and storage facilities.

H. Rule 28.9 Certification decision.

The proposed 199 IAC 28.9, based off of 199 IAC 24.10, makes only minor editorial changes for additional clarity.

I. Rule 28.10 Early site preparation.

The proposed 199 IAC 28.10, based off of 199 IAC 24.11, makes only a minor change for additional clarity.

J. Rule 28.11 Issuance of a certificate.

The proposed 199 IAC 28.11 makes no changes from the existing 199 IAC 24.12.

K. Rule 28.12 Application for amendment for certificate — contents.

The proposed 199 IAC 28.12, based off of 199 IAC 24.13, changes the title of this rule to “Application for amendment for certificate — contents” for clarity and provides additional guidance on amending grandfathered facilities.

L. Rule 28.13 Grandfathered facilities.

The proposed 199 IAC 28.13 provides the limited filing requirements for existing wind generating facilities built with a total capacity of less than 25 MW per gathering line that have already been constructed or where construction has already begun. These

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existing wind generating facilities will not be required to obtain a certificate from the Board, but shall provide the Board with the information necessary to perform safety inspections and evaluate the extent to which facilities were constructed with decommissioning and land restoration plans in mind.

M. Rule 28.14 Assessment of costs.

The proposed 199 IAC 28.14, based off of 199 IAC 24.14, makes only minor, non-substantive changes in order to add clarity and strike unnecessary language.

N. Rule 28.15 Waiver.

The proposed 199 IAC 28.15, based off of 199 IAC 24.15, revises the notice requirements to mirror the notice requirements contained in proposed rule 199 IAC 28.3(5).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Comments regarding the new 199 Iowa Administrative Code chapter 28 rules discussed in this order and any other comments regarding the proposed chapter 28 for the Utilities Board's consideration shall be filed no later than 30 days from the date of this order.

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2. Reply comments shall be filed no later than 45 days from the date of this order.

UTILITIES BOARD

Geri Huser Date: 2020.05.21
16:50:50 -05'00'

Nick Wagner Date: 2020.05.21
16:48:05 -05'00'

ATTEST:

Anna Hyatt Date: 2020.05.22
09:21:12 -05'00'

**Richard W.
Lozier, Jr.** Date: 2020.05.21
20:32:05 -05'00'

Dated at Des Moines, Iowa, this 22nd day of May, 2020.

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The following rule-making action is proposed:

ITEM 1. Adopt the following **new** 199—Chapter 28:

CHAPTER 28

LOCATION AND CONSTRUCTION OF RENEWABLE ELECTRIC
POWER GENERATING FACILITIES AND STORAGE FACILITIES

199—28.1(476A) Authority and purpose.

28.1(1) Authority. The regulations contained herein are prescribed by the Iowa utilities board pursuant to authority granted in Iowa Code chapter 476A, relating to the location and construction of renewable electric power generating facilities and storage facilities.

28.1(2) Purpose. The purpose of these regulations is to provide guidelines for proceedings for the determination of whether the proposed construction of a renewable electric generation facility with a total capacity of twenty-five (25) megawatts (MW) of electricity or more should be issued a certificate of public convenience, use and necessity for the construction of the generating facility.

199—28.2(476A) Definitions. As used in this chapter:

“*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 Iowa Code chapter 476A.

“*Board*” means the utilities board.

“*Certificate*” means a certificate of public convenience, use and necessity as defined in Iowa Code section 476A.1(3).

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

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“*Facility*” means any electric power generating plant or combination of plants at a single site, owned by any person or persons, with a maximum generator nameplate capacity of 25 MW 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 MW or more, but does not include those transmission lines before the generation station’s substation. A “facility” includes any electric storage unit or combination of electric storage units, at a single site, with a total generating capacity of 25 MW or more and those associated transmission lines connecting the electric storage unit to either a power transmission system or an interconnected primary transmission system or both.

“*Grandfathered Facility*” means any wind generation facility already in service or already under construction prior to the effective date of these rules with a total capacity of less than 25 MW per gathering line but a total capacity of 25 MW or more located at one site.

“*Intervenor*” means a person who has been granted permission to intervene by the board after filing a petition pursuant to rule 199—7.13(17A,476).

“*Non-participating landowner*” means any owner of record of real property or lessee of record of real property within the proposed facility site boundary from whom the applicant does not intend on using for the proposed facility, and within 1,000 linear feet outside of the proposed site boundary.

“*Participating landowner*” means any owner of record of real property or lessee of record of real property within the proposed facility site boundary from whom the applicant has obtained land rights.

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

“*Person*” means individual, corporation, cooperative, government or governmental subdivision or agency, partnership, association or other legal entity as defined in Iowa Code section 4.1(20).

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“*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 generating facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the board.

“*Renewable energy facility*” means any alternate energy production facility, as defined in Iowa Code section 476.42(1)(a), with a maximum generator nameplate capacity of 25 MW or more of electricity.

“*Significant alteration*” means:

- a. A change in the type of fuel used by the facility.
- b. Any change in the location of any of the components of a facility from what is stated in the certificate issued by the board.
- c. Any change in the construction, maintenance, or operation of equipment at an existing facility that increases the maximum generator nameplate capacity of the facility above the total capacity of the facility as stated in the certificate issued by the board.
- d. Any change in the location, construction, maintenance, or operation of equipment in an existing facility that was constructed without a certificate or a grandfathered facility that increases the maximum nameplate capacity of the facility to 25 MW or above.

“*Site*” means the land on which the generating plant of the facility is proposed to be located. For a generating facility with multiple generating plants, the “site” of the generating facility is the entire area where the multiple generating plants are located. For wind or solar facilities, “site” means the land on which all wind or solar generating plants for a project are designed as a single development, including but not limited to, common ownership or operation control, common developer, shared interconnection, and contiguous lands where the owner or developer has rights to construct additional wind or solar electric generating plants.

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“*Storage facility*” means any electric storage unit or combination of units with a total generating capacity of 25 MW or more and those associated transmission lines connecting the electric storage unit to either a power transmission system or an interconnected primary transmission system or both.

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

199—28.3 (476A) Preapplication activities and comment meeting.

28.3(1) *Preapplication activities.* Applicant must provide all potential participating landowners with a copy of the Acquisition Negotiation Statement of Rights found in 61 Iowa Administrative Code chapter 34 prior to seeking to obtain land rights. All written communications with potential participating landowners from which the applicant seeks to obtain land rights must reference 61 Iowa Administrative Code chapter 34.

28.3(2) *Postapplication comment meeting.* Not less than 30 days after filing of an application for renewable energy facility or storage facility, the board shall hold a comment meeting in the county of the proposed site for the renewable energy facility or storage facility. In the event the proposed site is in more than one county, such meeting shall be in the county containing the greatest portion of the proposed renewable energy facility or storage facility site. Comments may be made part of the record.

28.3(3) *Meeting venue.* The applicant shall be responsible for all negotiations and compensation for a suitable venue to be used for the comment meeting, including but not limited to a building or venue which is in substantial compliance with the requirements of the Americans with Disabilities Act Standards for Accessible Design, including both the Title III regulations at 28 CFR Part 36, Subpart D, and the 2004 Americans with Disabilities Act Accessibility Guidelines at 36 CFR Part 1191, Appendices B and D (as amended through the effective date of amendment), where such a building or venue is reasonably available.

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28.3(4) Location. The location of the meeting shall be reasonably accessible to all persons who may be affected by the granting of the certificate.

28.3(5) Board approval. The applicant shall file a letter with the board requesting board approval of the date and time of the comment meeting with the application. The letter shall be filed in the board's electronic filing system. Board approval shall be issued for the proposed comment meeting date, time, and location within ten days of filing.

a. Comment meeting notice for wind renewable energy facility. Upon Board approval of the date and time of the comment meeting for a proposed wind renewable energy facility, the applicant shall provide for the publication of notice of the comment meeting in a newspaper of general circulation in each county in which the proposed site is located, once each week for two consecutive weeks prior to the meeting date. The notice of such meeting shall contain the following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the utilities board at (515) 725-7300 in advance of the scheduled date to request that appropriate arrangements be made. The notice shall also include the information required in 28.7(2)(b). Proof of such notice shall be provided to the board by the applicant. Additional notice shall be made, as deemed appropriate by the board, via electronic media.

b. Comment meeting notice for non-wind renewable energy facility or storage facilities. Upon Board approval of the date and time of the comment meeting for a proposed non-wind renewable energy facility or storage facility, the applicant shall provide for the publication of notice of the comment meeting in a newspaper of general circulation in which the proposed site is located, once each week for two consecutive weeks, and provide notice to all participating and non-participating landowners. The notice of such meeting shall contain the following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the utilities board at (515) 725-7300 in advance of the scheduled date to request that appropriate arrangements be made. The notice shall also

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include the information required in 28.7(2)(b). Proof of such notice shall be provided to the board by the applicant. Additional notice shall be made, as deemed appropriate by the board, via electronic media.

28.3(6) *Personnel.* The 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 renewable energy facility or storage facility or significant alternation will be constructed.
- c.* In general terms the physical construction, appearance and location of large structures with respect to proposed property lines, including the distance of structures from non-participating landowners' property lines.
- d.* In general terms the property rights which the applicant shall seek including purchase, option to buy, easements, and leases.
- e.* Procedures to be followed in contacting landowners 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 should be represented at the comment meeting by qualified personnel designated to speak for them.

28.3(7) *Conduct of the meeting.* A member of the board, or a presiding officer designated by the board, shall preside at the meeting and shall present an agenda for the meeting, which shall include a

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summary of the legal rights of affected 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.

199—28.4(476A) Form of application, place of filing.

28.4(1) *Form of application.*

a. The application, associated documents, or other documents shall be filed in the board's electronic filing system and in compliance with board rules at chapters 7 and 14.

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.

28.4(2) *Manner and place of filing.*

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

b. The board, 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 board deems appropriate.

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

199—28.5(476A) Application for a certificate—contents. Each person or group of persons proposing to construct a renewable energy facility or storage facility shall file an application for certificate with the board, unless otherwise provided by these rules. The following information shall be included in the application:

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28.5(1) *General information.* In section 1, entitled “General Information,” the applicant shall include the following information:

a. The legal name, address, telephone number, facsimile transmission number, and email address of the applicant, as well as the name of the person authorized to receive communications relating to the application. The application shall include the names and Iowa business address, if applicable, and principal place of business of any person with an ownership interest in the proposed renewable energy facility or storage facility.

b. The name and type of business of the applicant’s and other persons with an ownership interest in the proposed renewable energy facility or storage facility. The information must include percentages of ownership.

c. An explanation of the need and purpose for the proposed renewable energy facility or storage facility. A complete description of the current and proposed rights of ownership in the proposed renewable energy facility or storage facility.

d. A general site description including a legal description of the site location and a map showing the coordinates of the site. The general site description should include a discussion of whether the proposed site is located in a flood plain and proposed setbacks from any non-participating landowners or lessees of record. If final design is not available at the time of application, the general site description should include construction timeline, dates expected for preliminary construction, and date for when final design is expected.

e. Applicant’s map showing the coordinates of the site, which shall also show its location with respect to state, county and other political subdivisions, and prominent features such as cities, lakes, rivers and parks within one mile of the site boundary. Applicant shall also provide a more detailed map showing the location of the facility perimeter, utility property, railroads and other transportation facilities,

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abutting and adjacent properties, cities, lakes, rivers, parks, other public facilities, cemeteries and places of historical significance within one mile of the site boundary.

f. A general description of the proposed renewable energy facility or storage facility, the nameplate generating capacity of the proposed renewable energy facility or storage facility in MW (alternating current rating) and the primary fuel source for each plant. The applicant shall describe how the choice of primary fuel contributes to the state's diversity of fuels used to generate electricity.

g. A schedule for the renewable energy facility or storage facility's construction and utilization including the projected date significant site alteration is proposed to begin and the projected date the renewable energy facility or storage facility is to be placed into service.

h. A description of the principal characteristics of the facility, the general layout of the renewable energy facility or storage facility, the capacity in MW expressed by the contracted maximum generator nameplate MW rating, the net renewable energy facility or storage facility addition in MW, by net to the busbar rating, and the portion (in MW) of the design capacity of the proposed renewable energy facility or storage facility which is proposed to be available for use by each owner, the number and type of generating plants, the total hours of operation anticipated seasonally and annually and output in megawatt hours (MWH) during these hours, and expected capacity factors.

i. A general map and description of the primary transmission corridors and approximate routing of the rights-of-way, along with an analysis of the existing transmission networks' 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 that 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 renewable energy facility or storage facility will be interconnected, as well as any analysis, in applicant's possession, submitted to an area reliability council, concerning the

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impact of the facility on the area grid, shall satisfy the foregoing requirements. The impact analysis must include both local area and regional impacts.

j. The applicant, if a public utility, must include a statement of total cost to construct the proposed renewable energy facility or storage facility. The total cost shall include, but not be limited to, the cost of all electric power generating plants, 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.

k. The names and addresses of those owners and lessees of record of real property identified in 28.6(2)“d” and “e”.

l. The names and addresses of those owners and lessees of record of real property for whom the applicant obtained or is seeking to obtain easements or seeks the use of eminent domain, and a copy of the proposed easement the applicant intends to offer or has obtained from the landowners or lessees of record of real property, copies of any communications with prospective landowners and an affidavit confirming that all potential participating landowners were provided with a copy of the Acquisition Negotiation Statement of Rights found in 61 Iowa Administrative Code chapter 34 prior to seeking to obtain land rights.

m. A general description of the economic impact of the facility.

n. A plan for decommissioning the renewable energy facility or storage facility. Each application should include an expected date of removal of the renewable energy facility or storage facility and a plan regarding the action to be taken upon decommissioning, including estimated costs of decommissioning

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and disposing of the renewable energy facility or storage facility and associated equipment and land restoration after decommissioning.

28.5(2) *Regulatory requirements.* In section 2, entitled “Regulatory requirements,” applicant shall include the following:

a. A list of all permits, licenses, or waivers from any regulatory agency and/or zoning authority necessary to construct, operate, and maintain the renewable energy facility or storage facility. The list should include timelines for obtaining such permit or indicate that the applicant intends to obtain the permit through this application pursuant to Iowa Code § 476A.8.

b. For any permits, licenses, or waivers that the applicant is seeking to obtain through this application pursuant to Iowa Code § 476A.8, the applicant must include all information required in the rules and application forms of such regulatory agency or zoning authority in the application.

28.5(3) *Community impacts.* 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 renewable energy facility or storage facility will have on the surrounding area within one mile of the site boundary including, but not limited to, the following:

a. A forecast of the impact on agricultural production and uses.

b. A forecast of the impact on open space areas and areas of significant wildlife habitat. The forecast shall include identification and description of the impact of the proposed renewable energy facility or storage facility on terrestrial and aquatic plants and animals.

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

d. 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

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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 renewable energy facility or storage facility.

28.5(4) *Site evaluation methodology.* In section 4, entitled "Site evaluation methodology," applicant shall present information related to its selection of the proposed site for the renewable energy facility or storage facility. Such information shall include the general criteria used to select alternative sites and how these criteria were used to select the proposed site.

199—28.6(476A) Initial board review—application acceptance.

28.6(1) Upon the filing of the application for a renewable energy facility or storage facility, the board and the appropriate regulatory agencies shall make an initial review to determine if the application is in substantial compliance with the requirements of rule 199—28.5(476A). If any significant deficiencies, including those noted by applicant, are identified in the application, the board shall notify the applicant specifying the deficiencies identified, within 30 days from the date of the filing of the application.

28.6(2) The applicant shall have 15 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 is not in substantial compliance with the requirements of 199—28.5(476A), the board may reject the application.

28.6(3) When the application is in substantial compliance with the requirements of rule 199—28.5(476A), and after the **28.3(2) *Postapplication comment meeting.*** the board shall accept the application and set the time and place for hearing, if necessary, as provided in rule 199—28.6(476A).

199—28.7(476A) Procedural schedule and hearing procedure.

28.7(1) *General.* The proceedings conducted by the board 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

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contrary to express provisions below, the hearing procedure shall conform to the board'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 board.

28.7(2) *Initial Procedural Schedule.*

a. Within 15 days of filing of the application, the Board shall issue a notice of the filing of the application and an initial procedural schedule, with a 30-day intervention deadline, upon the following:

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

ii. Interested agencies as determined by the board, including the office of state archaeologist and the office of historical preservation of the state historical society of Iowa.

iii. County, airport, and city zoning authorities from the area in which the proposed site is located; and

iv. Other interested persons as determined by the board.

b. The applicant shall provide the notice of the filing of the application and initial procedural schedule, with the 30-day intervention deadline, upon the following:

i. For proposed wind renewable energy facility, those included in the notice required under 28.3(5)(a).

ii. For proposed non-wind renewable energy facility or storage facility, all participating landowners and all non-participating landowners, and those included in the notice required under 28.5(b).

28.7(3) *Intervention.*

a. Those receiving notice under 28.7(2)(a)(i) shall be deemed parties to the proceeding.

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b. Such notice provided under 28.7(2)(a)(ii), (iii), (iv), or 28.7(2)(b)(i) and (ii) shall state that the recipient may become a party to the proceeding by filing written notice of intervention. A form for filing for intervention shall be provided on the IUB website.

c. Notice of intervention. An agency not receiving notice pursuant to 28.7(2)(a)(ii) 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.

d. 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 consistent with 199—7.13.

e. Board discretion. The board 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 board 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 board's notice of hearing or any prehearing order of the board unless the board shall, on motion, amend the same.

28.7(4) Procedural Schedule.

a. Upon acceptance of the application under 28.6 and after the intervention deadline, the board will determine the appropriate procedures.

b. Provision for the publication of notice of the schedule for the hearing held by the board 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.

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28.7(5) Appearance. If any regulatory agency fails to appear of record in the contested case proceeding conducted by the board, the board 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.

28.7(6) 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.

28.7(7) Application for rehearing. All applications for rehearing will be made and processed in accordance with Iowa Code sections 17A.16(2) and 476.12 and 199—7.27.

199—28.9(476A) Certification decision.

28.9(1) Issuance of decision. Upon close of the record in the proceeding, the board shall expeditiously render a written decision with complete determinations as to the facility siting criteria and other necessary findings of fact or conclusions of law necessary to support the board's decision.

28.9(2) Facility approval criteria. In rendering its certification decision, the board 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 applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate.

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c. Whether 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;

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

ii. Whether the proposed site represents a reasonable choice among available alternatives;

iii. 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.

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

e. Requirements for good engineering practice. The applicant shall use the applicable provisions of the publications listed below as standards of accepted good practice unless otherwise ordered by the board.

i. Iowa Electrical Safety Code, as defined in 199—Chapter 25.

ii. National Electrical Code, as defined in 199—Chapter 25.

iii. Power Piping ASME B31.1.

28.9(3) Denial. If the board finds that the application and record in the proceeding do not support issuing the certificate, the board will issue an order denying the application for certificate.

28.9(4) Application approval. If the board finds that the certificate should be issued, the board shall issue an order approving the application for certificate and, in accordance with rule 199—28.12(476A), prepare a certificate for construction of the facility.

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199—28.10(476A) Early site preparation.

28.10(1) In the event no certificate has been issued after 90 days from the conclusion of the hearing, the board 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 board's decision concerning the actual issuance of a certificate.

28.10(2) In the event the board denies an application for a certificate or an amendment to a certificate, applicants who have received permission to begin site preparation, pursuant to 28.11(1), shall restore the site, in accordance with the board order denying the application.

199—28.11(476A) Issuance of a certificate.

28.11(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 board in the order granting the application and other terms 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 board as being necessary for the applicant to comply with requirements of licenses or permits then sought but not yet issued.

28.11(2) Eminent domain. The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the board approves, prescribes, and finds necessary for the public convenience, use and necessity, proceeding in a manner of works of internal improvement under Iowa Code chapter 6B.

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28.11(4) *Certificate transfer.* A certificate may be transferred, subject to the approval of the board, to a person or persons 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.

28.11(5) *Application withdrawal.* Pursuant to Iowa Code section 476.53, a rate-regulated utility shall have the option of withdrawing its application for a certificate. An applicant that is not a rate-regulated utility may withdraw its application by motion.

199—28.12(476A) Application for certificate amendment—contents.

28.12(1) Application for amendment.

a. Each person or group of persons proposing a significant alteration to any renewable energy facility or storage facility which was constructed pursuant to a certificate issued by the board 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 renewable energy facility or storage facility which was not constructed pursuant to a certificate issued by the board, including a grandfathered facility, shall file an application for an amendment of a certificate.

28.12(2) All applications for amendment to a certificate shall be filed in accordance with rule 199—28.3(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—28.5(476A).

28.12(3) Upon board acceptance of the amendment application in accordance with 28.12(1), the board shall establish procedures for review of the amendment application. At the board's discretion, the

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comment meeting and prehearing conference for this proceeding may be waived. Notice shall be provided in accordance with 28.7(2).

28.12(4) In the consideration of an application for a certificate, pursuant to 28.12(1)“b,” or amendment to a certificate, pursuant to 28.12(1)“a,” there shall be a rebuttable presumption that the decision criteria of 28.9(2) are satisfied.

28.12(5) Amendment to a certificate. In determining whether an amendment to a certificate will be issued to the applicant, the board will be guided by the criteria set forth in 28.9(2) to the extent applicable and appropriate.

199—28.13(476A) Grandfathered facilities. Any person or persons that have constructed or have already begun construction of a grandfathered facility prior to the effective date of these rules are not required to file an application. Any person or persons constructing, owning, operating or maintaining a grandfathered facility described in this subrule shall file with the board the following information regarding the grandfathered facility within 60 days of the effective date of these rules:

- a.* The type and total nameplate capacity of all generating plants constructed as part of a grandfathered facility;
- b.* the owner or owners of the grandfathered facility;
- c.* the location of the grandfathered facility;
- d.* a site map showing all gathering lines, transformers and other equipment;
- e.* the date the grandfathered facility went into service;
- f.* the expected date of decommissioning; and
- g.* plans for decommissioning and removal of the facility, if any.

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199—28.14(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 board in reaching a decision on the application, including the costs of site inspections or examinations, the hearing, publishing of notice, board staff salaries, consultants employed by the board, and other expenses reasonably attributable to the proceeding.

199—28.15(476A) Waiver.

28.15(1) The board, 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 board will consider the following factors:

- a.* The purpose of the facility;
- b.* The type of facility;
- c.* If the facility is for the applicant's own needs;
- d.* The effect of the facility on existing transmission systems; and
- e.* Any other relevant factors.

In addition to other service requirements, the applicant must serve a copy of the waiver request on all persons given notice of the comment meeting in 28.3(5).

These rules are intended to implement Iowa Code chapter 476A.