

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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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

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

SECOND ORDER IMPLEMENTING MINN. STAT. § 216B.1691, OPENING DOCKET TO INVESTIGATE MULTI-STATE PROGRAM FOR TRACKING AND TRADING RENEWABLE CREDITS, AND REQUESTING PERIODIC UPDATES FROM STAKEHOLDER GROUP

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 Initial Order and Order After Reconsideration

The Commission determined, after reviewing initial comments on procedural and scoping issues, that this case had too many interdependent and sequential issues to resolve in a single Order. The Commission therefore sought comments on threshold issues, which it resolved in an initial Order, dated June 1, 2004, and an Order after reconsideration, dated August 13, 2004. Those Orders resolved the following issues:

- ***Covered Entities*** – The June 1 Order listed the 16 entities subject to the renewable energy objectives statute.
- ***Eligible Biomass Technologies*** – The June 1 Order permitted utilities to count toward their renewable energy objectives all biomass generation falling within existing statutory definitions of biomass.¹
- ***Eligible Hydroelectric Facilities*** – The June 1 Order found that the 60-megawatt statutory cap on countable hydroelectric facilities applied to all generation at a single hydroelectric site, not to each generating unit at that site.

¹ The Order excluded peat, which may arguably fall within certain statutory definitions of biomass, concurring with the uncontested claims of commenting parties that peat does not regenerate quickly enough to be classified as renewable and that harvesting peat poses significant risks to northern ecosystems.

- ***Pre-existing Generation*** – The June 1 Order found that the 10% statutory goal applies to both individual utilities and the state as a whole and that the statute does not require that all countable generation after 2005 come from new sources, nor that countable generation be added in equal annual increments.
- ***The Biomass Goal*** – The June 1 Order found 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 statute, not to annual retail electric sales.
- ***The Treatment of Energy Generated Under “Green Pricing” Programs*** – The August 13, 2004 Order After Reconsideration reversed the Commission’s original decision on this issue and excluded “green pricing” energy from counting toward a utility’s renewable energy objectives.
- ***Criteria and Standards for Meeting the Statutory “Good Faith Effort” Requirement*** – The June 1 Order set standards for evaluating utility filings to determine whether the utility has committed the time, money, and other institutional resources necessary to demonstrate a good faith effort.
- ***Verification and Implementation*** – The June 1 Order asked the Department of Commerce, the Commission’s own staff, and other interested stakeholders to work together toward the establishment of an independent tracking system to certify, verify, and implement the renewable energy objectives.

The June 1 Order also delegated to the Executive Secretary the authority to issue notices, develop questions, and establish further procedures to resolve remaining issues promptly.

B. The Current Comment Process

On June 2, 2004, the Executive Secretary issued a notice requesting comments on two more major issues: (1) the statutory requirement to establish a scale for weighting countable generation from different technologies; and (2) the statutory provision permitting the Commission to establish a renewable credits trading program. The following persons and organizations filed comments in response to the June 2 notice:

Investor-Owned Utilities

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

Electric Cooperatives

- Great River Energy
- Dairyland Power Cooperative
- Basin Electric Power Cooperative
- Minnkota Power Cooperative, Inc.

Municipal Electric Entities

- Missouri River Energy Services/Western Minnesota Municipal Power Agency
- Minnesota Municipal Power Agency

State Agencies

- Minnesota Department of Commerce

Environmental/Community Organizations

- Izaak Walton League of America-Midwest Office, Minnesotans for an Energy-Efficient Economy, and Minnesota Center for Environmental Advocacy, filing jointly
- The Minnesota Project, Communities United for Responsible Energy, and Concerned River Valley Citizens, filing jointly
- North Star Chapter of the Sierra Club
- Clean Water Action Alliance

Other Organizations, Companies, and Individuals

- National Solid Wastes Management Association
- Minnesota Chamber of Commerce

FINDINGS AND CONCLUSIONS

I. The Issues

The June 2 notice posed detailed questions on two major issues: (1) how the Commission should design and implement a weighted scale for counting the energy generated by various eligible renewable technologies, as required under Minn. Stat. § 216B.1691, subd. 2 (d); and (2) whether the Commission should establish a tradable renewable credits program, as authorized under Minn. Stat. § 216B.1691, subd. 4, and if so, how that program should be structured and operated.

These issues will be addressed in turn, together with the issue of avoiding double-counting of eligible generation through proper inter-utility and inter-jurisdictional allocation procedures. The allocation issue, which is integrally related to both the weighted scale and tradable credits issues, was raised in initial comments by the Department of Commerce and analyzed by the other parties in reply comments.

II. The Weighted Scale

A. Introduction

The renewable energy objectives statute directs the Commission to establish a weighted scale for counting toward the renewable energy objectives the energy produced by eligible technologies. It directs the Commission to consider the attributes of various technologies and fuels in establishing the scale and directs the Commission to establish a system granting multiple credits to technologies and fuels that the Commission finds it in the public interest to encourage.²

The June 2 notice posed detailed questions about how to establish a weighted scale, including what criteria to use in assigning weights to different technologies and fuels, whether it would be permissible to assign some technologies or fuels only partial credit, and whether it would be permissible, at least for the present, to assign all eligible technologies a weight of one.

B. The Comments

None of the commenting parties saw any significant benefit in establishing a weighted scale with multiple credits at this point in the implementation of the renewable energy objectives statute.

Most cautioned that producing any multiple-credit weighted scale at this point would require an unreasonably large investment of regulatory and stakeholder resources; that any weighted scale produced in the near-term would likely be outdated by the time it was completed; and that weighting some technologies or fuels more heavily than others carried the risk of distorting market signals and pricing structures, to the detriment of the long-term development of renewable energy.

Commenting parties also pointed out that granting only partial credit to some resources could effectively increase a utility's good faith obligation beyond the 10% statutory goal, while granting multiple credits could reduce a utility's obligation below that goal.

The only party that submitted a weighting proposal was the Department of Commerce (the Department), which recommended valuing all eligible generation at one, then discounting pre-existing generation by 50% and out-of-state generation by 25%. The Department argued that it would be superfluous to develop a scale assigning weights to different technologies and fuels based on environmental and socioeconomic factors, since that is already being done in the resource planning process, and that the only remaining factors requiring weighting were the age and location of eligible facilities.

At hearing the Department clarified that its proposal was designed more to facilitate and focus discussion than to function as a policy blueprint. The agency emphasized that its main concern was to avoid granting multiple credits for specific fuels or technologies at this time, believing that that course of action carried a serious risk of encouraging non-cost-effective decision-making at this stage in the development of renewable energy.

² Minn. Stat. § 216B.1691, subd. 2 (d).

C. Commission Action

The Commission finds that at this point it is not in the public interest to encourage any specific renewable fuel or technology through the use of multiple credits. In fact, multiple credits pose several serious risks at this stage in the development of state energy policy and the renewable energy industry. The Commission will therefore assign an initial value of one to all energy from eligible technologies, recognizing that subsequent developments may justify opening a proceeding to reexamine the multiple credits issue. The reasons for this decision are set forth below.

First, assigning values higher than one to specific fuels or technologies would reduce the amount of renewable generation utilities must try to acquire under the renewable energy objectives statute below the 10% goal set by the Legislature. While this creative tension between the 10% goal and multiple credits is part of the statutory structure, the Commission will not lightly sacrifice the 10% goal. To qualify for multiple credits – and thereby potentially reduce the amount of renewable energy available to Minnesota consumers – specific fuels or technologies must demonstrate a unique public policy value, which has not happened in this case.

Second, granting multiple credits to specific fuels or technologies at this point would likely distort market signals and price structures, jeopardizing the development of a robust market for renewable energy supplies. Multiple credits would handicap not just lower-weighted technologies and fuels, by discounting their value to the utility, but higher-weighted technologies and fuels, by potentially stifling efficiency and innovation.

As critical as subsidies can be to technological innovation, decisions to grant subsidies must be based on reliable economic and policy analysis showing clear public benefit. This record contains no such analysis, nor could any record obtainable at reasonable cost in the foreseeable future do so. It is simply premature to assign multiple credits to any particular renewable fuel or technology.

Third, granting multiple credits to specific fuels or technologies at this point would likely reduce the diversity of the state's renewable energy supplies, as utilities disproportionately selected fuels and technologies carrying multiple credits. Worse, favoring certain renewable technologies over others could skew research and development efforts in ways that ultimately prove to be counterproductive. It is too early in the development of renewable energy technology and too early in the life of this critical energy policy initiative to limit the sources from which utilities will draw their renewable energy supplies.

Further, the Commission concurs with the commenting parties that for the present the costs of attempting to assign multiple credits to specific fuels or technologies would far exceed the benefits. Setting multiple-credit values at this point would require a costly and comprehensive evidentiary proceeding, a detailed factual record, voluminous expert testimony, and painstaking policy and economic analysis. With so many renewable technologies still in their infancy, the outcome of that proceeding is unlikely to be reliable or helpful for any significant length of time.

Finally, the Commission appreciates the Department's creative grappling with weighted-scale issues and its resulting proposal to grant partial credit to preexisting and out-of-state resources. That proposal clearly achieved its purpose of acting as a springboard for productive discussion. The Commission will not, however, adopt the Department's proposal, since it raises troublesome legal and policy issues not offset by any significant policy or practical advantages apparent at this time.

First, it is not clear that the statute permits granting partial credit, since it speaks in terms of multiple, not fractional, credits. Second, discounting preexisting and out-of-state generation would effectively increase the renewable energy obligation of some utilities beyond the 10% goal set by the Legislature. Increasing that obligation without evidence of compelling public need or benefit gives the Commission pause. Third, discounting out-of-state generation is inconsistent with the Commission's decision on its inclusion in the June 1 Order and with the reasoned policy analysis explaining that decision.

For all the reasons set forth above, the Commission will establish a weighted scale valuing all countable generation equally at this stage in the renewable energy objectives initiative.

III. Tradable Renewable Credits

A. Introduction

The renewable energy objectives statute permits the Commission to establish a program for tradable credits for electricity generated by eligible technologies, under which utilities may meet their renewable energy objectives by buying tradable credits instead of directly generating or procuring renewable energy.

The statute requires the Commission, if it establishes a tradable credit program, to implement a system that constrains or limits the price of the credits without undermining the market for them. The statute also authorizes the Commission to facilitate the interstate trading of renewable credits, if a bordering state adopts an energy standard, portfolio, or objective similar to Minnesota's renewable energy objectives initiative.³

The June 2 notice requested comments on what form any tradable credits program should take, whether and to what extent utility respondents anticipated using these credits if they became available, and whether the statute permitted utilities to use tradable credits from neighboring states prior to the establishment of any Minnesota-specific tradable renewable credit program.

B. The Comments

Everyone who addressed the issue supported developing a multi-state tradable renewable credits program. Most recommended that the Commission open a specific docket for this purpose and that it build on the work already being done on this issue by stakeholder groups.

³ Minn. Stat. § 216B.1691, subd. 4.

Only two utilities – Basin Electric Power Cooperative and Minnesota Municipal Power Agency – expressed interest in using tradable renewable credits to meet their renewable energy objectives during the 2005-2007 time frame. And opinions were divided as to whether the statute permits the use of tradable renewable credits issued under neighboring states’ programs prior to the establishment of a Minnesota program.

C. Commission Action

1. Investigatory Docket Opened

The Commission concurs with the parties that it is important to fully and efficiently explore the potential for developing a workable interstate tradable renewable credits program. The best mechanism for accomplishing this is a new docket focused solely on tradable credit issues, including the recurring issue of tracking and trading credits across jurisdictions without double-counting. The Commission will open that investigatory docket as part of this Order.

The Commission also concurs with the parties that it is important to make full use of the foundational research, policy analysis, data collection, and ongoing examination of these issues conducted by stakeholder participants in the Midwest Tradable Renewable Credits Workshops.⁴ These workshops have attracted and continue to attract a diverse group of stakeholders from the public, private, and public interest sectors, all with significant substantive and policy expertise, and all committed to working together to develop a framework for the interstate trading of renewable credits.

It is important to establish regular lines of communication with these stakeholders, both to avoid duplicating one another’s efforts and to avoid missing promising lines of inquiry. The Commission will therefore ask the group’s technical review committee, which performs the day-to-day work on tracking and trading issues, for quarterly updates on its work, as well as reports on breaking developments that might influence or inform the Commission’s investigation. The Commission will ask its staff and the staff of the Department to liaise with the committee to facilitate these communications.

2. Treatment of Out-of-State Credits

One of the questions posed to the parties in the June 2 notice was whether the renewable energy objectives statute permits utilities to use tradable credits from neighboring states prior to the establishment of a Minnesota renewable tradable credit program. The Commission concludes that it does not.

⁴ These workshops, which are sponsored by the Commission, the Minnesota Department of Commerce, and the National Council on Electricity Policy, have been held twice so far, in February and June of this year, and a third workshop is scheduled for October 26 in Madison, Wisconsin.

The statutory language on interstate renewable credit trading reads as follows:

Subd. 4. Renewable energy credits. (a) To facilitate compliance with this section, the commission, by rule or order, may establish a program for tradable credits for electricity generated by an eligible energy technology. In doing so, the commission shall implement a system that constrains or limits the cost of credits, taking care to ensure that such a system does not undermine the market for those credits.

(b) In lieu of generating or procuring energy directly to satisfy the renewable energy objective of this section, an electric utility may purchase sufficient renewable energy credits, issued pursuant to this subdivision, to meet its objective.

(c) Upon the passage of a renewable energy standard, portfolio, or objective in a bordering state that includes a similar definition of eligible energy technology or renewable energy, the commission may facilitate the trading of renewable energy credits between states.

Minn. Stat. § 216B.1691, subd. 4.

Parties made two arguments in favor of reading the statute to permit the use of out-of-state credits before a Minnesota tradable credits program is in place: (1) the statute contains no direct prohibition against counting out-of-state credits before the Commission establishes a Minnesota program; and (2) the word “facilitate” in subsection (c) carries an expansive meaning and should be read expansively. The Commission disagrees.

First, the absence of a direct prohibition against pre-program use of out-of-state credits carries little weight in light of the language of subsection (b), which explicitly links the right to use a tradable renewable credit toward the renewable energy objectives with the credit having been “issued pursuant to this section.” In the absence of a Commission-established tradable credit program, no credit can meet that test.

Second, the language in subsection (c) on facilitating “the trading of renewable energy credits between states” goes to exactly that issue – trading renewable energy credits *between states*. It does not go to individual utilities’ rights but to the Commission’s statutory right to recognize other states’ tradable credits as part of its tradable credits program, and to work with other state commissions to establish mechanisms to recognize one another’s renewable credits. “Trading credits between states” assumes that two or more states have programs issuing credits to trade.

Any expansiveness in the word “facilitate,” then, goes to the Commission’s flexibility in dealing with other states’ credits in the context of its own tradable credits program, not to utilities’ flexibility in counting unaccredited energy supplies or energy credits toward their good faith obligation under the renewable energy objectives statute.

The Commission reads subdivision 4 as a three-part whole setting forth the Commission's responsibilities and authority regarding tradable renewable credits. Subsection (a) grants the Commission the authority to establish a renewable tradable credit program if it sees fit; it also sets forth basic pricing principles. Subsection (b) grants utilities the right to use tradable renewable credits issued under the Commission's program to meet their renewable energy objectives, instead of buying or generating renewable energy. Subsection (c) permits the Commission, if it establishes a tradable renewable credits program, to determine that credits issued by other states are countable and to work with the commissions of other states to facilitate reciprocal recognition of one another's tradable credits.

For all these reasons, the Commission finds that the renewable energy objectives statute does not permit utilities to count out-of-state tradable renewable credits prior to the establishment of a tradable renewable credit program in this state.

IV. Allocation Issues

A. Introduction

In its notice soliciting comments in the first phase of this case, the Commission requested comments on how to track units of renewable energy to ensure that they were not double-counted and that they were properly allocated – between states, for utilities serving more than one state, and between retail and wholesale customers, for utilities with both retail and wholesale operations. In its Order issued in the first phase of the case, the Commission found that the commenting parties were probably in the best position to develop workable allocation, verification, and tracking procedures and urged them to collaborate in this effort:

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. . . .

Order at 18.

Allocation issues arise in any effort to design a weighted scale, however, and the Department, the only party to design and submit a proposed weighted scale, also submitted a proposed allocation process. Under that process, an allocation factor would be developed for each utility, based on the

percentage of the utility's total load or total energy consumed in Minnesota; that allocation factor would be used to determine the percentage of each renewable generation source that should be credited to Minnesota and counted toward the renewable energy objectives.

B. The Comments

Most of the parties opposed this allocation process, pointing out that it would require multi-state utilities to treat the 10% goal as a system-wide goal instead of a Minnesota-specific goal, increasing their renewable energy obligations.

The Department responded at hearing that it concurred in a more fine-tuned set of guidelines introduced for discussion purposes by Commission staff. The parties present at hearing commended those guidelines as well. The guidelines' most helpful contribution is probably their mechanism for allocating entirely to the Minnesota jurisdiction those renewable resources that are added solely to meet Minnesota's renewable energy objectives and that are not counted toward any other renewable energy initiative.

C. Commission Action

Allocation issues are typically complex and fact-specific. At this point in the process of implementing the renewable energy objectives statute, neither the Commission nor the stakeholders have enough experience to set firm rules for allocating renewable resources between jurisdictions or across wholesale/retail boundaries. At this point the surest route to fair and reasonable allocations is to resolve allocation issues in company-specific resource plan or renewable energy objective filings. Company-specific filings will permit careful evaluation of each utility's unique network and load characteristics, as well as its renewable energy obligations in other states. The Commission will therefore set utility-specific allocation factors for renewable resources in utility-specific filings.

At the same time, the Commission respects the position, expressed by some parties, that it would be helpful for the utilities to have some general guidance on allocation issues as they prepare these filings. The Commission will therefore adopt the staff-prepared guidelines as a non-binding starting point for addressing company-specific allocation issues, emphasizing that each company's allocation factor will turn on unique facts and factors that may be inadequately reflected in the guidelines.

The guidelines are set forth below:

- Energy generated from network resources or purchase arrangements which existed prior to the establishment of the Minnesota REO (Renewable Energy Objectives) should be credited to the REO on the basis of the percentage of that utility's system energy consumed in Minnesota, and then the percentage of energy consumed by its (or its members') Minnesota retail customers.

- With respect to energy generated from facilities or purchase arrangements entered into after the establishment of the Minnesota REO, each utility has the burden of showing, in resource plan or REO plan filings, what percentage of the energy generated should be counted toward the REO. In absence of a convincing showing that all or some greater percentage than would result from allocation of such energy was acquired for purposes of the REO and is being used to serve Minnesota retail customers it will be credited to the REO on the basis of the percentage of that utility's system energy consumed in Minnesota, and then the percentage of energy consumed by its (or its members') Minnesota retail customers.
- In resources plans or REO report proceedings, if the utility wished to propose some other allocation or assignment method, the utility would have the burden of demonstrating that some other method is more reasonable given its particular circumstances.

V. Next Steps

The June 2 Order delegated to the Executive Secretary the authority to issue notices, develop questions, and establish further procedures to promptly resolve the remaining issues in this case. That authority remains in effect and will be exercised to continue the work of implementing the renewable energy objectives statute.

ORDER

1. The Commission finds that at present it is not in the public interest to assign multiple credits to any renewable technology or fuel countable toward the renewable energy objectives and therefore assigns a weight of one to all energy produced by qualifying technologies.
2. The Commission hereby opens a new docket to investigate establishing a multi-state tracking and trading program for tradable renewable credits, *In the Matter of In the Matter of a Commission Investigation into a Multi-state Tracking and Trading System for Renewable Energy Credits*, Docket No. E-999/CI-04-1616.
3. The Commission requests that the technical review committee of the stakeholder participants in the Midwest Tradable Renewable Credits Workshops provide quarterly updates on its work, as well as reports on breaking developments that might influence or inform the Commission's investigation. The Commission asks its staff and the staff of the Department to liaise with the committee to facilitate these communications.

4. The proper allocation of renewable resources between jurisdictions, wholesale/retail operations, competing renewable initiatives, or any other factor giving rise to a need for an allocation process, shall be determined on the basis of the facts specific to each company in individual resource plan filings or renewable energy objective filings. The Commission adopts the following general guidelines as a non-binding starting point for addressing allocation issues:
 - (a) Energy generated from network resources or purchase arrangements which existed prior to the establishment of the Minnesota renewable energy objectives should be credited to the renewable energy objectives on the basis of the percentage of that utility's system energy consumed in Minnesota, and then the percentage of energy consumed by its (or its members') Minnesota retail customers.
 - (b) With respect to energy generated from facilities or purchase arrangements entered into after the establishment of the Minnesota renewable energy objectives, each utility has the burden of showing, in resource plan or renewable energy objectives plan filings, what percentage of the energy generated should be counted toward the renewable energy objectives. In absence of a convincing showing that all or some greater percentage than would result from allocation of such energy was acquired for purposes of the renewable energy objectives and is being used to serve Minnesota retail customers it will be credited to the renewable energy objectives on the basis of the percentage of that utility's system energy consumed in Minnesota, and then the percentage of energy consumed by its (or its members') Minnesota retail customers.
 - (c) In resource plans or renewable energy objectives report proceedings, if the utility wished to propose some other allocation or assignment method, the utility would have the burden of demonstrating that some other method is more reasonable given its particular circumstances.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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