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February 7, 2014

Dr. Burl W. Haar  
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Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of a Commission Inquiry into Ownership of Renewable Energy Credits  
Used to Meet Minnesota Requirements - Minnesota Docket No. E999/CI-13-720

Dear Dr. Haar:

Dairyland Power Cooperative submits the enclosed Comments in response to the Minnesota Public Utilities Commission's Notice for Comment Period on Commission Inquiry. A copy of this filing has been served on all parties on the service list in this docket.

Thank you for your consideration.

Sincerely,

WHEELER, VAN SICKLE & ANDERSON, S.C.

*/s/ Mary Beth Peranteau*

Mary Beth Peranteau

MBP/lak

Enclosures  
by electronic filing  
cc: Service List

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

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In the Matter of Commission Inquiry Into  
Ownership of Renewable Energy Credits  
Used to Meet Minnesota Requirements

Docket No. E-999/CI-13-720

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**COMMENTS OF DAIRYLAND POWER COOPERATIVE  
ON OWNERSHIP OF RENEWABLE ENERGY CREDITS (RECs)**

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***INTRODUCTION***

The Commission issued a Notice Seeking Comments dated December 30, 2013, that seeks comments as to whether the Commission should make decisions on REC ownership, and if so, for which parties and which categories of RECs. This comment docket derives from earlier Docket Nos. E002/M-08-440 and E002/M-13-642, in which the petitioning party, Xcel Energy, expressly sought an order with respect to REC ownership in connection with particular Power Purchase Agreements (PPAs). But the broad-based inquiry in this docket does not arise from a similar request for a regulatory determination. Nor has there been a legislative delegation to the Commission to make such a determination for particular classes of RECs or parties as a statewide policy matter. As such Dairyland Power Cooperative (“Dairyland”) believes that any decision on REC ownership issued must be based on and should be limited to the specific arrangements agreed to by the renewable generator and the purchaser. Dairyland files these initial comments for the limited purposes of: (1) informing the Commission of its current REC policies – both with regard

to contracts for direct purchases of renewable energy and indirectly via its statutorily mandated subsidization of net metering for its Minnesota member distribution cooperatives; and (2) setting forth what Dairyland believes are the fundamental principles that should inform the issues of REC ownership in any subsequent proceeding based on the specific arrangements agreed to by the renewable generator and purchaser, Minnesota law, and FERC precedent under PURPA.

### ***BACKGROUND***

Dairyland supplies wholesale power under all-requirements contracts to three Minnesota distribution cooperatives: Freeborn-Mower Cooperative Services, People's Cooperative Services, and Tri-County Electric Cooperative. Tri-County Electric (in addition to serving retail customers), in turn sells power to ten Minnesota municipalities under wholesale all-requirements contracts.<sup>1</sup> Dairyland also sells wholesale power (although not on an all-requirements basis) to the city of St. Charles. Dairyland aggregates the retail load and wholesale sales of its cooperative and municipal customers for purposes of calculating the percentage of RECs for retirement to meet its annual Minnesota RES obligation under Minn. Stat. § 216B.1691.

Dairyland currently obtains RECs for compliance with the Minnesota RES from owned renewable generation and via wholesale contracts under which it purchases energy and the associated renewable attributes of wind, solar and biomass-fueled generation. Dairyland also acquires RECs associated with the energy generated by distributed renewable

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<sup>1</sup> The municipalities served by Tri-County include Caledonia, Whalan, Spring Grove, Peterson, Eitzen, Caledonia, Harmony, Lanesboro, Mabel and Rushford, Minnesota.

facilities that are interconnected with its member distribution cooperatives. There are currently approximately 500 customer-sited distributed generators within the Dairyland system, of which about two-thirds are solar generators. As mandated by Minn. Stat. § 216B.164, subd. 3(e), Dairyland as wholesale supplier reimburses its Class A (all-requirements) member distribution cooperatives for the additional cost over its wholesale rate of compensating QFs under the net metering rate. Rate reimbursement is made under Dairyland's DG-4 rate rider, which provides in pertinent part: “[Dairyland's] reimbursement to the Member Cooperative will be based on the difference between the Member Cooperative's average wholesale rate for Schedule A-1 firm energy purchases and the member Cooperative's applicable Average Retail Energy Rate applied to its net purchases of energy from eligible QF distributed generation.”

Dairyland's all-requirements members in Wisconsin and Iowa are under no regulatory obligation to compensate QFs for excess generation at a net metering (retail) rate. Nevertheless, all customer-members on the Dairyland system bear the additional cost of the DG-4 rate rider, because under cooperative principles, reimbursement is made available to all Class A member cooperatives on a non-discriminatory basis, and all of Dairyland's costs are ultimately borne by those cooperatives' members.

As a condition of reimbursement, the DG-4 rate rider provides that Dairyland receives all renewable attributes/rights associated with its member cooperative's purchase of the output from the renewable QF distributed generation. Based on a cost/benefit analysis that looks at administrative costs of registering and retiring these RECs vs. the use of its inventory of available “banked” RECs from other sources to satisfy its renewable

portfolio compliance obligations, Dairyland has not been registering RECs associated with small, customer-sited distributed generators in M-RETs. However, that cost/benefit analysis may change in the future based on revisions to M-RETs policies regarding registration of RECs from distributed generation, or future renewable compliance obligations that specify a percentage of renewables to be sourced from customer-sited generation. Dairyland's policies endeavor to preserve its ownership of RECs associated with distributed generation for the benefit of end-use consumers on the Dairyland system who have paid for those RECs under the rate structure.

### COMMENTS

**I. ANY DETERMINATION ON REC OWNERSHIP IN THIS DOCKET SHOULD BE LIMITED TO RECS ASSOCIATED WITH EXCESS ENERGY PURCHASED FROM CUSTOMER-SITED GENERATION AT NET METERING RATES UNDER MINN. STAT. § 216B.164, SUBD. 3.**

This comment docket is the product of a Department of Commerce Division of Energy ("DOE") recommendation in connection with Docket No. E002/M-13-642, a petition by Xcel Energy for approval of tariff modifications in compliance with the 2013 Omnibus Energy Bill, which affected the net metering and standby energy provisions of Minn. Stat. § 216B.164. Among other things, Xcel's proposed tariff modifications sought approval of proposed "clarifying language" in its tariff regarding ownership of RECs associated with net-metered distributed generation. That language proposed that RECs associated with net-metered distributed generation should be assigned to the purchasing utility.

This proceeding should not be used as a means to enlarge the scope of issues raised by Xcel's tariff filing. Any determination by the Commission with respect to the ownership

of RECs created by net-metered distributed generation should be grounded in the legislature's delegation of authority to adopt rules and a standard contract for net metering under Minn. Stat. § 216B.164, subd. 6. However, there is no need for the Commission to make a determination as to other classes of RECs, in particular those that are the subject of negotiated terms of power purchase agreements or other contracts such as inter-utility energy sales. In contrast to the circumstances in Docket No. E002/M-08-440 (the "silent PPAs"), the concept of RECs and their associated value is now widely recognized. The issue of REC ownership is just one of any number of negotiated terms between commercial parties to a PPA. At most, this docket should be concerned exclusively with ownership of RECs associated with purchases of excess energy from net-metered, customer-sited generation.

## **II. ANY DETERMINATION ON REC OWNERSHIP SHOULD ADHERE TO PRINCIPLES ESTABLISHED BY MINNESOTA LAW AND FERC PRECEDENT.**

The Commission's initial inquiry into REC ownership arose in an earlier proceeding initiated by Xcel Energy, Docket No. E002/M-08-440, in which the Commission was requested to determine the ownership of RECs for Xcel power purchase agreements that were silent on the issue. The Commission's preliminary jurisdictional determination found:

Renewable energy credits are creatures of statute, and are heavily imbued with the public interest. They are central to state energy regulatory policy, and exist only to serve critical state energy goals. They were created as a regulatory tool for measuring and monitoring utilities' compliance with their statutory obligations to secure specified percentages of generation supplies from renewable sources. . . .

*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 (September 9, 2010), at 4 (emphasis added). The Commission's September 9, 2010 Order further noted that "Xcel's costs are ultimately borne by Minnesota ratepayers, and the Commission is charged with protecting ratepayer interests."

Although Minn. Stat. § 216B.164, subd. 1 provides that the net metering rules should be "construed in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production," that statement of legislative intent is qualified by the statement that this must be "*consistent with protection of the ratepayers and the public.*" The market value of RECs is driven by renewable energy portfolio regulations in Minnesota and elsewhere. The cost of RECs is ultimately borne by ratepayers of the utilities subject to renewable mandates. The Commission should protect the interest of the end-use consumer in obtaining full value for the cost of net metering, including the renewable attributes of required net metered energy purchases.

Dairyland anticipates that this docket will garner substantial comment from solar and other renewable industry groups advocating the position that, absent some additional premium over the net-metered rate, RECs associated with net-metered purchases should be retained by the facility owner in order to promote customer-sited renewable generation. This position ignores the Commission's findings in Docket No. E-002/M-08-440 that RECs were created to measure and monitor compliance with utilities' statutory renewable portfolio obligation. RECs were not created and should not be administered (absent a clear expression of legislative intent to do so) as a further subsidy to encourage additional customer-sited generation or capacity that is oversized relative to customer load.

Section 216B.164 is Minnesota's implementation of the Public Utility Regulatory Policy Act (PURPA). In 2003, FERC issued a decision declaring that REC ownership in the context of preexisting PURPA power purchase agreements is a matter to be decided by the states under state law. *American Ref-Fuel Co.*, 105 F.E.R.C. ¶ 61,004 (2003). In *American Ref-Fuel*, FERC considered a petition from owners of several QFs seeking a declaratory judgment that the QFs were compensated only for energy and capacity under their PPAs, not for any "environmental attributes," and therefore should not "inherently convey to the purchasing utility any renewable energy credits." 105 F.E.R.C. ¶ 61,005, at ¶ 2. FERC granted the petition to the extent that it sought a declaration that FERC's "avoided cost regulations did not contemplate the existence of RECs and that the avoided cost rates for capacity and energy sold under contracts entered into pursuant to PURPA do not convey the RECs, in the absence of an express contractual provision." *Id.* ¶ 61,006, at ¶ 18. Dairyland acknowledges FERC's conclusion that the issue of REC ownership is not governed by PURPA and is a matter of state law and policy. However, FERC's reasoning in *American Ref-Fuel* suggests that where a utility compensates a QF at a rate in excess of avoided cost, the utility should be deemed to have purchased the environmental attributes of a renewable QF.

Consistent with the Minnesota RES, the utility that is obligated to purchase renewable energy from distributed generation (which also qualifies as eligible generation under Minn. Stat. § 216B.1691) at rates higher than avoided cost should own the RECs that are created with that energy for the purpose of measuring utility compliance with the RES. Ownership of RECs should be based on the utilities' ownership of qualifying energy



purchased from customer-sited renewable generation. Customer-sited generators paid the net-metered (retail) rate for their excess renewable generation are provided a premium over the avoided cost rate. It is appropriate for ratepayers funding that premium to receive the benefits of any RECs in exchange for that premium.

The Commission should consider equity and fairness, and the potential long-term ratepayer impact of its determination of REC ownership. Assignment of RECs to the generating consumer will reduce the benefit obtained by retail consumers whose rates pay for net metering costs. It would be unreasonable to require utilities to purchase renewable energy to meet the Minnesota RES for more than avoided cost, and then require ratepayers to pay again for RECs to verify their purchases in order to measure compliance with the RES. By the same token, it would be unreasonable to order utilities to forego the RECs associated with the renewable energy purchased at rates above avoided cost, as that would frustrate the purpose of the utilities' purchasing renewable energy to meet the Minnesota RES. A determination that the net metered rate includes consideration for all of the environmental attributes of the renewable energy strikes an appropriate balance between the goals of incentivizing distributed generation and the protection of the retail consumers paying for those incentives, and is consistent with the fundamental purpose of RECs to measure compliance with the RES.

## CONCLUSION

Dairyland believes that the Commission should limit its consideration in this docket to the question of REC ownership in connection with net metered, customer-sited generation under Minn. Stat. § 216B.164, subd. 3. However, in the absence of any expression of legislative intent for the ratepayers as a whole to further subsidize the proliferation of small, customer-sited renewable generation (beyond the incentives created by net metering), the Commission should deem the net metering rate paid by utilities to be in full consideration for the transfer of RECs associated with those purchase.

Dairyland appreciates the opportunity to provide these comments.

Dated this 7th day of February, 2014.

Respectfully submitted,

WHEELER, VAN SICKLE & ANDERSON, S.C.  
Attorneys for Dairyland Power Cooperative

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on those parties listed on the service list for this docket attached hereto.

Dated at Madison, Wisconsin, this 7th day of February, 2014.

Respectfully submitted,

*/s/ Mary Beth Peranteau*  
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