BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility's Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. § 216B.1691

ISSUE DATE: June 1, 2004

DOCKET NO. E-999/CI-03-869

INITIAL ORDER DETAILING CRITERIA AND STANDARDS FOR DETERMINING COMPLIANCE WITH MINN. STAT § 216B.1691 AND REQUIRING CUSTOMER NOTIFICATION BY CERTAIN COOPERATIVE, MUNICIPAL, AND INVESTOR-OWNED DISTRIBUTION UTILITIES

PROCEDURAL HISTORY

I. Introduction and Factual Background

In 2001, the Minnesota Legislature passed Minn. Stat. § 216B.1691, setting renewable energy objectives for Minnesota investor-owned electric utilities, generation and transmission cooperatives, and municipal power agencies. The statute required these utilities, cooperatives, and power agencies (hereinafter, "utilities") to make good faith efforts to generate or otherwise secure enough electricity from qualifying renewable energy technologies to represent 10% of total retail electric sales by the year 2015.

In 2003, the Legislature amended the statute to require the Commission to supervise and facilitate these good faith efforts. Among other things, the 2003 amendments required the Commission to issue an initial Order, and subsequent Orders as necessary, doing the following things:

- Detailing criteria and standards for measuring a utility's efforts to meet the renewable energy objectives and determining whether the utility has met the good faith requirement.
- Detailing criteria and standards that protect against undesirable impacts on the reliability of the utility's system.
- Detailing criteria and standards that protect against undesirable economic impacts on the utility's ratepayers.
- Detailing criteria and standards that consider technical feasibility.

- Providing for a weighted scale that determines how energy generated by different technologies counts toward a utility's objective and that grants multiple credits for technologies and fuels that the Commission finds it in the public interest to encourage.

The 2003 amendments also authorized the Commission to establish a program for tradable credits for electricity generated by eligible technologies and provided guidelines for any tradable credits system the Commission might establish.

II. Commission Proceedings to Date

A. The Comment Process

On June 13, 2003, the Commission issued a notice seeking comments from interested persons on the appropriate procedural framework for this case. On July 9 and 18, 2003, the Commission issued notices setting reply comment periods.

The Commission determined, after reviewing the comments filed on procedural and scoping issues, that this case had too many interdependent and sequential issues to resolve in a single Order. The Commission therefore decided to seek comments on the most fundamental issues, to address those issues in an initial Order, and then to promptly resolve remaining issues based on that decisional foundation.

On January 30, 2004, the Commission issued a notice seeking substantive comments on the issues it intended to address in the first Order in this case. Initial comments were due on March 1 and reply comments on April 5. The following persons and organizations filed comments in response to the notice:

Investor-Owned Utilities

- Interstate Power Company
- Northern States Power Company, d/b/a Xcel Energy
- Minnesota Power
- Otter Tail Power Company
- Northwestern Wisconsin Electric Company

Electric Cooperatives

- Great River Energy
- Dairyland Power Cooperative
- Basin Electric Power Cooperative
- East Central Energy

Municipal Electric Entities

- Missouri River Energy Services/Western Minnesota Municipal Power Agency
- Southern Minnesota Municipal Power Agency
- Central Minnesota Municipal Power Agency
- Minnesota Municipal Power Agency
- Minnesota Municipal Utilities Association
- Heartland Consumers Power District
- Elk River Municipal Utilities

State Agencies

- Minnesota Department of Commerce
- Residential and Small Business Utilities Division of the Office of the Attorney General

Units of Local Government

- East Central Solid Waste Commission
- Crow Wing County
- Olmsted County

Environmental/Community Organizations

- Izaak Walton League of America-Midwest Office
- Minnesotans for an Energy-Efficient Economy
- Minnesota Center for Environmental Advocacy
- The Minnesota Project
- Communities United for Responsible Energy
- North American Water Office
- Rural Minnesota Energy Task Force
- Concerned River Valley Citizens
- North Star Chapter of the Sierra Club
- Clean Water Action Alliance
- Minnesota Public Interest Research Group

Other Organizations, Companies, and Individuals

- National Solid Wastes Management Association
- Minnesota Resource Recovery Association
- Minnesota Chamber of Commerce
- Minnesota Utility Investors
- Clean Power Markets
- McNeilus Wind, LLC and GM, LLC
- Laura and John Reinhardt

B. Tradable Credits Workshops

On February 24, 2004, the Commission, the Minnesota Department of Commerce, and the National Council on Electricity Policy sponsored the Midwest Tradable Renewable Credits Workshop, an all-day conference attended by over 100 people. A second workshop, sponsored by the same organizations, is scheduled for June 16 in Madison, Wisconsin.

FINDINGS AND CONCLUSIONS

I. The Issues

The issues on which the Commission sought comment in the first round of substantive comments are set forth below, together with a conservation issue raised in the comments.

- Which entities are covered by the statute?
- Does energy from out-of-state facilities count toward the 10% goal?
- Which biomass technologies count as eligible technologies?
- Does the 60-megawatt cap on eligible hydro facilities apply per-unit or per-facility?
- How should the Commission factor in the recognition that some resources may occur in "lumpy" increments when measuring whether the year-by-year objectives are being met?
- Does the 1% goal for biomass technologies mean 1% of the energy generated by eligible technologies or 1% of total energy sales?
- Does energy used for green pricing programs count toward the 10% goal?
- Does energy saved through conservation count toward the 10% goal?
- What criteria and standards should be used in determining whether a utility has met the "good faith effort" statutory requirement?
- What systems and procedures are needed to track and verify compliance?

These issues will be addressed in turn.

II. Entities Subject to the Statute

One of the issues on which the Commission sought comments was which entities are covered by the renewable energy objectives statute. The notice soliciting comments listed 17 entities as those probably covered and requested comments and corrections. Comments fell into three categories.

A. Heartland Consumers Power District

Heartland Consumers Power District, listed in the notice, stated that it was not a covered entity because it was not a public utility or a municipal power agency under Minnesota law. No one challenged this claim, and the Commission concurs. Heartland will not be subject to the renewable energy objectives of Minn. Stat. § 216B.1691.

B. Northwestern Wisconsin Electric

Northwestern Wisconsin Electric requested an exemption from Minn. Stat. § 216B.1691 on grounds that it complies with Wisconsin's renewable portfolio standards, which are similar to Minnesota's renewable energy objectives. Further, the company has fewer than 100 customers in Minnesota, making it potentially burdensome to comply with Minnesota-specific renewable energy requirements.

The Commission lacks the authority to grant an exemption from Minn. Stat. § 216B.1691 or any other statute. The statute does give the Commission flexibility in applying it, however, by requiring good faith efforts instead of specific outcomes and by authorizing the Commission to

determine whether utilities are acting in good faith. The Commission concludes that the company's small size and its compliance with Wisconsin's renewable portfolio standards will be significant factors in evaluating the good faith of its efforts to meet the renewable energy objectives.

C. Municipal Utilities

Some commentors argued that municipal utilities, especially those that do not have full-requirements contracts with municipal power agencies (which are covered under the statute), should be subject to the renewable energy objectives statute. They emphasized the need for even-handed application of state energy policy and the importance of promoting the use of renewable technologies by self-generating municipal utilities.

Whatever the merits of including municipal utilities within the class of utilities subject to the renewable energy objectives, the Legislature has decided against it. The Commission lacks both the authority and the inclination to second-guess that decision.

D. Covered Entities

The Commission finds that the entities subject to the renewable energy objectives statute are the16 entities listed below:

Public Utilities Providing Electric Service

- Northern States Power Company d/b/a Xcel Energy
- Minnesota Power
- Otter Tail Power
- Interstate Power & Light Company
- Northwestern Wisconsin Electric Company

Generation and Transmission Cooperative Electric Associations

- Great River Energy
- Minnkota Power Cooperative
- Dairyland Power Cooperative
- Basin Electric Power Cooperative
- East River Electric Power Cooperative
- L & O Power Cooperative

Municipal Power Agencies

- Southern Minnesota Municipal Power Agency
- Western Minnesota Municipal Power Agency/Missouri River Energy Services
- Northern Municipal Power Agency
- Minnesota Municipal Power Agency
- Central Minnesota Municipal Power Agency

III. Renewable Energy Generated Outside the State

One of the issues on which the Commission sought comments was whether energy from out-of-state facilities should count toward meeting the renewable energy objectives.

A. The Comments

The Minnesota Project, Communities United for Responsible Energy, North American Water Office, the Rural Minnesota Energy Task Force, and Concerned River Valley Citizens argued that out-of-state generation should not count toward meeting the renewable energy objectives on grounds that in-state generation provides greater environmental and economic benefits.

These commentors were especially concerned about permitting tradable renewable credits for out-of-state generation, claiming that this could permit utilities to meet their objectives with paper transactions that did not benefit the Minnesota environment, did not contribute to in-state economic development, and did not provide protection against volatility in the price of natural gas and other fossil fuels.

Laura and John Reinhardt opposed counting out-of-state generation on grounds that this generation requires long-distance, high-voltage transmission lines, which pose issues of their own, and on grounds that small-scale, community-based generation located near load is the most environmentally-friendly alternative.

The other commentors recommended counting out-of-state generation, emphasizing cost issues and the fact that utilities secure and dispatch generating resources on a system-wide basis.

B. Commission Action

The Commission finds that out-of-state renewable generation used to serve Minnesota customers counts toward meeting utilities' renewable energy objectives, for four main reasons.

First and most compelling, the statute does not by its terms exclude out-of-state generation, nor does it articulate underlying policy goals that support excluding out-of-state generation. In fact, by specifically permitting the Commission to authorize interstate trading of renewable energy credits, the Legislature appears to have approved using out-of-state resources to meet renewable energy goals.

Second, utilities routinely rely on out-of-state generation to meet Minnesota demand, since they do plan resource acquisitions on a system-wide basis and since they increasingly serve customers in more than one state. It would be anomalous, to say the least, to permit a Minnesota utility to use out-of-state coal generation to serve Minnesota customers but not to recognize out-of-state renewable generation as a meaningful part of its portfolio.

Third, refusing to recognize out-of-state renewable generation could significantly increase the cost of meeting the renewable energy objectives, raising rates for ratepayers and perhaps causing utilities to miss the statutory 10% target.

Fourth, environmentally-friendly generation need not be sited in Minnesota to produce positive environmental benefits within the state. This generation might displace more polluting generation located within the state, for example. And more fundamentally, Minnesota’s ecosystem is inextricably connected with the ecosystems of neighboring states, making regional environmental advances beneficial to Minnesotans.

Given the Commission's conclusion that out-of-state generation counts toward meeting the renewable energy objectives, the Commission need not reach the argument that excluding such energy would violate the Commerce Clause of the United States Constitution.

IV. Eligible Biomass Technologies

A. The Comments

Another issue on which comments were sought was which biomass technologies should count toward meeting the renewable energy objectives. Minnesota statutes define biomass differently for different purposes, and the renewable energy objectives statute defines it only in terms of clarifying its application to mixed municipal solid waste. The Commission solicited comments to ensure that any grounds for limiting recognition to certain technologies or fuels were adequately explored.

Nearly all commentors urged the Commission to take an inclusive approach at this stage in the development of biomass technologies. There was also no controversy about the proposal to exclude peat from the list of eligible fuels, as advocated by the Minnesota Project, Communities United for Responsible Energy, North American Water Office, the Rural Minnesota Energy Task Force, Concerned River Valley Citizens, and the North Star Chapter of the Sierra Club.

The Sierra Club also offered detailed recommendations on restricting the conditions under which whole trees, logging waste, recyclable waste paper, and crops should be treated as eligible fuels. And the Club opposed treating peat and municipal waste as eligible fuels.

B. Commission Action

The Commission finds that it is important to take an inclusive approach to counting biomass generation toward meeting the renewable energy objectives at this early stage in the development of biomass technologies. At this stage, limiting recognition to certain technologies or fuels carries the risk of stifling the research and innovation required to determine biomass's true potential as a cost-effective, environmentally sound, reliable alternative to fossil fuels.

The Commission will therefore count toward meeting the renewable energy objectives all biomass generation falling within existing statutory definitions of biomass, i.e., Minn. Stats. §§ 216B.2422, subd. 1 (c); 216C.051, subd. 7 (g) (1); 216B.2411, subd. 2(c); and §216B.2424, subds. 1 and 6 (f). To the extent that peat is arguably listed, however, the Commission will exclude it, concurring with the uncontested claims of commenting parties that peat does not regenerate quickly enough to qualify as renewable and that harvesting peat poses unacceptable risks to northern ecosystems.

V. Eligible Hydroelectric Facilities

A. The Comments

The renewable energy objectives statute lists the energy technologies that count toward meeting the renewable energy objectives; this list limits eligible hydroelectric technologies to "hydroelectric with a capacity of less than 60 megawatts."[1] One of the issues on which the Commission requested comment was whether the 60-megawatt cap applied to each generating unit at a hydroelectric plant or to the plant as a whole.

[1] Minn. Stat. § 216B.1691, subd. 1 (a) (1).

There were commentors on both sides of the issue. Those who advocated applying the cap to individual generating units argued that historically hydroelectric power has been the most basic and reliable renewable resource and that it should receive expansive treatment in the absence of clear statutory language requiring other treatment.

Those on the other side of the issue pointed to recent controversies regarding the environmental and socioeconomic impacts of large-scale dams, claimed that the Legislature was responding to these controversies by limiting eligible hydro technologies to low-impact facilities, and argued that regulators and utilities generally deal with hydroelectric plants as a whole, not as a conglomeration of individual generating units.

B. Commission Action

The Commission finds that the 60-megawatt cap applies to all generation at a single hydroelectric site, not to the output of each generating unit at that site.

First, this is the most logical and straightforward reading of the statute. It would be illogical for the Legislature to concern itself with the size of individual generating units at a hydroelectric facility, when the environmental effects that prompted the renewable energy statute come from the facility as a whole.

Neither would it be logical to exclude the energy from a 150-megawatt hydro plant in determining progress toward meeting the renewable energy objectives, while counting the energy from three 50-megawatt generators with the same environmental impacts. The Commission declines to find that the Legislature intended such a result.

Furthermore, the parties are correct in pointing out that regulators and utilities generally deal with hydroelectric plants as a whole, not as a conglomeration of individual generating units. In fact, Minnesota's certificate of need statute explicitly requires treating all generating units at a single site as one large energy facility. Minn. Stat. § 216B.2421. Similarly, the regulations promulgated under the federal Public Utility Regulatory Policies Act require treating all hydroelectric generators owned by the same entity and using water from the same impoundment as a single facility.[2]

For all these reasons, the Commission concludes that the 60-megawatt cap on eligible hydroelectric facilities applies to the entire generation site, not to individual generating units.[3]

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[2] 18 CFR 292.204 (a) (2).

[3] Several commentors, including the Department of Commerce, pointed out that some new, run-of-river hydroelectric technologies have such low environmental impact that even at higher capacity levels, they are more environmentally benign than traditional projects under the 60-megawatt cap. The Commission does not have the discretion to count these projects, given the statutory language, but it will apprise the chairs of the legislative policy committees that the issue has been raised and may merit legislative attention.

VI. Treatment of Pre-existing Generation and New Generation from Eligible Technologies Added in Increments Larger than 1% Per Year

A. Introduction

The renewable energy objectives statute requires utilities to make good faith efforts to generate or otherwise secure enough electricity from qualifying renewable energy technologies to ensure that generation from these technologies constitutes 10% of total retail electric sales by the year 2015. The statute sets an initial goal of one percent by 2005, with annual one percent increases thereafter until 2015.

The statutory language is set forth below:

> Subd. 2. **Eligible energy objectives.** (a) Each electric utility shall make a good faith effort to generate or procure sufficient electricity generated by an eligible energy technology to provide its retail consumers, or the retail customers of a distribution utility to which the electric utility provides wholesale electric service, so that:
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> (1) commencing in 2005, at least one percent of the electric utility's total retail electric sales is generated by eligible energy technologies;
>
> (2) the amount provided under clause (1) is increased by one percent of the utility's total retail electric sales each year until 2015; and
>
> (3) ten percent of the electric energy provided to retail customers in Minnesota is generated by eligible energy technologies.
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> Minn. Stat § 216B.1691, subd. 2 (a).

This juxtaposition of time frames and goals is not a model of clarity as to the treatment of pre-existing generation or new generation added in increments larger than one percent in any given year. The Commission therefore sought comments on the treatment of "lumpy" additions to a utility's qualifying portfolio and the "bankability" of qualifying generation that exceeds the initial or annual 1% goals.

B. The Comments

Most commentors agreed that the statute requires the Commission to evaluate utilities' good faith efforts in light of the overarching 10% goal, which they see as both a state-wide goal and a utility-specific goal, and to use the 1% initial and annual goals as benchmarks to ensure steady progress along the way.

The Izaak Walton League of America - Midwest Office, Minnesotans for an Energy-Efficient Economy, the Minnesota Center for Environmental Advocacy, and the North Star Chapter of the Sierra Club, however, argued that the 10% goal was a state-wide goal irrelevant to individual utility performance. They argued that the overarching statutory goal was to *increase* each utility's renewable portfolio by 1% of retail sales per year for nine years, beginning in 2006, regardless of the amount of renewable generation in the utility's portfolio at that time.

They also argued that the 1% initial goal set for 2005 was intended to jump-start this process for utilities with few renewables and to function as the cut-off point for recognizing pre-existing renewable generation for utilities that already had significant renewable portfolios. Consistent with this theory, they contended that pre-existing renewable generation counts only toward reaching the 1% goal for 2005. After 2005, each utility must add new, qualifying generation equaling 1% of its total retail sales during each calendar year until 2015, even if those increases result in total renewable generation significantly exceeding 10% of the utility's total generation resources.

C. Commission Action

The Commission concurs with the majority of the commentors that the 10% goal applies both to individual utilities and to the state as a whole and that the statute does not, by its terms or by its purpose, require that all countable generation after 2005 come from new sources. There are three main reasons for this conclusion.

1. The Statutory Language

First, the restrictive reading urged by the environmental commentors is inconsistent with a commonsense reading of the statute and at least two of its specific provisions.

The statute clearly and explicitly excludes two categories of pre-existing generation from counting toward the renewable energy objectives: (1) generation mandated by Chapter 641 of the Laws of 1994 and Commission Orders issued thereunder; and (2) generation from a refuse-derived fuel facility with a power sales agreement in effect as of May 29, 2003 and terminating on December 31, 2010. These explicit exclusions demonstrate that the statute contains no general prohibition against counting pre-existing generation; if it did, it would have not have been necessary to explicitly exclude these two examples of pre-existing generation.

Moreover, the statute clearly permits counting generation from an otherwise-excluded, refuse-derived fuel plant – even after 2005 – if the purchased power agreement includes a rate adjustment reflecting the plant's inclusion as an eligible energy technology. This willingness to include the generation of the pre-existing refuse-derived fuel plant after 2005 demonstrates that 2005 is not an absolute cut-off date for counting generation from pre-existing renewable facilities.

Further, the statute's careful attention to excluding some pre-existing resources, while remaining silent on others, severely undermines the claim that the exclusion of pre-existing resources after 2005 was simply taken for granted by the drafters of the statute.

Finally, if the statute meant to treat the 10% objective as irrelevant to individual utilities and to treat the 1% initial objective and the 1% annual increases as the only meaningful goals for individual utilities, it would say so directly, not in the convoluted manner suggested by the commentors. Treating the 10% goal as the ultimate target, both industry-wide and for individual utilities, and treating the 1% intermediate goals as benchmarks to spur and gauge compliance, is a much more straightforward and commonsense reading of the statute.

2. The Significance of the Annual Objectives

The Commission reads the statute as requiring it to evaluate utilities' good faith efforts in light of the overarching 10% goal, which applies both to utilities and to the state as a whole, and to use the 1% initial and annual goals as benchmarks to ensure steady progress along the way.

The annual goals guide the Commission in enforcing the good faith obligation. They make it clear that utilities are to stay focused, make steady progress toward the 10% goal, and account for any failure to make steady progress. They make it clear that utilities have a present, an intermediate, and a long-term obligation to make renewable generation an integral part of their portfolios. They are of a piece with longstanding state policies favoring conservation and renewable energy over fossil-fuel derived energy.[4]

By casting these 1% annual goals as "objectives," however, rather than mandates, the Legislature has clearly determined that utilities and regulators need some flexibility in implementing them. Rigid insistence on equal annual increments of new renewable generation is inconsistent with the flexible approach adopted in the statute.

3. The Statute's Underlying Policies

Further, the restrictive reading of the statute urged by the environmental commentors would penalize the behavior the statute seeks to encourage, the aggressive pursuit of renewable resources. Utilities that have been diligent in adding renewable energy to their portfolios, carefully calibrating the reliability and rate effects of these new resources, could find themselves forced to add, or to defend their decision not to add, renewable generation exceeding both the 10% goal and the percentage of renewable energy reasonably consistent with optimal system operation.

The restrictive reading would also complicate – and, in all likelihood, hinder – utilities' compliance efforts. Rigid insistence on adding qualifying generation in 1% annual increments would discourage large-scale renewable projects, however worthwhile, even assuming the availability of tradable credits, joint ownership, staged implementation, and similar devices. It would similarly discourage adding large numbers of small projects in a single calendar year, no matter how consistent those additions might be with good energy policy and the needs of the utility's system.

The Commission is convinced that the Legislature did not intend to penalize utilities for early compliance with state policies favoring renewable resources, to stifle innovation and creativity in deploying renewable resources, or to deprive utilities of the flexibility needed to balance renewable portfolios with the needs of their service areas. The restrictive reading urged by the environmental commentors carries the potential for all these harms.

The Commission therefore concludes that the 10% overarching objective applies to both individual utilities and the state as a whole and that the 1% initial and annual objectives function both as intermediate goals and as benchmarks for evaluating individual utilities' good faith in striving to meet the renewable energy objectives set by statute.

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[4] See, for example, the resource planning statute's requirement that utilities' resource plans include least-cost plans for meeting 50% and 75% of all new and refurbished capacity through conservation and renewable energy facilities. Minn. Stat. § 216B.2422, subd. 2. See the statutory prohibitions against certifying nonrenewable energy facilities or including the costs of those facilities in rates, unless the utility demonstrates that a renewable facility is not in the public interest. Minn. Stat. § 216B.2422, subd. 4. See also the certificate of need statute's prohibition against granting a certificate of need for a nonrenewable facility unless the applicant demonstrates that it has explored the possibility of using renewable generation and that the nonrenewable alternative is less expensive, including environmental costs.

VII. The Biomass Goal

A. Introduction

The renewable energy objectives statute sets separate goals for biomass generation, as set forth below:

> (b) Of the eligible energy technology generation required under paragraph (a), clauses (1) and (2), not less than 0.5 percent of the energy must be generated by biomass energy technologies . . . . By 2010, one percent of the eligible technology generation required under paragraph (a), clauses (1) and (2), shall be generated by biomass energy technologies.
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> Minn. Stat. § 216B.1691, subd. 2 (b) .

The Commission sought comments on how to interpret the 0.5% and 1% goals – specifically, whether these percentages applied only to the amount of energy generated by eligible technologies or to a utility's annual retail sales.

B. The Comments

There was general agreement that the plain meaning of the statutory language was that the percentage goals for biomass-generated energy apply to the pool of energy procured or generated under the renewable energy objectives statute, not to annual retail electric sales. There was also widespread, but not universal, agreement that the Legislature had intended the percentage to apply to annual retail electric sales.

The parties were nearly evenly divided on how the Commission should proceed. Some commentors urged the Commission to apply the statute as written; others urged the Commission to effectuate what they considered to be the Legislature's intent and apply the biomass percentages to annual retail electric sales.

C. Commission Action

The Commission will enforce the statute as written. The statute is clear on its face, and the Commission lacks the authority to rewrite it to reflect its own or any other party's understanding of legislative intent.

The Commission emphasizes, however, that the statute's biomass percentage goals are floors only and that the Commission is charged with enforcing every provision in the renewable energy objectives statute, including the requirement that utilities make good faith efforts to include biomass-fueled generation in their renewable energy portfolios.

Finally, to ensure that state policymakers have adequate information, the Commission will apprise the chairs of the legislative policy committees that it is enforcing the statute as written, that many stakeholders believe the statute contains a drafting anomaly, and that the issue may merit legislative attention.

VIII. The Treatment of Energy Generated Under "Green Pricing" Programs

A. Introduction

In 2001 the Legislature passed both the renewable energy objectives statute and the "green pricing" statute,[5] which requires all Minnesota distribution utilities to offer their customers the opportunity to stipulate that some or all of the energy purchased or generated on their behalf will be "renewable energy or energy generated by high-efficiency, low-emissions, distributed generation such as fuel cells and microturbines fueled by a renewable fuel."[6] The statute requires utilities to charge customers exercising the green pricing option the difference between the cost of purchasing or generating renewable energy and the cost of purchasing or generating nonrenewable energy.

One of the issues on which the Commission sought comments was whether energy purchased under green pricing programs should be counted toward meeting the renewable energy objectives, assuming the energy was generated by an "eligible energy technology," as the renewable energy objectives statute requires.

B. The Comments

1. Comments Opposing the Inclusion of Green Pricing Energy

Commenting parties were deeply divided on this issue. The environmental, consumer, and community organizations participating in the case, and the Residential and Small Business Utilities Division of the Office of the Attorney General, opposed counting green pricing generation toward the renewable energy objectives, chiefly on grounds that it would be deceptive and discriminatory as to green power program participants.

They argued that customers opt to participate in green pricing programs because they believe that those programs give them an opportunity to make a difference – they believe that every kilowatt hour of green power they purchase represents one less kilowatt hour of power generated with fossil fuel. These commentors argued that it would be deceptive to continue marketing green pricing programs without explaining to customers that it is possible that the power for which they are paying a premium would have been acquired by the utility anyway – and its cost reflected in all customers' rates – as part of the utility's obligatory good faith effort to meet the renewable energy objectives.

They also argued that it would be inequitable and discriminatory to charge green pricing customers a premium for renewable energy purchased under the green pricing program, when other customers would receive renewable energy generated or purchased under the renewable energy objectives program at standard rates.

They also argued that permitting utilities to count the same energy toward its green pricing obligations and its renewable energy objectives was illogical and constituted double-counting. And finally, these commentors argued that counting green pricing energy toward the renewable energy objectives essentially forced green pricing customers to subsidize a general obligation that the statute places on utilities and whose costs should be spread over the general body of ratepayers.

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[5] Minn. Stat. § 216B.169.

[6] Minn. Stat. § 216B.169, subd. 2 (a).

2. Comments Supporting the Inclusion of Green Pricing Energy

The other commentors supported counting energy purchased under green pricing programs. They pointed out that the statute does not exclude green pricing energy and that it does exclude other types of generation. They emphasized that the renewable energy objectives are only goals and that it is therefore by no means certain that renewable energy purchased under green pricing programs would have been provided to the utility's ratepayers anyway.

They also emphasized the need for a variety of tools and strategies to meet the renewable energy objectives and argued that green pricing is one of many tools utilities should be permitted to consider using.

C. Commission Action

After careful review, the Commission concludes that utilities, with the possible exception of Xcel Energy,[7] may elect to count energy purchased under green pricing programs toward their renewable energy objectives, if they give customers clear and timely notice of this election and permit customers to withdraw from these programs upon reviewing the notice. The reasons for this decision are set forth below.

1. The Statutory Language

First, the statute, which does specifically exclude several categories of energy from counting toward the renewable energy objectives, does not exclude energy purchased under green pricing programs. This is powerful evidence that the Legislature did not intend to exclude green pricing as a tool for meeting the renewable energy objectives.

2. No Discrimination/Deception/Subsidization

Second, it is simply not true that permitting utilities to count green pricing energy renders green pricing customers' contributions illusory and the marketing of green pricing programs deceptive. The renewable energy objectives are just that – objectives. Utilities must make good faith efforts to meet these objectives, but the statute explicitly requires factoring in technical feasibility and protecting against undesirable rate and reliability impacts.

In short, utilities do not have an absolute obligation to reach the 10% goal, and there is therefore no certainty that energy purchased under green pricing programs would have been purchased anyway to meet the renewable energy objectives. The fact that the Legislature chose to enact renewable energy *objectives*, not mandates, changes the equation significantly and discredits claims that counting green pricing energy deceives, discriminates against, or takes advantage of green pricing customers.

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[7] The unique status and obligations of Xcel Energy under the renewable energy objectives statute will be addressed in a subsequent Order. Among other things, the statute provides that the renewable energy objectives are requirements for Xcel, subject to resource planning requirements, least-cost planning requirements, and reliability constraints. Minn. Stat. § 216B.1691, subd. 6.

Furthermore, permitting utilities to coordinate their green pricing programs with their efforts to reach the renewable energy objectives could enhance their chances of meeting the objectives, since the premium paid by green pricing customers could result in making renewable energy projects that would otherwise fail the statute's "undesirable economic impact" test financially viable.

The downside, of course, is that explaining the complex relationship between the two programs could complicate green pricing marketing efforts and reduce program participation. Those concerns, however, are best left to the utilities, who must weigh the costs and benefits of counting green pricing energy toward their renewable energy objectives obligations.

And finally, to ensure full disclosure of accurate information to green pricing customers, the Commission will require all municipal and cooperative distribution utilities served by generation and transmission cooperatives or municipal power agencies that elect to count green pricing power toward the renewable energy objectives to inform their customers of this fact and permit them to withdraw from the program. While these distribution utilities are not subject to the renewable energy objectives statute, they are subject to the green pricing statute and to the Commission's enforcement authority thereunder.

The Commission will of course place the same requirement on investor-owned utilities that choose to include green pricing energy toward meeting their renewable energy objectives.

3. No Double-Counting

Finally, the Commission rejects the claim that counting energy purchased under the green pricing program toward the renewable energy objectives constitutes an impermissible "double-counting" of the same energy. As discussed above, the renewable energy objectives are goals, not discrete quotas that must be met in addition to, independently of, and separately from, the utility's other renewable energy obligations. The renewable energy objectives statute sets goals; the green pricing statute creates an independent obligation that may incidentally help meet the goal.

The green pricing statute – like the distributed generation statute[8], the cogeneration and small power production statute,[9] and the renewable preferences in the resource planning and certificate of need statutes[10] – increases the use of renewable generation. In the absence of a legislative directive to the contrary, however, the Commission treats these initiatives as complementary, not competitive, enterprises, and counts renewable energy generated or purchased in response to them toward the renewable energy objectives.

IX. The Role of Conservation

A. The Comments

Two commentors, Laura and John Reinhardt, urged the inclusion of energy saved through conservation, energy efficiency, and load management toward meeting the renewable energy

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[8] Minn. Stat. § 216B.1611.

[9] Minn. Stat. § 216B.164.

[10] Minn. Stat. § 216B.2422, subd. 4 and Minn. Stat. § 216B.243, subd. 3a.

objectives. They pointed out that the renewable energy objectives statute begins with the phrase "Unless otherwise specified in law,"[11] and pointed to Minn. Stat. § 216C.051, subd. 7, establishing conservation and load management as the state's highest priority in energy production and consumption, as authority for treating conservation/energy efficiency/load management as "eligible energy technologies" under Minn. Stat. § 216B.1691, subd. 1 (a).

None of the other commentors shared this view.

B. Commission Action

The Commission concurs with the Reinhardts that conservation and load management are core values of Minnesota energy policy and that the Legislature has adopted them as the state's highest priority in electric energy production and consumption. The Commission does not concur, however, that the renewable energy objectives statute permits utilities to substitute energy saved through conservation for any part of the 10% of its generation portfolio that is to come from renewable resources. There are two reasons for this conclusion.

First, the statute explicitly lists the technologies that count toward meeting the renewable energy objectives, and conservation/energy efficiency/load management are not listed. It is inconceivable that the Legislature would have failed to list alternatives to generation if that had been its intent.

Second, including conservation/energy efficiency/load management would be inconsistent with the statute's clear purpose. However successful conservation efforts might be, Minnesota will always require some irreducible quantity of electrical energy; the purpose of the renewable energy objectives statute is to ensure that a significant percentage of this irreducible quantity comes from renewable resources.

For all these reasons, the Commission concludes that conservation/energy efficiency/load management – critical as they are to Minnesota's energy policy – are not eligible energy technologies under the renewable energy objectives statute.

X. Criteria and Standards for Meeting the "Good Faith Effort" Requirement

On the issue of how the Commission should apply the "good faith effort" standard in evaluating compliance with the renewable energy objectives statute, the comments were thoughtful and necessarily general. The Commission shares the commentors' conviction that, at least at this point, it would be neither helpful nor possible to set highly specific, prescriptive standards for compliance.

Instead, the Commission will focus on whether the utility's filing demonstrates that it has committed the time, money, and other institutional resources necessary to develop a comprehensive plan for making a good faith effort to meet its renewable energy objectives.

[11] Minn. Stat. § 216B.1691, subd. 1.

Specifically, utilities' filings under the statute should demonstrate the commitments listed below:

- **Demonstrated commitment to a specific plan**. Each utility must file a plan that reasonably details the steps to be taken to reach the renewable energy objectives, with an accompanying timetable.
- **Demonstrated financial commitments** to build facilities or to purchase energy to meet the renewable energy objective, including but not limited to project financing; purchase and ordering of equipment; and expenditures to hire construction firms if needed.

- **Demonstrated commitments to construction of physical infrastructure** to meet the renewable energy objectives, including but not limited to ordering equipment; hiring construction firms; and/or contracting for a Renewable energy objectives site.

- **Demonstrated legal and contractual commitments** to purchase or build the facilities to meet the renewable energy objectives, including but not limited to contracts for sites on which to build; contracts for labor and equipment; arrangements for insurance and liability etc.[12]

- **Demonstrated commitment to meet regulatory requirements** in timely fashion, including but not limited to federal, state, county, township and municipal permitting and any other regulatory obligations, such as filed plans for facility construction in the Commission's biennial transmission planning process under Minn. Stat. 216B.2425.

- **Demonstrated commitment to transmission access** for the Renewable energy objectives facilities, including but not limited to initiation or participation in transmission studies or provision of interconnection and transmission service for these facilities.

- **Demonstrated commitment to openness and transparency.** This requires full public access to all non-proprietary information relating to meeting the renewable energy objectives, including but not limited to actions taken for financial commitments; construction of physical infrastructure; legal and contractual commitments; compliance with regulatory requirements; and transmission access.

These filings should also demonstrate that the utility has carefully analyzed each project's technical feasibility and its potential for negative impacts on reliability and rates, including, but not limited to, addressing the following factors:

- Maintaining or improving the adequacy and reliability of utility service.

- Keeping the customers' bills and the utility's rates as low as practicable, given regulatory and other constraints.

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[12] In the case of contracts for purchases to meet the renewable energy objective, a check list of required items could include: request for proposals (RFP); the field of candidates to which the RFP was offered; the response to the RFP, the selection of a short list or a winning bidder; and the negotiation of the contract.

- Minimizing adverse socioeconomic effects and adverse effects upon the natural environment.

- Enhancing the utility's ability to respond to changes in the financial, social, and technological factors affecting its operations.

- Limiting the risk of adverse effects on the utility and its customers from financial, social, and technological factors that the utility cannot control.

The Legislature has authorized the Commission to fine-tune the process for evaluating good faith efforts by issuing subsequent Orders as necessary; the Commission anticipates monitoring the effectiveness of the standards set forth above and adjusting them as necessary in future Orders.

XI. Verification and Implementation Issues

The Commission also sought comments on what procedures it should adopt for oversight, verification, and enforcement of utilities' compliance with their renewable energy objectives obligations. Specifically, the Commission asked how best to certify eligible facilities, verify generation and sales volumes from certified facilities, and verify the proper allocation of energy from certified facilities between utilities and between the jurisdictions of interstate utilities.

The commentors filed a wealth of suggestions, ranging from self-certification to exacting third-party verification. It was clear, however, that they shared the same interest in developing the least cumbersome and most clearly reliable verification procedures possible. It was equally clear that they were in the best position to develop these procedures, since most of them had hands-on experience with verification and allocation issues.

The Commission will therefore ask the Department, its own staff, interested commentors, and any other interested stakeholders to work together toward the establishment of an independent tracking system to certify, verify, and implement the renewable energy objectives. In designing this system, stakeholders should bear in mind the need for the system to be simple, accurate, transparent, and reasonable in cost.

XII. Next Steps

Finally, with these foundational issues resolved, it is important to move expeditiously toward the filing of the first biennial renewable energy objectives reports under Minn. Stat. § 216.1691, subd. 3. The Commission will therefore delegate to its Executive Secretary the authority to issue notices, develop questions, and establish further procedures to resolve remaining issues promptly. Those issues include, but are not necessarily limited to, those set forth below:

- Reporting requirements, including content, timing, and related issues.

- Developing a weighted scale of how energy produced by various eligible energy technologies shall count toward the renewable energy objectives and establishing a system that grants multiple credits for technologies and fuels that it is in the public interest to encourage.

- The specific criteria and standards applicable to Xcel Energy under Minn. Stat. § 216B.1691, subd. 6.

- Certification, verification, and tracking systems.
- Voluntary compliance and/or reporting by municipal utilities.
- Follow-up on issues related to tradable credits.

The Commission will so order.

ORDER

1. The utilities listed below are subject to the renewable energy objectives statute and shall comply with all requirements set forth below:

Public Utilities Providing Electric Service

- Northern States Power Company d/b/a Xcel Energy
- Minnesota Power
- Otter Tail Power
- Interstate Power & Light Company
- Northwestern Wisconsin Electric Company

Generation and Transmission Cooperative Electric Associations

- Great River Energy
- Minnkota Power Cooperative
- Dairyland Power Cooperative
- Basin Electric Power Cooperative
- East River Electric Power Cooperative
- L & O Power Cooperative

Municipal Power Agencies

- Southern Minnesota Municipal Power Agency
- Western Minnesota Municipal Power Agency/Missouri River Energy Services
- Northern Municipal Power Agency
- Minnesota Municipal Power Agency
- Central Minnesota Municipal Power Agency

2. In meeting their renewable energy objectives, utilities shall not include as eligible energy technologies, hydroelectric facilities whose capacity at a single generating site equals or exceeds 60 megawatts.

3. In meeting their renewable energy objectives, utilities may include generation from all eligible energy technologies, whenever installed, with the following exceptions:

   A. Generation from hydrogen-fueled facilities after 2010 unless the hydrogen is generated from the resources listed in Minn. Stat. § 216B.1691, subd. 1 (a) (1), as provided in that subdivision.

B. Generation mandated under Laws 1994, Chapter 641, or by Commission Order(s) issued thereunder prior to August 1, 2001, as provided in Minn. Stat. § 216B.1691, subd. 1 (a) (2).

C. Generation from an energy recovery facility used to capture the heat value of mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste, with a power sales agreement in effect as of May 29, 2003, that terminates after December 31, 2010, unless the agreement provides for rate adjustment in the event the facility qualifies as a renewable energy source, as provided in Minn. Stat. § 216B.1691, subd. 2 (b).

4. In meeting their renewable energy objectives, utilities may include generation from out-of-state facilities, as long as those facilities are used to serve Minnesota customers.

5. In meeting their renewable energy objectives, utilities may include generation from all biomass sources falling within existing statutory definitions of biomass, i.e., Minn. Stats. §§ 216B.2422, subd. 1 (c); 216C.051, subd. 7 (g) (1); 216B.2411, subd. 2(c); and §216B.2424, subds 1 and 6 (f), with the exclusion of peat.

6. In meeting their renewable energy objectives, utilities may elect to include generation purchased under green pricing programs established under Minn. Stat. § 169.

7. Public utilities choosing to include energy purchased under green pricing programs toward their renewable energy objectives shall notify all their customers of this choice and shall permit existing green pricing customers to withdraw from the program if they wish.

8. All municipal and cooperative distribution utilities served by generation and transmission cooperatives or municipal power agencies that elect to count green pricing power toward the renewable energy objectives shall inform all their customers of this fact and permit existing green pricing customers to withdraw from the program if they wish.

9. In meeting their renewable energy objectives, utilities shall strive to ensure that at least one percent of the pool of energy generated by eligible energy technologies is generated by biomass technologies.

10. In meeting their renewable energy objectives, utilities shall not include energy savings from conservation, energy efficiency, or load management.

11. In their biennial filings demonstrating compliance with the renewable energy objectives, utilities shall address the following two sets of criteria, which the Commission will use in evaluating their compliance with the "good faith efforts" standard set by statute:

A. Demonstrated commitment to a specific plan. Each utility must file a plan that reasonably details the steps to be taken to reach the renewable energy objectives, with an accompanying timetable.

B. Demonstrated financial commitments to build facilities or to purchase energy to meet the renewable energy objective, including but not limited to project financing; purchase and ordering of equipment; and expenditures to hire construction firms if needed.

C. Demonstrated commitments to construction of physical infrastructure to meet the renewable energy objectives, including but not limited to ordering equipment; hiring construction firms; and/or contracting for a Renewable energy objectives site.

D. Demonstrated legal and contractual commitments to purchase or build the facilities to meet the renewable energy objectives, including but not limited to contracts for sites on which to build; contracts for labor and equipment; arrangements for insurance and liability etc.[13]

E. Demonstrated commitment to meet regulatory requirements in timely fashion, including but not limited to federal, state, county, township and municipal permitting and any other regulatory obligations, such as filed plans for facility construction in the Commission's biennial transmission planning process under Minn. Stat. 216B.2425.

F. Demonstrated commitment to transmission access for the renewable energy objectives facilities, including but not limited to initiation or participation in transmission studies or provision of interconnection and transmission service for these facilities.

G. Demonstrated commitment to openness and transparency. This requires full public access to all non-proprietary information relating to meeting the renewable energy objectives, including but not limited to actions taken for financial commitments; construction of physical infrastructure; legal and contractual commitments; compliance with regulatory requirements; and transmission access.

H. Demonstrated reasonable efforts to adequately consider technical feasibility and to protect against undesirable impacts on system reliability and undesirable economic impacts on ratepayers, including, but not necessarily limited to, the following factors:

1. Maintaining or improving the adequacy and reliability of utility service.

2. Keeping the customers' bills and the utility's rates as low as practicable, given regulatory and other constraints.

3. Minimizing adverse socioeconomic effects and adverse effects upon the natural environment.

4. Enhancing the utility's ability to respond to changes in the financial, social, and technological factors affecting its operations.

5. Limiting the risk of adverse effects on the utility and its customers from financial, social, and technological factors that the utility cannot control.

[13] In the case of contracts for purchases to meet the renewable energy objective, a check list of required items could include: request for proposals (RFP); the field of candidates to which the RFP was offered; the response to the RFP, the selection of a short list or a winning bidder; and the negotiation of the contract.

12. The Commission asks the Department of Commerce, Commission staff, and all interested commentors and stakeholders to work together toward the establishment of an independent tracking system to certify, verify, and implement compliance with the renewable energy objectives. In designing this system, primary emphasis should be placed on simplicity, accuracy, transparency, and reasonableness of cost.

13. The Commission delegates to the Executive Secretary the authority to issue notices, develop questions, and establish further procedures to resolve remaining issues promptly. Those issues include, but are not necessarily limited to, those set forth below:

    A. Reporting requirements, including content, timing, and related issues.

    B. Developing a weighted scale of how energy produced by various eligible energy technologies shall count toward the renewable energy objectives and establishing a system that grants multiple credits for technologies and fuels that it is in the public interest to encourage.

    C. The specific criteria and standards applicable to Xcel Energy under Minn. Stat. § 216B.1691, subd. 6.

    D. Certification, verification, and tracking systems.

    E. Voluntary compliance and/or reporting by municipal utilities.

    F. Follow-up on issues related to tradable credits.

14. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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