

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
David C. Boyd  
Nancy Lange  
Dan Lipschultz  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Commission Inquiry into  
Ownership of Renewable Energy  
Credits used to Meet Minnesota Requirements

ISSUE DATE: July 22, 2014

DOCKET NO. E-999/CI-13-720

ORDER DETERMINING  
RENEWABLE ENERGY CREDIT  
OWNERSHIP UNDER MINN. STAT.  
§ 216B.164

**PROCEDURAL HISTORY**

On December 30, 2013 the Commission initiated this inquiry into ownership of Renewable Energy Credits (RECs) and solicited public comments on a number of questions related to REC ownership. The Commission invited comment on these topics:

- What categories of Renewable Energy Credits (RECs) need clarity on ownership?
- Who owns the RECs from net metered customers? Does it matter whether the facility is being paid the average retail rate or avoided cost rate?
- Who owns the RECs if a third party owns the equipment and leases to the homeowner/business?
- Are there special considerations on REC ownership related to REC aggregators/marketers?
- What factors should the Commission take into account when determining REC ownership?
- Should the Commission make decisions on REC ownership?
- If the Commission should issue decisions on REC ownership, for which utilities or parties to a transaction should the Commission's decision apply?

The following entities filed initial comments:

- Powerfully Green
- Otter Tail Power Company
- Dairyland Power Cooperative
- Minnkota Power Cooperative
- Minnesota Power
- Minnesota Department of Commerce – Division of Energy Resources

- Environmental Law and Policy Center, Fresh Energy, Izaak Walton League of America – Midwest Office, SunEdison, and Vote Solar Initiative (the Environmental Organizations)
- Northern States Power Company d/b/a Xcel Energy
- Metropolitan Council
- Solar Energy Industries Association
- The Center for Resource Solutions

The following entities filed reply and supplemental reply comments:

- Otter Tail Power Company
- Northern States Power Company d/b/a Xcel Energy
- Sam’s East, Inc. and Wal-Mart Stores East, LP
- Environmental Law and Policy Center, Fresh Energy, Izaak Walton League of America – Midwest Office, SunEdison, and Vote Solar Initiative
- Sundial Solar
- Solar Energy Industries Association
- Powerfully Green

On June 12, 2014, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **I. Introduction and Factual Background**

Under Minn. Stat. § 216B.1691, Minnesota utilities must generate or procure a specified portion of their retail electric sales using renewable energy sources. These requirements, called the Renewable Energy Standards, are different for nuclear and non-nuclear utilities<sup>1</sup> and are set forth below:

<b>Non-Nuclear Utilities</b>	<b>Nuclear Utility</b>
2012: 12%	2010: 15%
2016: 17%	2012: 18%
2020: 20%	2016: 25%
2025: 25%	2020: 30%

The statute directs the Commission to oversee utilities' compliance with the Renewable Energy Standards. In order to facilitate compliance with the Renewable Energy Standards, under Minn. Stat. § 216B.1691, subd. 4, the Commission has established a program for tradable renewable energy credits. A Renewable Energy Credit (REC) represents 1 MWh of renewable energy. Retirement of RECs is the only means for a utility to show compliance with Minnesota’s Renewable Energy and Solar Energy Standards.

---

<sup>1</sup> Minnesota has one nuclear utility: Xcel Energy.

REC ownership is generally not established by statute.<sup>2</sup> The Commission has previously addressed REC ownership in limited circumstances involving existing power purchase agreements.<sup>3</sup> Recent state legislation governing solar and distributed generation has prompted renewed interest in matters of REC ownership.

The Commission therefore began this investigation into issues relating to REC ownership, and solicited public comment to determine what Commission action, if any, was needed.

## **II. Issues Discussed in Comments**

The Commission received comments from many industry stakeholders and members of the general public. Comments addressed issues in the following general categories: the Commission's jurisdiction to determine REC ownership, which transactions would benefit from guidance from the Commission, what the Commission's ownership determination should be, and what further action following a Commission determination, if any, may be appropriate. A brief summary of comments on these issues follows.

### **A. Jurisdiction**

The parties mostly, but not entirely, agreed that the Commission had jurisdiction to make determinations of REC ownership. Minnkota Power Cooperative stated that the Commission may not have jurisdiction to make certain REC ownership determinations. Dairyland Power Cooperative argued that the Commission should limit application of any REC ownership determination in this docket to RECs associated with purchases of excess energy from net-metered, customer-sited generation.

### **B. Transactions Needing Commission Guidance**

Commenters did not universally agree on the circumstances where REC ownership clarification was needed. Commenters identified that REC ownership issues can arise in net-metered transactions and in non-net-metered transactions subject to the federal Public Utility Regulatory Policies Act (PURPA). In net-metered transactions, customers receive credit for energy generated in surplus of energy consumed on-site. Commenters also identified the possible need to clarify REC ownership when a third party owns the generation equipment and leases it to utility customers.

### **C. REC Ownership Determination**

Recommendations on REC ownership in net-metered transactions were generally divided between arguments that in net-metered transactions utilities should be deemed to own RECs, and arguments, including the Department's position, that generators should retain RECs.

---

<sup>2</sup> But see Minn. Stat. § 216C.414, subd 5 (stating that RECs associated with energy from a "Made in Minnesota" incentive belong to the utility) and Minn. Stat. § 216B.164, subd 10(i) (stating that RECs for solar energy credited under an alternative tariff belong to the utility).

<sup>3</sup> Order Determining Ownership of Renewable Energy Credits for Power Purchase Agreements Made Pursuant to State Wind and Biomass Statutes and the Federal Public Utility Regulatory Policy Act, Docket No. E-002/M-08-440 (sometimes called the "Silent REC" docket) (September 9, 2010). See also Order Determining Ownership of Renewable Energy Credits, Docket No. E-002/M-08-440 (June 2, 2011).

Central to the commenters' disagreement is whether the rate utilities pay to net-metered customers with facilities under 40 kW constitutes a premium over a utility's avoided cost. Utilities argued that net metered generators are compensated at the average retail utility energy rate, which they assert is more than the avoided cost, and therefore, as part of that rate, utilities pay for RECs. The Department and others asserted that the rate does not include a premium that constitutes payment for RECs.

Some utilities further argued that for net-metered transactions the Commission should determine that utilities own RECs for energy consumed on-site as well as for net energy generated and sold to a utility.

#### **D. Suggested Further Action**

Depending on the outcome of the Commission's investigation, commenters recommended that the Commission consider revising the uniform statewide distributed generation contract<sup>4</sup> and that utility tariffs be modified to reflect clarifications arising from this investigation. Other recommendations included a proposal for dual-pricing tariffs, an ongoing REC auction, and a standardized process for REC aggregation.

### **III. Commission Action**

#### **A. Jurisdiction**

The Commission has previously concluded that it has the authority to determine who owns renewable energy credits under applicable federal and state laws, and the rationale supporting that conclusion still applies.<sup>5</sup> Renewable energy credits are a statutory creation, and exist to serve state energy goals. They were created as a regulatory tool to measure and monitor utility compliance with statutory renewable-energy obligations—REC retirement is the only measure by which the Commission evaluates compliance with the Renewable Energy Standards. The Minnesota Legislature granted the Commission broad authority over REC-related standards and criteria, which necessarily includes the authority to determine how renewable energy credits can be used, and by whom, to ensure credits are not double-counted.<sup>6</sup>

Accordingly, the Commission has jurisdiction to further clarify matters of REC ownership. In light of the record in this proceeding, the Commission concludes that greater clarity of REC ownership for utilities subject to Minn. Stat. § 216B.164 is warranted.

---

<sup>4</sup> As required by Minn. Stat. § 216B.164, subd. 6, Commission rules set forth a Uniform Statewide Contract for use by utilities and net-metered or qualifying cogeneration or small power production facilities. Minn. R. Ch. 7835.

<sup>5</sup> *In the Matter of Xcel Energy's Petition for a Determination of Entitlement to Renewable Attributes of Energy Purchases Pursuant to Renewable Energy Requirements*, Order Determining Ownership of Renewable Energy Credits for Power Purchase Agreements Made Pursuant to State Wind and Biomass Statutes and the Federal Public Utility Regulatory Policy Act (September 9, 2010), at 4–5.

<sup>6</sup> See Minn. Stat. § 216B.1691, subd. 4.

## **B. REC Ownership Determination**

The Commission is required to construe Minn. Stat. § 216B.164 “to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.” Minnesota statutory provisions for net-metering rates pre-date the creation of RECs, supporting a conclusion that REC value was not contemplated to be a part of net-metered transactions. And, Minn. Stat. § 216B.164 is silent about ownership of RECs, except under specific circumstances involving an alternative (not net-metered) tariff rate.<sup>7</sup>

The Commission previously reasoned that PURPA avoided-cost rates for renewable energy do not include additional value to account for severable environmental attributes, and that therefore power purchase agreements under PURPA do not result in REC ownership transfer to a purchasing utility absent contractual provisions to the contrary. Likewise, the Commission concludes that rates paid for net-metered energy do not include a premium that constitutes a payment for a renewable attribute. Net-metered rates are the same regardless of fuel type, and statutory provisions for net-metered rates were not created in contemplation of the independent, severable value of RECs.

These considerations all support a conclusion that REC ownership remains with a generator unless a different outcome has been expressly provided for in a relevant contract, statute, or Commission order or rule. The Commission therefore concludes that for all transactions subject to Minn. Stat. § 216B.164, REC ownership remains with energy generators, unless one of the following applies: (1) other ownership is expressly provided in a contract between the generator and a utility; (2) state law specifies a different outcome; or (3) specific Commission orders or rules specify a different outcome.

## **C. Further Action**

The Commission will not take further action concerning REC ownership at this time, and will not require that tariffs or the uniform statewide distributed generation contract be updated. Instead, the Commission will require existing tariffs and the uniform statewide contract to be interpreted consistent with this order. Utilities may, if they wish, file updated tariffs.

## **ORDER**

1. The Commission makes the following findings:
  - a. The Commission has jurisdiction to decide REC ownership, and to apply the finding in (b), below, to utilities subject to Minnesota Statutes § 216B.164.

---

<sup>7</sup> Minn. Stat. § 216B.164, subd 10(i) (“Renewable energy credits for solar energy credited under [an alternative tariff] belong to the electric utility providing the credit.”)

- b. Generators own all RECs unless: (1) other ownership is expressly provided for by a contract between the generator and a utility; (2) state law specifies a different outcome; or (3) specific Commission orders or rules specify a different outcome.
  - c. Corresponding tariffs and the uniform statewide contract should be interpreted in a manner consistent with this order.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.