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: August 13, 2004 DOCKET NO. E-999/CI-03-869 ORDER AFTER RECONSIDERATION

PROCEDURAL HISTORY

I. Introduction and Factual Background

In 2001, the Minnesota Legislature passed Minn. Stat. § 216B.1691, setting renewable energy objectives for Minnesota's 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. Preliminary Proceedings and the Initial Order

In June and July 2003, the Commission issued notices seeking initial and reply comments from interested persons on the appropriate procedural framework for developing the issues and issuing the Orders required under the renewable energy objectives statute.

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.

Some 39 persons and organizations filed comments. On June 1, 2004, the Commission issued its initial Order, which addressed and resolved the following issues:

- 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?

III. Petitions for Reconsideration; Request for Abeyance and Clarification

A. Sierra Club North Star Chapter – Petition for Reconsideration or Amendment

On June 18, 2004, the North Star Chapter of the Sierra Club filed a petition for reconsideration or amendment of the initial Order. The petition sought reconsideration of the decision to permit utilities to elect to count energy purchased under green pricing programs toward their renewable energy objectives.

B. Izaak Walton League of America–Midwest Office, Minnesotans for an Energy-Efficient Economy, and Minnesota Center for Environmental Advocacy – Petition for Reconsideration and Amendment

On June 18, 2004, these parties filed a petition for reconsideration and amendment of the initial Order. They sought reconsideration of the Order's finding that the 10% statutory goal applied to both individual utilities and the state as a whole, its findings that existing generation and generation added in increments exceeding one percent in any given year counted toward the 10% goal, and its decision to permit utilities to elect to count energy purchased under green pricing programs toward their renewable energy objectives.

C. Minnesota Resource Recovery Association – Petition for Reconsideration

The Minnesota Resource Recovery Association filed a petition for reconsideration of the initial Order's finding that the one percent biomass goal applied to the pool of energy procured or generated under the renewable energy objectives statute, not to annual retail electric sales.

D. Izaak Walton League of America–Midwest Office, Minnesotans for an Energy-Efficient Economy – Request for Abeyance and Clarification

On June 23, 2004, these two parties filed a letter asking the Commission to hold their earlier-filed petition for reconsideration in abeyance, pending action on the merits of the remaining issues in the case. They pointed out the inter-relatedness of both sets of issues and suggested that combining the two determinations might be more efficient than making separate determinations.

They also asked the Commission to clarify the meaning of ordering paragraph 4 of the initial Order, which reads as follows:

> 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.

They sought confirmation of their position that out-of-state renewable facilities were being "used to serve Minnesota customers" only if they had "firm network transmission service from an out-of-state renewable generator to an in-state network customer." They suggested that this issue, too, might well be held in abeyance pending resolution of the remaining issues in the case.

IV. Responses to Petitions

The following parties filed responses, summarized below, to the petitions for reconsideration, amendment, clarification, and abeyance.

A. Northern States Power Company, d/b/a Xcel Energy

Xcel opposed all requests for reconsideration and opposed the request to clarify the meaning of "used to serve Minnesota customers" to require specific transmission arrangements. The Company claimed that the proposed clarification would in fact impose new and controversial requirements that required evidentiary development and careful policy analysis.

B. Minnesota Power

Minnesota Power opposed all requests for reconsideration and supported the initial Order as record-based, legally sufficient, and adequately explained.

C. Otter Tail Power Company

Otter Tail opposed all requests for reconsideration, stating that the initial Order was carefully considered and legally sufficient. The Company opposed the petition for clarification as seeking to go beyond clarification to establish new and controversial transmission requirements.

D. Great River Energy

Great River opposed all requests for reconsideration and opposed the request for abeyance as likely to render the case even more complex and unwieldy than its nature requires.

E. Dairyland Power Cooperative

Dairyland opposed all petitions for reconsideration. It opposed the petition for clarification as seeking to inject into this case extraneous issues that merit careful consideration on their own. It did not oppose the request for abeyance.

F. Missouri River Energy Services

Missouri River opposed the petitions for reconsideration, urged caution in defining the phrase "used to serve Minnesota customers," and asked that there be no further comment periods should the Commission decide to grant the request for abeyance.

G. Minnesota Department of Commerce

The Department of Commerce recommended holding the reconsideration petitions in abeyance and considering their merits as the remaining issues in the case are considered and resolved.

H. The Minnesota Project

The Minnesota Project supported the petition for reconsideration filed by the Sierra Club North Star Chapter, which challenged the initial Order's decision on the inclusion of green pricing energy.

The Project also supported the petition filed jointly by the Izaak Walton League of America–Midwest Office, Minnesotans for an Energy-Efficient Economy, and the Minnesota Center for Environmental Advocacy, which challenged the Order's decision to permit utilities to elect to count green pricing energy toward their renewable energy objectives, its interpretation of the 10% statutory goal, and its treatment of existing generation and generation added in increments exceeding one percent in any given year.

I. Clean Water Action Alliance

The Clean Water Action Alliance supported the reconsideration petition of the Minnesota Resource Recovery Association, which challenged the initial Order's interpretation of the one percent biomass goal.

The Alliance also supported, for the reasons set forth by petitioners, the petition for reconsideration filed by the Sierra Club North Star Chapter, and the petition for reconsideration filed jointly by the Izaak Walton League of America–Midwest Office, Minnesotans for an Energy-Efficient Economy, and the Minnesota Center for Environmental Advocacy.

J. National Solid Wastes Management Association

The National Solid Wastes Management Association supported the reconsideration petition of the Minnesota Resource Recovery Association, which challenged the initial Order's finding that the one percent biomass goal applied to the pool of energy procured or generated under the renewable energy objectives statute, not to annual retail electric sales.

The Association opposed the joint reconsideration petition filed by the Sierra Club North Star Chapter, and the petition for reconsideration filed jointly by the Izaak Walton League of America–Midwest Office, Minnesotans for an Energy-Efficient Economy, and the Minnesota Center for Environmental Advocacy.

K. Minnesota Chamber of Commerce

The Minnesota Chamber of Commerce opposed all petitions for reconsideration as well as the request for abeyance and clarification on grounds that they offered no new evidence or insights that merited reopening the initial Order.

L. Minnkota Power Cooperative

Minnkota opposed all requests for reconsideration as offering nothing new and emphasized the need to move forward expeditiously to implement the statute.

V. Proceedings on Reconsideration

The petitions for reconsideration, the request for abeyance and clarification, and the parties' responses to these filings came before the Commission on August 5, 2004. Having reviewed the entire record and having heard the arguments of the parties, the Commission makes the following findings, conclusions, and Order.

FINDINGS AND CONCLUSIONS

VI. Summary of Commission Action

The Commission concludes that its original decision on one issue – the treatment of energy purchased under "green pricing" programs" in measuring compliance with the renewable energy objectives – must be reversed on reconsideration. The Commission finds that excluding that energy is more consistent with the public interest and the policy goals of the Public Utilities Act than including it, as the original Order permits. The Commission will therefore reverse that decision on reconsideration.

The Commission will affirm the remainder of the June 1 Order.

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

A. Introduction

The "green pricing" statute[1] 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."[2] 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 at the outset of this proceeding was whether energy purchased under green pricing programs should be counted toward meeting the renewable energy objectives, if the energy was generated by one of the "eligible energy technologies" listed in the renewable energy objectives statute.

B. The Parties' Positions

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.

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[1] Minn. Stat. § 216B.169.

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

These commentors argued that it would be deceptive to continue marketing green pricing programs without explaining to customers that it was possible that the power for which they were 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.

The remaining 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. The Initial Order

In its initial Order the Commission concluded that utilities, with the possible exception of Xcel Energy,[3] could elect to count energy purchased under green pricing programs toward their renewable energy objectives, if they gave customers clear and timely notice of this election and permitted customers to withdraw from these programs upon reviewing the notice.

This decision was based on three principal grounds. First, although the Commission considered the statute ambiguous, it found that the absence of a statutory prohibition against counting green pricing energy weighed in favor of including it.

Second, the Commission rejected claims that counting green pricing energy toward the renewable energy objectives would be deceptive or discriminatory, because the renewable energy objectives were just that – objectives. Since these objectives were to be pursued with due attention to technical feasibility, rate impacts, and system reliability, it was by no means certain that green pricing energy would have been produced in any case to meet the renewable energy objectives.[4]

Third, the Commission rejected claims that counting green pricing energy would constitute "double-counting," explaining that statutory initiatives promoting conservation and renewable energy are normally considered complementary, not competitive, enterprises.

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[3] 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.

[4] Minn. Stat. § 216B.1691, subd. 2 (c).

D. Action on Reconsideration

On reconsideration the Commission concludes that excluding green pricing energy in measuring utilities' compliance with the renewable energy objectives is more consistent with the public interest and the goals of the Public Utilities Act than including it.

The green pricing program is a public policy initiative established by the Legislature, embraced by the environmental community, and gaining popularity with ratepayers. It offers clear promise as a tool for increasing the use of renewable and distributed generation, heightening public awareness of clean energy issues, and facilitating public involvement in energy initiatives the Legislature has found to be critical to the state's energy future. Sustaining this program and ensuring its future viability are goals and responsibilities of this Commission. Counting green pricing energy toward the renewable energy objectives is inconsistent with these goals and responsibilities because it jeopardizes the success, effectiveness, and future of the green pricing program.

The initial Order is correct in explaining that counting green pricing energy is not inherently deceptive or discriminatory, since utilities' obligations under the renewable energy objectives statute are not absolute, but tempered by cost, reliability, and technical considerations. It is true, as the Order explains, that there is therefore no certainty that the utility would have acquired the energy purchased by green pricing customers anyway, to meet its renewable energy objectives. It is equally true, however, that the utility *might* have acquired the energy anyway, to meet its renewable energy objectives, and that is the source of the problem.

While it might not be deceptive or discriminatory to enroll ratepayers in the green pricing program after full disclosure of the complex relationship between that program and the renewable energy objectives, such disclosure would almost certainly reduce program participation. It strains credulity to suggest that ratepayers will be just as eager to pay a premium for green energy that might have been purchased anyway, as for green energy that would not have been purchased but for their payment of the premium.

Further, counting green pricing energy toward the renewable energy objectives complicates an already complex marketing task. Utilities marketing their green pricing programs have already encountered some skepticism and an appropriate insistence on strict accountability.

In Xcel's green pricing tariff docket, for example, the Minnesota Interfaith Climate Change Campaign appeared and reported that, in their experience, consumers were questioning whether utilities would in fact use the green pricing premium to purchase new renewable energy. The Campaign recommended independent verification of Xcel's green energy purchases.[5]

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[5] *In the Matter of Xcel Energy's Petition for Approval of a Renewable Energy Rider*, E-002/M-01-1479, Order Requiring Credit, Discussion, and Reports on Future Credit, Independent Verification, and True-Up, and Other Filings (September 15, 2003).

Customer confusion, too, has posed a challenge to utilities publicizing this innovative program. And the sharply divided opinions of commenting parties in this case illustrate the difficulty of arriving at one straightforward account of the program's function and purpose. Adding another layer of complexity to this program cannot help the program thrive.

Permitting utilities to count green pricing energy toward their renewable energy objectives also raises difficult administrative issues. It is not clear, for example, how to treat premiums paid by ratepayers before utilities opted to count green pricing energy. Neither is it clear whether utilities should be permitted to opt in or out of counting green pricing energy at will, at set intervals, or at one point only.

Finally, the Commission now places less weight than it did originally on the statute's failure to prohibit the inclusion of green pricing energy. The original Order assumed, as the Commission still does, that the statute provides no clear direction on the counting of green pricing energy, leaving the Commission to craft a policy that most effectively promotes the statutory goals. In the original Order the Commission gave some weight to the absence of a statutory prohibition on counting green pricing energy, noting the presence of prohibitions on counting other kinds of energy.

At hearing, however, one party noted at least one statutory provision on renewable energy – a provision permitting the use of Conservation Improvement Program funds for renewable generating facilities – that explicitly permits utilities to count the renewable energy at issue toward its renewable energy objectives.[6] This instance of explicit permission weakens the argument, accepted in part in the initial Order, that it goes without saying that all renewable energy generated under other statutory initiatives is countable toward the renewable energy objectives in the absence of a statutory prohibition.

In short, the statute leaves it to the Commission to determine whether counting green pricing energy toward the renewable energy objectives is consistent with the public interest and the policies underlying the Public Utilities Act. For the reasons set forth above, the Commission concludes that it is not and will reverse its original determination on reconsideration.

VIII. Conclusion

For the reasons set forth above, the Commission will reverse its original determination permitting utilities to count "green pricing" energy toward their renewable energy objectives.

The Commission has examined all the post-Order petitions filed in this case and finds that, with the exception of the green pricing issue, they do not raise new issues, point to new and relevant evidence, expose errors or ambiguities in the original Order, or otherwise persuade the Commission of a need to rethink the decisions in the June 1, 2004 Order. The Commission concludes that those decisions are consistent with the facts, the law, and the public interest and will affirm the remainder of the original Order.

The Commission will so order.

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[6] Minn. Stat § 216B.2411, subd. 3 (a).

ORDER

1. Ordering paragraph 6 of the Order issued in this case on June 1, 2004 is hereby amended to read as follows:

   F. In meeting their renewable energy objectives, utilities shall not include generation purchased under green pricing programs established under Minn. Stat. § 169.

2. All other provisions of the Order issued in this case on June 1, 2004 are hereby affirmed.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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