

**Minnesota Public Utilities Commission**  
**Staff Briefing Papers**

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Meeting Date: October 15, 2014..... Agenda Item # **\*\*4**

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Company: All Investor-Owned Electric Utilities

Docket No. E-999/CI-13-542

In the Matter of the Implementation of Solar Energy Standards  
Pursuant to 2013 Amendments to Minnesota Statutes, Section  
216B.1691

Issue(s): What further action should the Commission take to establish criteria  
and procedures for identifying which utility customer sales are excluded  
when determining the utility's Solar Energy Standard?

Staff: Janet F. González.....(651) 201-2231

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***Relevant Documents***

Staff Briefing Papers for 11/7/2014 Agenda Meeting .....October 31, 2013  
Order Establishing NAICS Codes & Further Requirements .....November 20, 2013  
Notice for Comments on Excluded Customers – Phase 2.....December 3, 2013  
Department of Commerce Comments.....December 17, 2013  
Minnesota Power Comments .....December 20, 2013  
Otter Tail Power Comments .....December 23, 2013  
Xcel Energy Comments.....December 23, 2013  
Solar Exempt Group Comments .....December 23, 2013

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The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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October 9, 2014

## ***Statement of the Issue***

What further action should the Commission take to establish criteria and procedures for identifying which utility customer sales are excluded when determining the utility's Solar Energy Standard (SES)?

- Should any criteria in addition to NAICS codes be applied to determine customer eligibility for exclusion?
- What specific requirements should be established for notification to potentially excludable customers and for verification of their status?

## ***Relevant Statute***

Minn. Stat. 216B.1691, subd. 2f **Solar Energy Standard**, (the SES statute) requires that by the end of 2020, at least 1.5% of the public utility's total retail electric sales must be generated by solar energy. At least 10% of the 1.5% must be met by solar voltaic (PV) devices of 20 kW or less.

The SES applies only to public (investor-owned) electric utilities and is in addition to the Renewable Energy Standard (RES) obligations which apply to a broader group of electric utilities. Energy used to satisfy the RES may not be used to satisfy the SES. The law also sets an energy goal, but not a standard, of 10% solar by 2030.

Sales to certain types of customers are to be excluded from the sales base for calculating the utility's SES obligation, and costs of satisfying the SES is to be excluded from the rates of these customers. Specifically with respect to calculating the sales base for the SES and treatment of excluded customers, the SES statute states:

....

(d) For the purposes of calculating the total retail electric sales of a public utility under this subdivision, there shall be excluded retail electric sales to customers that are:

- (1) an iron mining extraction and processing facility, including a scam mining facility as defined in Minnesota Rules, part 6130.0100, subpart 16; or
- (2) a paper mill, wood products manufacturer, sawmill, or oriented strand board manufacturer.

Those customers may not have included in the rates charged to them by the public utility any costs of satisfying the solar standard specified by this subdivision.

## ***Commission Actions To-Date on Customer Exclusion Issues***

On July 25, 2013, the Commission issued a notice requesting public utilities to file information on their retail sales, potentially excluded customers, and estimated SES obligations. The notice also asked for comments on the utility filings and related issues:

- Whether the utilities have provided reasonable estimates of their SES obligations;
- Whether the Commission should establish criteria to be used by utilities in determining customer exclusions, such as kilowatt (kW) demand, kilowatt hour (kWh) usage, and North American Industry Classification System (NAICS) codes; and
- Whether the Commission should establish procedures and/or require utilities to file tariffs relating to customer exclusions that address verification procedures, reporting requirements, customer petitions, or other related issues.

By August 15, 2013, Otter Tail Power, Interstate Power, Minnesota Power, and Xcel Energy had filed the requested information and related comments. By August 30, 2013, the Minnesota Department of Commerce, Division of Energy Resources (the Department), Fresh Energy and the Minnesota Center for Environmental Advocacy, Xcel Energy, the Solar Exempt Group, and the Minnesota Chamber of Commerce had filed comments on the utility filings. Please see Commission staff briefing papers filed in e-dockets on October 30, 2013 for more information.

On November 7, 2013, the Commission met to consider the matter. On November 20, 2013, the Commission issued its ORDER ESTABLISHING NAICS CODES AS INITIAL SCREEN TO DETERMINE EXCLUSION FROM SOLAR ENERGY STANDARD AND SETTING FURTHER REQUIREMENTS in this docket. The Commission found that:

- NAICS codes should be the initial screen for determining exclusion from the SES.
- Parties should file additional comments on the specific NAICS categories that qualify for exclusion.
- Customers must file requests with their utility for exclusion from the SES.
- Each utility shall file with the Commission a proposal for notifying its customers of potential eligibility for exclusion, together with a proposed form or template developed in consultation with stakeholders, for customers to use in applying for exclusion.
- Each utility shall file with the Commission a list of customers who have requested exclusion and the basis for each request for exclusion.

The Commission also delegated to the Executive Secretary authority to issue further notices and establish additional procedures. On December 3, 2013, the Commission issued a notice that requested comments on the following:

- What specific NAICS codes should be used to screen customers who are potentially eligible for exclusion from the Solar Energy Standard (SES), and why?
  - The list included in the Department of Commerce's August 29, 2013 comments?
  - The list included in Minnesota Power's August 15, 2013 filing?
  - Some other set of NAICS codes?

- What criteria other than NAICS codes, if any, should be used to make a final determination of customer eligibility?
  - Size or rate schedule criteria, such as having a minimum kW demand or being on a demand-metered or large C&I rate?
  - A certain percentage of customer activity being in a qualified NAICS code?
  - The specific statutory activity tied to a facility, account, and/or meter? For example, if a customer who qualifies by NAICS code has its manufacturing facility on one meter and its headquarters office on a different meter, does the latter qualify? Does it matter if the headquarters office is at a different site than the manufacturing facility?
  - Some other criteria?
- What information should customers who apply for exclusion be required to provide?

### ***Party Comments and Staff Analysis***

#### **Which specific NAICS Codes Should be Used?**

In its November 20, 2013 Order, the Commission determined that the North American Industry Classification System (NAICS)<sup>1</sup> should be used as the initial screen in determining which customers qualify for the SES exclusion. The December 3, 2013 Notice asked parties to comment on whether the categories that had been initially proposed by the Department, those initially proposed by Minnesota Power, or some other categories should be adopted.

In their December 2013 comments, the Department recommended using the list it had suggested in its original comments:

<b>NAICS Code</b>	<b>Category</b>
212210	Iron Ore Mining
321113	Sawmills
321114	Wood Preservation
321211	Hardwood Veneer and Plywood Manufacturing
321212	Softwood Veneer and Plywood Manufacturing
321213	Engineered Wood member (Except truss) Mfg.
321214	Truss Manufacturing
321219	Reconstituted Wood Product Mfg.
321911	Wood Window and Door Mfg.
321912	Cut Stock, Resawing Lumber and Planning
321918	Other Millwork (incl. flooring)
321920	Wood Container and Pallet Mfg.

<sup>1</sup> The NAICS is the standard used by U.S. Federal statistical agencies, including the U.S. Census, for classifying businesses for collecting, analyzing, and publishing statistical data. This system was adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

321991	Manufactured Home (mobile Home) Mfg.
321992	Prefabricated Wood Building Mfg.
321999	All Other Misc. Wood Product Mfg.
322110	Pulp Mills
322121	Paper (except Newsprint) Mills
322122	Newsprint Mills
322130	Paperboard Mills
322211	Corrugated and Solid Fiber Box Mfg.
322212	Folding Paperboard Box Mfg.
322219	Other Paperboard Container Mfg.
322220	Paper Bag and Coated and Treated Paper Mfg.
322230	Stationery Product Mfg.
322291	Sanitary Paper Product Mfg.
322299	All Other Converted Paper Product Mfg.

Xcel, Minnesota Power, and Otter Tail all supported adopting the list. Otter Tail stated, however, that while the list appears to be comprehensive it should not be definitive, and there should be a process to allow customers to expand the list approved NAICS codes.

In response to Otter Tail's concern, there would be nothing in theory preventing a customer who believes she is eligible for exclusion from applying to the utility even if it does not fall under one of the NAICS codes on the list. Staff believes there should be an affirmative determination by the Commission in such an instance. This issue can be addressed as part of the overall process for a customer to challenge a utility decision to deny an exclusion, not as a limitation on the finality of the list.

Staff recommends finding that the above list recommended by the Department comprehensively covers the categories of industries that are to be excluded under the statute and should be adopted.

**Should any other screening criteria be used, such as size?  
How should multiple facilities or lines of business of a customer be treated?**

In its November 20, 2013 Order, the Commission determined that NAICS codes should be used as the *initial* screen in determining eligibility for exclusion from the SES. There was interest expressed by Commissioners in exploring whether other factors should also be considered in making a final determination of eligibility.

The December 3, 2014 Notice asked parties to comment on whether there should be: size or rate schedule criteria, such as having a minimum kW demand or being on a demand-metered or large C&I rate; a certain percentage of customer activity being in a qualified NAICS code; or the specific statutory activity tied to a facility, account, and/or meter.

### *Size Criteria*

The Department, Xcel, Minnesota Power, and Otter Tail all stated that no size or rate schedule threshold should be used, because there is no size threshold for exclusion stated in the statute. The Department stated that using a size criterion could be considered discriminatory. The Department notes that the related kWh excluded from smaller customers will not have a major impact on the overall state SES standard.

Staff agrees the statute has no size threshold, however, there are practicably of implementation issues that are within the Commission's area of expertise and authority that could come into play. In information supplied in the initial phase of this docket, Xcel identified 1,031 customers who may be eligible for exclusion, using SIC codes and general account review. 1,013 of those customers are in the Small Commercial/Industrial (C&I) class. Some of these Small C&I customers are not even demand-billed. In the trade secret list of customers, Xcel included a number of small customers who at least by name do not appear to be in the stated industries, and some who appear to be retail establishments. While one would expect at least some of these smaller customers will no longer be considered eligible using NAISC codes, it is still likely some relatively small customers will potentially be eligible.

Including small customers will complicate considerably the actual exclusion of costs—for some of these customers, would excluded amounts be so small as to be rounded to zero on bills? The Commission may want to consider a criterion that a customer must be demand-billed to be eligible for the exclusion, which generally means a load of 25 MW or more, still relatively small.

### *Other Potential Screening Criteria*

Minnesota Power notes that the statute used the word “customer” with respect to excluded retail sales, and thus suggests that all locations and facilities associated with that customer be eligible for exclusion. Xcel states that either customer or premise (location) could be used, but prefers doing it by customer, for ease and consistency among utilities. Otter Tail suggests a similar, but somewhat narrower, requirement—the customer seeking the exemption must indicate whether exemption is sought for the whole account (which could include multiple meters and/or facilities), specific meters, or specific facilities, and would need to certify that the primary business activity designated falls in an approved NAISC code. Both Otter Tail and Xcel contend that it would be too burdensome to attempt to separate or allocate back office activities from primary business activities in determining excluded activity.

Staff notes that there are multiple different uses in Minnesota statutes of the word “customer”, and that the word could apply to a particular meter or location, not necessary every facility under common ownership. An eligible customer of Minnesota Power, for example, could also have facilities in a cooperative or municipal service area—obviously those facilities outside the service area would not be excluded. Staff would suggest using a locational criterion, such that multiple meters and facilities at the same location would all be eligible, but that facilities in a

different location would need to be evaluated separately, and primary activity at that location be used to qualify. A customer with multiple sites in one utility's service area could potentially provide all the information on one form. A customer with facilities in multiple public utility service areas would need to apply to each utility. Staff agrees that trying to separate or allocate usage for different types of business activities would not be burdensome, and that primary business activity of the entity is a reasonable way to go.

### **What Information Should the Customer Provide to the Utility? What Information Should the Utility Provide the Customer?**

In its November 20, 2013 Order, the Commission determined that customers must file information with the utility to verify their eligibility. The December 3, 2013 Notice asked parties to comment on what information customers should file.

#### *Information to be Filed by Customers*

While the specific list of information varied somewhat, the Department, Xcel, OTP, and MP had very similar ideas for what information customers should be required to file with the utility to verify eligibility for exclusion. It seems reasonable to staff that at a minimum the following information be provided:

- Company name and account number(s)
- Primary business activity and NAICS code at each location for which exclusion is being requested
- Customer contact information

Otter Tail also suggests that the customer be required to certify that the information is accurate and truthful.

#### *Information Utilities Should Provide to Customers*

The December 3, 2013 Order also stated that each utility should file with the Commission a proposal for notifying its customers of potential eligibility for exclusion, together with a proposed form or template developed in consultation with stakeholders, for customers to use in applying for exclusion. However, because the specific criteria have not yet been established by the Commission, it seemed premature for utilities to file detailed information. Staff understands there have been some preliminary discussions among at least some stakeholders.

Staff suggests that utility notices to customers include information that the utility may request Commission guidance in unclear situations and for the customer to appeal to the Commission if it disagrees with the utility. This could include situations such as discussed earlier where a customer believes she should be excluded even if the NAICS code is not on the list.

Assuming the Commission makes specific decisions on relevant issues today, Staff suggests requiring each utility to make a compliance filing that describes the utility's proposal for notifying and educating customers, overall process for evaluating filings, and a proposed form/template for customers. It may not be necessary to require stakeholders to engage in further talks, but set a time frame for the filings such that there is time for voluntary consultations should parties wish to do so.

The more difficult issue ahead for the Commission will be in identifying the specific costs that should be excluded and the rate and tariff mechanisms for doing so. In its November 20, 2013 Order, the Commission already delegated authority to the Executive Secretary to issue notices and establish procedures for addressing these issues.

(Decision Options start on following page)



## Decision Options

### NAICS Codes

1. Adopt the following list of North American Industry Classification System (NAICS) codes for determining customers eligible for exclusion from the Solar Energy Standards (SES):

NAICS Code	Category
212210	Iron Ore Mining
321113	Sawmills
321114	Wood Preservation
321211	Hardwood Veneer and Plywood Manufacturing
321212	Softwood Veneer and Plywood Manufacturing
321213	Engineered Wood member (Except truss) Mfg.
321214	Truss Manufacturing
321219	Reconstituted Wood Product Mfg.
321911	Wood Window and Door Mfg.
321912	Cut Stock, Resawing Lumber and Planning
321918	Other Millwork (incl. flooring)
321920	Wood Container and Pallet Mfg.
321991	Manufactured Home (mobile Home) Mfg.
321992	Prefabricated Wood Building Mfg.
321999	All Other Misc. Wood Product Mfg.
322110	Pulp Mills
322121	Paper (except Newsprint) Mills
322122	Newsprint Mills
322130	Paperboard Mills
322211	Corrugated and Solid Fiber Box Mfg.
322212	Folding Paperboard Box Mfg.
322219	Other Paperboard Container Mfg.
322220	Paper Bag and Coated and Treated Paper Mfg.
322230	Stationery Product Mfg.
322291	Sanitary Paper Product Mfg.
322299	All Other Converted Paper Product Mfg.

2. Find that some other set of codes or criteria should be adopted.

### Other Criteria - Size

3. Find that the SES exclusion should apply only to demand-metered customers of 25 MW or greater.
4. Find that no size or rate class criteria should apply.

### **Other Criteria – Location and Activity**

5. Find that all customer locations within a utility's service area are eligible for exclusion from the SES if the primary business purpose is consistent with the NAICS codes and any other criteria adopted by the Commission.
6. Find that all facilities at a specific customer location within a utility's service area are eligible for exclusion from the SES if the primary business purpose is consistent with the NAICS codes and any other criteria adopted by the Commission.
7. Find that each metered facility within a utility's service area are eligible for exclusion from the SES if the primary business purpose is consistent with the NAICS codes and any other criteria adopted by the Commission.

### **Information from Customers to Determine Eligibility**

8. Find that the following information at a minimum should be provided to the utility by customers who apply for exclusion from the SES:
  - Company name and account number(s)
  - Primary business activity and NAICS code at each location for which exclusion is being requested
  - Customer contact information
9. Specify additional or alternative information that customers must provide.
10. Require that customers certify that the information provided is accurate and truthful.

### **Utility Compliance Requirements**

11. Require Xcel, Minnesota Power, Otter Tail, and Interstate to make compliance filings within 45 days of the date of this order that include the following:
  - Plan for notifying customers of potential eligibility for exclusion from the SES, including proposed text of written materials
  - Draft form/template for customers to use in requesting exclusion
  - Process and description of internal procedures for processing customer requests
12. Require additional or alternative information to be included in compliance filings.
13. Delegate to the Executive Secretary authority to approve the compliance filings if neither parties nor Commission staff raise disputed issues.

Staff recommends Options 1, 3 (not recommended by any party), 6, 8, 11, and 12

## Attachment 1

Minn. Stat. §216B.1691 (2013):

### Subd. 2f. **Solar energy standard.**

(a) In addition to the requirements of subdivisions 2a and 2b, each public utility shall generate or procure sufficient electricity generated by solar energy to serve its retail electricity customers in Minnesota so that by the end of 2020, at least 1.5 percent of the utility's total retail electric sales to retail customers in Minnesota is generated by solar energy. At least ten percent of the 1.5 percent goal must be met by solar energy generated by or procured from solar photovoltaic devices with a nameplate capacity of 20 kilowatts or less.

(b) The solar energy standard established in this subdivision is subject to all the provisions of this section governing a utility's standard obligation under subdivision 2a.

(c) It is an energy goal of the state of Minnesota that, by 2030, ten percent of the retail electric sales in Minnesota be generated by solar energy.

(d) For the purposes of calculating the total retail electric sales of a public utility under this subdivision, there shall be excluded retail electric sales to customers that are:

(1) an iron mining extraction and processing facility, including a scam mining facility as defined in Minnesota Rules, part 6130.0100, subpart 16; or

(2) a paper mill, wood products manufacturer, sawmill, or oriented strand board manufacturer.

Those customers may not have included in the rates charged to them by the public utility any costs of satisfying the solar standard specified by this subdivision.

(e) A public utility may not use energy used to satisfy the solar energy standard under this subdivision to satisfy its standard obligation under subdivision 2a. A public utility may not use energy used to satisfy the standard obligation under subdivision 2a to satisfy the solar standard under this subdivision.

(f) Notwithstanding any law to the contrary, a solar renewable energy credit associated with a solar photovoltaic device installed and generating electricity in Minnesota after August 1, 2013, but before 2020 may be used to meet the solar energy standard established under this subdivision.

(g) Beginning July 1, 2014, and each July 1 through 2020, each public utility shall file a report with the commission reporting its progress in achieving the solar energy standard established under this subdivision.