

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of Commission Considerations
and Determinations Under the Electricity Title,
Section XII, of the Federal Energy Policy Act
of 2005

ISSUE DATE: August 15, 2006

DOCKET NO. E-999/CI-06-159

ORDER TAKING ACTION UNDER
FEDERAL ENERGY POLICY ACT OF 2005
AND SOLICITING COMMENTS

PROCEDURAL HISTORY

In 2005 the United States Congress enacted the federal Energy Policy Act of 2005 (the Act).¹ Among other things, the Act required state regulatory authorities to consider adopting standards in five areas and requiring rate-regulated electric utilities with retail sales over a specified threshold to meet those standards. The five areas in which the Act provided standards for consideration are set forth below:

- Net Metering
- Fuel Source Diversity
- Fossil-Fuel Generation Efficiency
- Smart Metering
- Interconnection with On-Site Generators of Retail Customers

The Act established deadlines for state action and provided that previous state action, within specified time lines, considering or implementing these or comparable standards, constituted compliance and eliminated the need for further state action.

On July 27, 2006, this Commission met and took up the issue of what it must do to comply with the Act.

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, §§ 1251-1254.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission has examined the five standards the Act requires it to consider adopting and finds that three of the five – net metering, fuel source diversity, and interconnection with on-site customer generators – have already been considered and appropriately implemented. The two remaining standards – fossil-fuel generation efficiency and smart metering – have also been previously addressed but require additional consideration, which this Order initiates.

These actions are explained below.

II. Net Metering

The Act requires state regulatory authorities to consider adopting a standard requiring each utility to offer net metering service, under which electric energy generated by a consumer from an eligible on-site generating facility may be used to offset electric energy provided by the utility to the consumer during the applicable billing period. The Commission finds that Minnesota regulatory authorities have already taken action implementing this or a comparable standard.

In 1981, the Minnesota Legislature enacted Minn. Stat. § 216B.164, subd. 3; that statute obligates Minnesota electric utilities to purchase power from customer-owned generating facilities and establishes net metering (termed “net energy billing” in the statute) for facilities under 40 kW. The statute was carefully crafted by the Legislature to encourage the development of small, local generating facilities, while avoiding untoward pressure on the transmission system or retail rates.

The Legislature directed the Commission to adopt rules implementing the statute, including its net metering requirements. Those rules, set forth at Minnesota Rules, Chapter 7835, were developed after a long process of public comment and stakeholder participation. They continue the careful process, begun by the Legislature, of balancing the sometimes competing interests of small generators, retail ratepayers in general, and a business climate sensitive to the price of energy.

The Commission finds the net metering standard has been adequately considered and appropriately implemented by the statute and rules described above.

III. Fuel Source Diversity

The Act requires state regulatory authorities to consider adopting a standard requiring each utility to develop a plan to minimize its dependence on a single fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies. Here, too, Minnesota regulatory authorities have already taken action implementing this or a comparable standard.

Minnesota's resource planning statute and Commission rules adopted to implement that statute require electric utilities to file periodic resource plans reporting on (1) the projected energy needs of their service areas over the next 15 years; (2) their plans for meeting projected need; (3) the analytical process they used to develop their plans for meeting projected need; and (4) their reasons for adopting the specific resource mix proposed to meet projected need. Minn. Stat. § 216B.2422 and Minnesota Rules Chapter 7843.

The resource planning statute and rules place a high priority on ensuring that *all* potential resources for meeting need – both supply-side and demand-side – are identified, cost-quantified, and carefully considered; these actions are required from all utilities.² They also require utilities to give the most serious consideration to renewable resources and technologies, requiring that each resource plan include scenarios whereby the utility meets 50% and 75% of all new and refurbished capacity needs through a combination of conservation and renewable energy resources.³

The resource planning process is Minnesota's main vehicle for ensuring that utilities maintain a diverse portfolio of generation technologies and fuels, including renewable technologies and fuels, but Minnesota statutes also encourage renewable generation in many other ways. For example –

- Minn. Stat. § 216B.1691 requires utilities to make good faith efforts to generate or otherwise secure enough electricity from qualifying renewable technologies to represent 10% of total retail sales by the year 2015.
- Minn. Stat. § 216B.1612 encourages the development of community-based energy development (C-BED) wind projects and requires utilities to develop tariffs to facilitate the integration of these projects into the utilities' systems.
- Minn. Stat. § 216B.243, subd. 3a prohibits the construction of non-renewable generation and associated transmission facilities unless renewable generation is too costly or impractical.
- Minn. Stat. § 216C.051, subd. 7 (c) designates wind and solar resources as first-choice fuels for future generation.
- Minn. Stat. § 216C.41 authorizes incentive payments to encourage wind production.
- Minn. Stat. § 216B.013 states that it is a goal of this state that Minnesota move to hydrogen as an increasing source of energy for its electrical power, heating, and transportation needs.

² Minn. Stat. § 216B.2422, subd. 1 (d); Minnesota Rules 7843, subp. 3 A.

³ Minn. Stat. §216B.2422, subd. 2.

The Commission finds the fuel source diversity standard has been adequately considered and appropriately implemented by the statutes and rules described above.

IV. Interconnection With Customers' On-Site Generators

The Act requires state regulatory authorities to consider adopting a standard requiring each utility to offer interconnection service for on-site distributed generation facilities owned by customers. Minnesota regulatory authorities have already taken action implementing this or a comparable standard.

In 2001 the Minnesota Legislature enacted Minn. Stat. § 216B.1611, requiring utilities to provide interconnection services for customers' on-site, distributed generation facilities. The statute required the Commission to conduct an industry-wide proceeding to set standards for the distributed generation tariffs the statute required each utility to file.

The Commission completed this work with its Order of September 28, 2004, setting industry-wide standards for distributed generation tariffs,⁴ and it is nearing the end of the process of approving individual utilities' tariffs. The Commission finds the interconnection standard has been adequately considered and appropriately implemented by the statute and subsequent Commission proceedings described above.

V. Fossil-Fuel Generation Efficiency

The Act requires state regulatory authorities to consider adopting a standard requiring each utility to develop and implement a ten-year plan to increase the efficiency of its fossil fuel generation.

Fuel efficiency is a factor that is always taken into account in resource planning; it is inextricably linked with issues of cost, efficiency, reliability, and environmental impact. It is not explicitly addressed by rule or statute, however, and utilities are currently under no obligation to develop ten-year plans to increase the efficiency of their fossil-fuel generating facilities.

There are clear advantages to the focused, systematic examination of fuel efficiency that the federal Act envisions. And the resource planning process would be the obvious forum in which to conduct that examination. The Commission will therefore solicit comments from utilities and other stakeholders on whether and how this standard could or should be made part of the resource planning process, including comments on what guidance the Commission should give utilities to ensure that the standard would be explicitly addressed in future resource plans.

⁴ *In the Matter of Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities under Minnesota Laws 2001, Chapter 212, Docket No. E-999/CI-01-1023, Order Establishing Standards (September 28, 2004).*

VI. Smart Metering

The Act requires state regulatory authorities to consider adopting a standard requiring each utility to offer its customers “smart metering” – in brief, the ability to choose time-based rate schedules over flat rate schedules and to use advanced metering and communications technology to manage energy use in response to time-based fluctuations in energy prices. This standard is probably the most complex of the five, both in technological and public policy terms.

Although this Commission has examined time-based pricing in some depth in dockets involving individual utilities, it has never conducted an industry-wide examination of the issue, nor has it examined the issue within the past two years. It is clearly in the public interest to examine the issue again, from an industry-wide perspective and in light of current conditions and knowledge, to determine whether the Commission should adopt the smart metering standard of the Act, a comparable or different standard, or no standard.

The Commission will solicit comments from utilities and other stakeholders on smart metering and will delegate to the Executive Secretary the authority to frame the issues set for comment, to set comment time frames, and to otherwise manage the investigation of smart metering issues in this docket.

VII. Affected Utilities

As explained above, any standards adopted under the federal Act apply only to rate-regulated electric utilities with retail sales exceeding 500,000 megaWatt hours in the year which is two years before the one in which state regulatory authorities consider adopting the standards. In this case, that year would be 2004, and the following utilities would appear to be affected:

- Northern States Power Company d/b/a Xcel Energy
- Minnesota Power
- Otter Tail Power Company
- Interstate Power Company
- Dakota Electric Association
- Northwest Wisconsin Electric

The United States Department of Energy is compiling a list of affected utilities, which is not yet available, and which would be authoritative on coverage issues.

Finally, the Commission notes that Northwest Wisconsin Electric has very few Minnesota customers, and the Commission has historically deferred to the Wisconsin Public Service Commission’s regulation of this company. Here, too, the Commission will defer applying any standards to that company, pending action by the Wisconsin Commission.

ORDER

1. Regarding the net metering standard, the Commission finds that this State has considered this standard and implemented it appropriately in statute and rules.
2. Regarding the fuel source diversity standard, the Commission finds that this State has considered this standard and implemented it appropriately in statute and rules.
3. Regarding the standard on interconnection with on-site generators of retail customers, the Commission finds that this State has considered this standard and implemented it appropriately in statute and rules.
4. Regarding the fossil fuel efficiency standard, the Commission will solicit comments, under the direction of the Executive Secretary, on whether and how this standard could or should be made part of the resource planning process, including comments on what guidance the Commission should give utilities to ensure that the standard would be explicitly addressed in future resource plans.
5. Regarding the smart metering standard, the Commission will investigate whether adopting this or a comparable standard would be in the public interest, and delegates to the Executive Secretary the authority the authority to frame the issues set for comment, to set comment time frames, and to otherwise manage the investigation.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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