

The Commission met on **Thursday, February 4, 2010**, with Chair Boyd and Commissioners Pugh, Reha, and Wergin present.

ENERGY AGENDA

E-002/CN-08-992

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificate of Need for a 161 kV Transmission Line in Dodge, Olmstead and Mower Counties in Southeastern Minnesota

Commissioner Wergin moved that the Commission

1. accept the Application as complete;
2. direct the use of the informal review process;
3. encourage combined environmental review and joint hearings to the extent practicable; and
4. decide that, since the Commission has the Commission elected to use of the informal initial and reply comment review process, the Order should include the following:
 - the name(s) and telephone number(s) of the Commission employee or employees designated to facilitate citizen participation in the process;
 - a request that the OES to study the issues and indicate in comments its position on the reasonableness of granting a certificate of need to the Applicant;
 - a requirement that the Applicant facilitate in every reasonable way the continued examination of the issues by the OES and Commission staff;
 - a request the Office of Administrative Hearings to coordinate with Commission staff and hold at least one public hearing on the project;
 - a request that the Applicant place a hard copy of the application in a government center or public library in the vicinity of the project;
 - a directive that Commission staff work with an Administrative Law Judge and staff of the OES in selecting a suitable location for the public hearings on the application; and
 - a directive that the Applicants work with staff of the Commission and the OES to

- direct that the publication of notice of the public hearings must appear in newspapers of general circulation at least ten (10) days prior to the start of the hearings, that such notice be in the form of visible display ads, and proofs of publication of such ads be obtained from the newspapers selected;
- delegate authority to the Executive Secretary to manage this case under the informal process.

The motion was adopted, 4-0.

E-002/TL-09-1315

In the Matter of the Route Permit Application for the Pleasant Valley to Byron 161 Kilovolt High Voltage Transmission Line in Dodge, Olmsted and Mower Counties

Commissioner Reha moved that the Commission

1. accept the Xcel Energy Pleasant Valley to Byron 161 kV Transmission Line Route Permit Application as complete and authorize the Office of Energy Security to process the application under the full review process in Minn. Rule 7850.1700-2700;
2. authorize the Office of Energy Security to name a public advisor in this case;
3. take no action on an advisory task force at this time; and
4. refer the matter to the Office of Administrative Hearings (OAH) for a contested case hearing, pursuant Minn. Rules 1405, to be held jointly with certificate of need, as provided by Minn. Stat. § 216B.243, subd. 4.

The motion was adopted, 4-0.

G-022/M-09-1172

In the Matter of Greater Minnesota Gas, Inc.'s Financial Integrity

Commissioner Reha moved that the Commission

1. grant one requested clarification requested by the OES in its Motion for Order of Clarification and find that the Commission has not approved any security issuance by GMG;
2. grant the OES's Motion for Order to Make a Filing and require GMG to file within 30 days
 - a. details of GMG's plans to provide reliable natural gas service to its Minnesota retail customers consistent with Minn. Stat. § 216B.04, irrespective of actions GMG's lenders might take with respect to GMG's financing and irrespective of the District Court's ultimate decision in the Dakota County matter;

b. details regarding the extent to which current members of GMG's Board of Directors are personal guarantors of any loan, line of credit or other debt instrument entered into by GMG in order to secure financing;

c. a status report on the Dakota County matter; and thereafter updates on a timely basis detailing any change in the status of the Dakota County matter as well as any action taken by GMG, its lenders or the personal guarantors as to GMG's financing; and

3. require GMG to make a securities issuance/capital structure filing within thirty days of the date of the Commission's Order in this matter; this filing should specifically request approval of the encumbrance of GMG property as part of the existing loan from Home Federal.

The motion was adopted, 4-0.

E-999/CI-04-1616

In the Matter of a Commission Investigation into a Multi-state Tracking and Trading System for Renewable Energy Credits

E-999/CI-03-869

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

Commissioner Pugh moved that the Commission:

1. find that, in order for renewable energy certificates (RECs) from facilities that use fuel blending or co-firing to be considered eligible to meet the Minnesota renewable energy obligation/renewable energy standard (REO/RES), they must meet the standards of Minn. Stat. §216B.1691, subd. 5 as interpreted by the Commission and follow the protocol for compliance as set out below;
2. find that facilities that come under Minn. Stat. §216B.1691, subd. 5 are those that produce electricity by fuel combustion through fuel blending or co-firing more than 1% of a fuel [not included under the fuel types listed in Minn. Stat. §216B.1691, subd. 1(a)(5)] annually; the "more than 1% of a fuel" will be measured on a total heat input basis and exclude fuels used for start-up;
3. find that, if a facility meets the threshold for fuel blending and co-firing as stated in (2) above, the generation from that facility may count toward a utility's REO/RES if it meets the standards of Minn. Stat. §216B.1691, subd. 5 by coming under one of the following categories, and demonstrating compliance, as follows:
 - A. a facility that emits one or more pollutants that are regulated by the NSPS, BACT or MACT, or has made modifications or upgrades that bring the facility under NSPS, BACT or MACT; compliance is demonstrated by providing the relevant and most updated state air quality permit for the facility, including an explanation of how the air permit demonstrates compliance with the CAA; this documentation should be submitted to the M-RETS System Administrator;

- B. a facility that does not meet the permit size threshold or for some other reason has been exempted from the standards in the CAA (or related state standards) by the responsible state agency in the state in which the facility is located; the registering entity should provide a copy of the state exemption determination (including the reasons why the exemption was made), permit, or a demonstration of emissions control equivalent to NSPS to the M-RETS System Administrator, who will contact Commission staff to assist in the review of the documentation; the facility is responsible for monitoring changes to the CAA that might bring that facility under the Act; in this event, the facility will need to follow the compliance procedures in 3(a) above;
 - C. a facility that has not formally come under NSPS, BACT or MACT, including modifications and upgrades, but has voluntarily met CAA standards; the registering entity should provide an affirmative statement showing that the control equipment in operation and the permitted emission limits are equivalent to those that would apply if the source went through a formal BACT analysis at the time of inception of the CAA; the documentation should be provided to the M-RETS System Administrator, who will contact Commission staff to assist in the review of the documentation; the burden of proof demonstrating compliance will remain with the registering facility and further documentation may be required;
4. find that a determination of compliance under Minn. Stat. §216B.1691, subd. 5 will not be made until the required state permitting process has been completed;
 5. find that, once compliance with Minn. Stat. §216B.1691, subd. 5 has been determined, the generation from that facility may count toward a utility's REO/RES on an ongoing basis until the facility seeks an enhancement or upgrade or additional air permitting requirements occur; if an enhancement or upgrade at that facility triggers additional air permitting requirements, or if any other factor triggers additional air permitting requirements, the facility is required to submit copies of new air permits to demonstrate that it remains in compliance with Minn. Stat. §216B.1691, subd. 5; this updated documentation should be provided to the M-RETS System Administrator;
 6. find that a facility must implement the state specified MACT requirements for all MACT standards for that facility for which the compliance deadline has passed. For cases in which there are MACT standards with time remaining before the compliance deadline expires, these facilities should provide a description of their plans to comply with the MACT standard within the compliance timeframe; this documentation should be provided to the M-RETS System Administrator;
 7. find that facilities, which have already registered in M-RETS, including those that have self-designated their facilities as "MN eligible," need to meet the standards and protocol in Decision Alternatives #1-6, above.

The motion passed, 4-0.

E-999/CI-03-869

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

Commissioner Wergin moved to take the actions set forth below:

1. **WAPA Allocations** – Find that REO-RES compliance shall be calculated based on the sales of the “electric utility,” as that term is defined by Minn. Stat. §216B.1691, subd. 1(b) to its distribution cooperatives, municipal members, or retail customers and require East River, L&O, and OTP to make a compliance filing within 30 days of the Order in this docket stating whether and how their REO/RES percentages have changed from those listed in Docket No. 08-1163.

2. **Timing Issues** – Clarify that the REO/RES percentages for the year identified and every year forward until the next percentage and year identified are as follows, for all utilities except Xcel:

2011: 7%

2012-2015: 12%

2016-2019: 17%

2020-2024: 20%

2025: 25%

3. **Modification/Delay Procedures** – Clarify that a modification/delay request may be filed at any time, subject to the following:

- a. The petition shall include a discussion of why REC purchases are not a reasonable method for achieving compliance; and
- b. The petition shall include a plan to comply with the RES, as required by Minn. Stat. §216B.1691, subd. 2b (c); and
- c. The initial petition shall comply with the service, content, and filing requirements established by Minn. Rules part 7829.1300 and 7829.1400; and
- d. The initial petition shall clearly include a timeframe by which the petitioner requests a final decision from the Commission.

4. **Tracking Rate and Reliability Impacts** – Make all clarifications set forth below:

- a. Find that for utilities that file resource plans, adequate opportunities already exist in resource plan proceedings and other dockets to evaluate the impact of the REO-RES.

- b. Find that utilities bear the burden of demonstrating the costs they seek to recover are reasonable.
 - c. Find that intervenors in a resource plan proceeding that request information related to the rate impact of future compliance with the RES are making a “reasonable request for information” pursuant to Minn. Rules, part 7843.0300, subp. 8, and that utilities must therefore respond to those requests for information.
 - d. Find that the Commission favors forward looking, long term cost information when analyzing rate impacts of the REO/RES, but does not preclude other types of cost information from being presented by parties.
 - e. For utilities subject to the REO/RES but not to the resource plan statute, accept voluntary filings of rate impact in the utilities’ biennial REO-RES reports.
5. ***Noncompliance*** – Make all clarifications set forth below:
- a. The Commission’s June 1, 2004 Order in this docket shall be factors considered when determining whether the Commission takes additional action against a utility for noncompliance with the REO-RES.
 - b. Whether or not the utility brought the noncompliance to the attention of the Commission in a timely manner will be considered either a mitigating or aggravating factor in determining whether to take action against the utility.
 - c. Whether RECs are available for purchase, and at what price, shall be considered a factor in determining whether to take action against a noncompliant utility.
 - d. Other factors will be considered on a case-by-case basis if a petition is brought forward.
6. ***Miscellaneous Requests for Clarification*** – Decline to make the requested clarifications summarized below:
- a. Dairyland’s request that the Commission state that it retrospectively measures REO/RES compliance in the annual REC retirement filings.
 - b. Dairyland’s request to revise the REC retirement requirements to use a three-year rolling average.
 - c. Otter Tail’s request to remove from the retail sales subject to the REO/RES requirements all renewable resources that do not qualify as “eligible technologies” under the REO/RES statute.
 - d. The Large Industrial Group’s request to prohibit utilities from seeking cost recovery through riders in an amount greater than the forecast until the next rate case or resource plan proceeding.

The motion was adopted, 4-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: FEBRUARY 24, 2010

A handwritten signature in black ink, reading "Burl W. Haar". The signature is written in a cursive style with a large initial "B".

Burl W. Haar, Executive Secretary