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February 7, 2014

—Via Electronic Filing—

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: COMMENTS
COMMISSION INQUIRY INTO OWNERSHIP OF RENEWABLE ENERGY CREDITS
USED TO MEET MINNESOTA REQUIREMENTS
DOCKET NO. E999/CI-13-720

Dear Dr. Haar:

Enclosed for filing are the Comments of Northern States Power Company, doing business as Xcel Energy, in response to the Minnesota Public Utilities Commission's December 30, 2013 Notice of Comment Period.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list.

Please contact Amber Hedlund at amber.r.hedlund@xcelenergy.com or (612) 337-2268 if you have any questions regarding this filing.

Sincerely,

/s/

CHRISTOPHER B. CLARK
REGIONAL VICE PRESIDENT
RATES AND REGULATORY AFFAIRS

Enclosures
c: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF A COMMISSION
INQUIRY INTO OWNERSHIP OF
RENEWABLE ENERGY CREDITS USED TO
MEET MINNESOTA REQUIREMENTS

DOCKET NO. E999/CI-13-720

COMMENTS

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission these Comments in response to the Commission's December 30, 2013 Notice regarding ownership of renewable energy credits (RECs). We appreciate the opportunity to provide input related to ownership of RECs used to meet Minnesota renewable energy standards. Below we provide our comments and respond to specific questions included in the Notice.

COMMENTS

1. What categories of RECs need clarity of ownership?

We believe clarity of REC ownership is needed for net metered facilities, and facilities that will operate under our proposed Community Solar Garden and Solar*Rewards programs.

- *Net Metered Facilities.* REC ownership for net metered facilities is not addressed in Minnesota statute or our current net metering tariff. In Docket No. E002/M-13-642 we proposed tariff modifications to implement certain 2013 legislative changes. Consistent with our understanding of the legislation, Commission precedent, and current practice, we proposed to include a provision that all RECs associated with energy produced by a net metered facility are owned by the Company. In that docket, the Commission stated that this current proceeding should address REC ownership issues. We discuss our

proposed treatment of RECs for net metered facilities in response to Question 2 below.

- *Solar*Rewards.* Minnesota statute is silent on REC ownership under our Solar*Rewards program, but our existing Solar*Rewards tariff contract transfers REC ownership to the Company. In Docket No. E002/M-13-1015 we proposed a new Solar*Rewards production incentive program to replace the existing Solar*Rewards program in 2014. While our proposal is currently pending final decision by the Commissioner of the Department of Commerce, Department Staff has recommended approval of our proposed contract that includes transfer of RECs to the Company. If approved by the Department, we will file the new Solar*Rewards tariff contract for approval by the Commission. We provide additional discussion of our proposed treatment of RECs for Solar*Rewards facilities in our response to Question 2 below.
- *Community Solar Gardens.* Minnesota statute does not directly address REC ownership for facilities that will operate under the Community Solar Garden program. The CSG statute does direct that the Company shall purchase all energy from CSG facilities under the Value of Solar tariff, and the VOS statute states that RECs are owned by the utility purchasing energy under a VOS tariff. However, until a VOS tariff is approved, the statute directs that energy shall be purchased at the applicable retail rate. To address REC ownership before a VOS tariff is implemented, in Docket No. E002/M-13-867 we proposed a CSG tariff that is modeled in part on our net metering tariff and includes transfer of RECs to the Company. We provide additional discussion of our proposed treatment of RECs for CSG facilities in our response to Question 2 below.

Minnesota statute clearly identifies ownership of RECs when payment to a customer is made under the Value of Solar tariff or when a customer receives the Made in Minnesota solar energy production incentive. No clarification of REC ownership is necessary in these situations.

- *Value of Solar Tariff.* The 2013 legislation amended Minn. Stat. § 216B.164 to allow a utility to propose an alternative tariff to compensate customers through a bill credit mechanism for operating distributed solar generation interconnected to the utility system. Regarding REC ownership under the Value of Solar tariff, Minn. Stat. § 216B.164, subd. 10(i) states: “Renewable energy credits for solar energy credited under this subdivision belong to the electric utility providing the credit.”

- *Made in Minnesota.* The 2013 legislation also included a solar production incentive program for facilities using solar panels made in Minnesota. When an owner of grid-connected solar photovoltaic modules receives the Made in Minnesota production incentive, Minn. Stat. § 216C.414, Subd. 5 states: “Renewable energy credits associated with energy provided to a public utility for which an incentive payment is made belong to the utility.”

2. Who owns the RECs from net metered customers? Does it matter whether the QF is being paid the average retail rate or avoided cost rate?

A. Net Metered Facilities

Under net metering, customers are compensated for energy at the retail rate, which is above the avoided cost rate. Thus, we believe all RECs associated with energy produced by a net metered facility should be owned by the utility. We believe this position is supported by direction provided by the Legislature, Commission precedent, and our current practice regarding REC ownership.

Legislative Direction

A primary purpose of the 2013 Omnibus Energy Bill is to encourage the production of solar energy and other renewable distributed generation resources. The legislation also includes the Solar Energy Standard (SES), requiring that each public utility shall generate or procure sufficient electricity generated by solar energy so that by the end of 2020 at least 1.5 percent of the utility’s total retail sales to retail customers in Minnesota is generated by solar energy (Minn. Stat. § 216B.1691, Subd. 2f(a)).

Part of this new legislation includes providing services for net metered facilities pursuant to Minn. Stat. § 216B.164, Subd. 3a. This statute does not directly address who owns the RECs produced by net metered facilities. However, certain relevant guidance was provided as part of the new law in Minn. Stat. § 216B.1691, Subd. 2f(f), which specifies how RECs for solar PV systems should be handled:

- (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 the effective date of this act but before 2020 may be used to meet the solar energy standard established under this subdivision.

We believe the intent of the legislation is to use the RECs to satisfy the SES, meaning the RECs would be owned by the utility. Absent these RECs, the Company may need to procure additional renewable energy to satisfy its requirements, which would increase costs to customers.

Commission Precedent

Commission precedent confirms that when we are paying more than avoided cost for renewable energy, we are paying for RECs associated with that energy. A discussion of the Company's Net Energy Billing tariff and the Commission's decisions on REC ownership in Docket No. E002/M-08-440 (the Silent REC docket) is helpful.

The Company's Net Energy Billing tariff was first filed in the mid-1980s and can be found in the rate book in Section 9, Sheet No. 2. The tariff was the result of Minn. Stat. § 216B.164, which implemented PURPA. The Company's Net Energy Billing tariff reflects rates based on our retail rate and is applied pursuant to the Uniform Statewide Contract for Cogeneration and Small Power Production Facilities, which is in the rate book Section 9, Sheet Nos. 10-12. Because the Uniform Statewide Contract was established before the concept of RECs existed, it is silent on their treatment.

The Commission has treated ownership of RECs in contracts entered into pursuant to statutory renewable mandates differently than in contracts entered into pursuant to PURPA. In the Silent REC docket, the Commission stated that contracts to fulfill wind and biomass mandates should be treated differently than contracts entered into pursuant to PURPA, such that Xcel Energy owns the RECs for energy produced under the wind and renewable mandate statutes, unless a generator can demonstrate that the power purchase agreement at issue is not silent as to REC ownership and explicitly provides otherwise. (September 9, 2010 Order at p. 7). The Commission noted that energy purchased without these renewable attributes would not have satisfied the statutory renewable requirements, and the Commission would have been unlikely to approve a contract if it had not been understood that the rights to claim the generation as renewable did not belong to the purchasing utility and its ratepayers. (September 9, 2010 Order at p. 8). The Commission agreed with the position of the Department that if the Company paid more than avoided cost to purchase the power, it would appear that the Company purchased, and ratepayers paid for, more than energy. (September 9, 2010 Order at p. 10). Thus, in cases where the rate paid for energy exceeds avoided cost and the contract is silent on REC ownership, the Commission found that the Company has the right to the RECs.

Under our net metering tariff we are paying for energy at our retail rate, which is more than the avoided cost. Based on the discussion above, we believe that premium supports transfer of the RECs to the Company.

Current Practice

Allowing the Company to receive the RECs for solar distributed generation is also consistent with current practice. The Company receives the solar RECs under existing solar distributed generation programs, such as existing Solar*Rewards (tariff Section 9, Sheet 15) and the Minnesota Bonus Rebate, which is an addendum to the existing Solar*Rewards contract (tariff Section 9, Sheets 29-32).

B. Solar*Rewards

Minnesota statute is silent on REC ownership under our Solar*Rewards program, but our existing Solar*Rewards tariff contract transfers REC ownership to the Company. Statute is clear that the Company will receive RECs if the customer receives an incentive through the Made in Minnesota program, and we believe the RECs from projects receiving Solar*Rewards incentives should receive the same treatment as projects receiving Made in Minnesota incentives.

In addition, we will be paying Solar*Rewards customers an incentive for solar energy produced that is above avoided cost. Based on the discussion above, we believe that premium supports transfer of the RECs to the Company.

In Docket No. E002/M-13-1015, we proposed a new Solar*Rewards production incentive program to replace the existing Solar*Rewards program in 2014. While our proposal is currently pending final decision by the Commissioner of the Department of Commerce, Department Staff has recommended approval of our proposed contract that includes transfer of RECs to the Company.

We note that we proposed a 20-year term for the new Solar*Rewards contract to match the term of our existing Solar*Rewards contract, but Staff recommended a 10-year term and that the RECs be assigned to the Company after the 10-year term only if the Company has an approved Value of Solar tariff. In our Reply to the Proposed Decision, we continued to recommend a Solar*Rewards contract term of 20 years, with RECs transferred to the Company for the 20-year period. If the Commissioner disagrees and finds that the contract term should be shortened to 10 years, we propose that at the end of the 10-year contract term that the customer have the opportunity to participate in any available tariff arrangement or tariff contract

applicable to the customer's situation, without prescribing use of the VOS tariff for all customers at this time.

After we receive the Department's Decision, we will file the new Solar*Rewards tariff contract, conforming to that Decision, for approval by the Commission.

C. Community Solar Gardens

The CSG program is one of the tools the Legislature provided to advance solar energy in the state of Minnesota and help utilities meet the Solar Energy Standard. For the program to contribute to the SES, the Company must demonstrate that it owns the RECs associated with the energy purchased from the garden. Since the Legislature directed the Company to purchase all energy from the gardens at the Value of Solar rate and stated that purchase of energy at the VOS rate assigns the RECs to the utility providing the credit, the Legislature appears to have intended RECs from solar garden production to belong to the utility and be used for compliance. Even absent this specific authority under the CSG Statute, the energy would still be "procured" by the Company, and the new legislation generally authorizes this solar production to count toward meeting the SES. (Minn. Stat. § 216B.1691, subd. 2f(a).)

Should the VOS rate not be approved at the time a customer signs a CSG contract, the Legislature directed the utility to purchase energy at the "applicable retail rate." Given that the VOS rate is still being developed, the Company looked to its existing rate tariffs as a basis for a CSG tariff. This was intended to facilitate the review process by eliminating the creation and review of an entirely new rate, especially when the VOS rate may be available shortly after the program's launch. The Net Energy Billing tariff provided a reasonable basis for the proposed CSG tariff because it has already been approved by the Commission and is consistent with the statutory language.

Following the principles established in the Silent REC docket discussed above, a contract entered for purposes of complying with the SES or renewable energy standard that has a contract price above the avoided cost rate should result in the Company receiving the RECs. This ensures that customers receive the full benefit of energy purchased to fulfill renewable energy requirements. If we did not abide by the Legislative intent (and consequently did not use the RECs to satisfy the SES), we would need to get them elsewhere, which would result in customers paying extra for them.

Additionally, the only CSG projects for which the REC issue is not directly addressed are those that come online prior to approval of a VOS rate that do not receive incentives. It could potentially confuse customers and increase administrative burden

to offer a separate REC payment only for a limited segment of solar gardens. Further, because the VOS Statute establishes the retail rate as the floor for a VOS rate for the first three years and transfers the RECs to the Company at that rate, it is unclear why additional payments would be required when offering the same retail rate outside of the VOS tariff.

For these reasons, in Docket No. E002/M-13-867, we proposed a CSG tariff that includes transfer of RECs to the Company. That docket is currently pending Commission action.

D. Conclusion

Finally, we note there has been discussion of specific REC values in various solar dockets currently before the Commission. While we recognize RECs do have value to a utility because they are necessary to demonstrate compliance with renewable energy standards, we have not attempted to carve out a specific REC value in the development of our Minnesota solar programs. Rather, we believe by purchasing renewable energy at a premium – either through an incentive payment or at a rate above avoided cost – we are paying for and our customers should receive the benefits of all attributes associated with that energy, including RECs.

The Commission is also currently considering issues related to tracking and reporting of solar RECs in Docket No. E999/CI-13-542. As discussed in our Comments in that docket, we believe transferring REC ownership to a utility as we have outlined also benefits customers by providing the utility flexibility to add solar resources to its system in the most efficient, cost-effective manner.

3. Who owns the RECs if a third party owns the PV equipment and leases to the homeowner/business?

We do not believe REC ownership should be treated differently based on whether a customer or a third party owns the PV equipment. As noted above, we believe RECs should be transferred to the utility for energy purchased at a premium. We have proposed certain tariff changes to ensure REC ownership is clear and well documented. In addition, we may need to update incentive or rebate program materials to ensure REC ownership information is fully disclosed in all circumstances.

As an example, we note that the Midwest Renewable Energy Tracking System (M-RETS) requires that the generator owner sign the form designating REC responsibility to the appropriate party. Our contracts and tariffs governing REC ownership are agreements between the Company and our customers; however, our customers might

not own the generator equipment in certain situations. We would work to ensure REC ownership and procedural steps for all parties are well documented and clear in our tariffs and solar program materials.

4. Are there special consideration on REC ownership related to REC aggregators/marketers?

We understand this question to relate to participants in a secondary REC market. We believe the framework and general policy guidelines for REC ownership presented in these Comments should govern REC ownership between customers/generators and the utility purchasing the energy. Ownership would be determined under the utility's tariff or contract with a customer, where the purchase price of energy would include the transfer of RECs to the utility. Typically, REC aggregators and marketers act on behalf of REC owners (sellers) in a secondary market. In this context, we do not see a need for additional REC ownership considerations related to REC aggregators and marketers.

5. What factors should the Commission take into account when determining REC ownership?

Absent an applicable Minnesota statute or Commission approved tariff governing REC ownership in a certain situation, we believe legislative intent, Commission precedent, and our current practice and processes regarding REC ownership can inform the Commission's decision. Our recommendations are discussed in detail in response to Question 2 above.

6. Should the Commission make decisions on REC ownership?

Yes, we believe it is appropriate for the Commission to determine policy and make decisions on REC ownership. As noted in the Commission's September 9, 2010 Order in the Silent REC Docket, RECs are heavily imbued with the public interest, and the Commission has authority to determine how and by whom RECs can be used. We believe getting the rules right and determining what governs REC ownership up front as we propose in these comments will resolve most general questions related to REC ownership. That said, the Commission would always have the ability to make determinations on REC ownership if parties raise any issues or disputes.

7. If the Commission should issue decisions on REC ownership, for which utilities or parties to a transaction should the Commission's decision apply?

We believe the general framework for determining REC ownership we have proposed in these Comments would be applicable to any utility, customer, generator owner, or REC aggregator or marketer. We recognize RECs are currently a vehicle used to demonstrate a utility's compliance with renewable energy standards, and utilities are the only entities who must comply with these standards. However, to set the appropriate framework and minimize potential disputes in the future, we believe the Commission's policy guidance should be applicable to any party involved in a REC transaction.

CONCLUSION

We appreciate the opportunity to provide input and participate in the process as the Commission establishes REC ownership policy going forward. We look forward to working with parties throughout this proceeding.

Dated: February 7, 2014

Northern States Power Company

CERTIFICATE OF SERVICE

I, Theresa Sarafolean, hereby certify that I have this day served copies of the foregoing document or a summary thereof on the attached lists of persons:

xx by depositing a true and correct copy or summary thereof, properly enveloped with postage paid, in the United States Mail at Minneapolis, Minnesota; or

xx via electronic filing

DOCKET No. E999/CI-13-720

Dated this 7th day of February 2014

/s/

Theresa Sarafolean

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