

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: April 10, 2014 Agenda Item # ****2**

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

Issues: 1) What clarifications should the Commission issue on Solar Renewable Energy Credit shelf life?
2) What information should be included in the utilities' annual reports on the SES?
3) Should the Commission issue any other clarifications related to the SES?

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Relevant Documents

Commission Notice of Comment Period. December 30, 2013
Fresh Energy, EL&P, and IWLA, Comments. January 31, 2014
Geronimo Energy, LLC, Comments. January 31, 2014
Invenergy Solar Development, LLC, Comments January 31, 2014
Minnesota Solar Energy Industries Association, Comments..... January 31, 2014
SMMPA, Comments..... January 31, 2014
Minnesota Power, Comments January 31, 2014
Xcel Energy, Comments January 31, 2014
Department of Commerce, Comments January 31, 2014
Otter Tail Power Company, Comments..... January 31, 2014
Public Comment (Innovative Power Systems, MRETS)..... February 3, 2014
Otter Tail Power Company, Reply Comments February 10, 2014
Fresh Energy, EL&P, and Izaak Walton League of America, Replies..... February 10, 2014

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Statement of the issue

- 1) What clarifications should the Commission issue on Solar Renewable Energy Credit shelf life?
- 2) What information should be included in the utilities' annual reports on the SES?
- 3) Should the Commission issue any other clarifications related to the SES?

Relevant Statute

Minn. Laws 2013, Chapter 85, was signed by the Governor on May 23, 2013. Article 10, Section 3, Solar Energy Standard, became effective on July 1, 2013. This section amends Minn. Stat. §216B.1691, to add a Solar Energy Standard (SES) for public electric utilities. The full text of Section 3 is Attachment 1 to these briefing papers.

This new law 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 photovoltaic (PV) devices of 20 kW or less; and
- Retail sales from certain customers must be excluded from the base for calculating the utility's total retail electric sales. The retail rates for those customers must not include any costs of satisfying the SES. An excluded customer is a(n):
 - o Iron mining extraction and processing facility, including a scam mining facility
 - o Paper mill
 - o Wood products manufacturer
 - o Sawmill
 - o Oriented strand board manufacturer

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.

Background of Commission Inquiry

The Commission opened the current docket in order to implement the new legislation. An earlier inquiry in this same docket relates to which customer are considered to be excluded from the utility's retail sales calculation; the Commission issued an Order on November 20, 2013 with some initial guidance, subject to further comment.

On December 30, 2013, the Commission issued the Notice that is the subject of these briefing papers. This Notice was issued because of informal questions stakeholders have been submitting to Commission staff. These questions were all incorporated into the Notice. In general, the questions relate to the fact that the SES legislation was incorporated into Minnesota's existing

Renewable Energy Standard (RES) statute, Minn. Stat. §216B.1691, and because the Commission has issued a series of Orders implementing the RES statute¹, parties inquired whether aspects of the Commission's previous RES Orders also apply to the SES. In addition, some parts of the new SES legislation appear to impose different requirements than those imposed by previous Commission RES Orders.

Party Comments in Response to Commission Notice

Party comments are organized by topic, with a background section where relevant to summarize past Commission decisions on the same subject.

I. Shelf Life for Solar RECs

Background: Shelf Life

RECs are a vehicle to assist in the development of renewable facilities in a manner that benefits the ratepayer; because the retirement of RECs is the manner by which utilities demonstrate their compliance with state RPS's, and because RECs can be bought and sold, the existence of RECs and a liquid market for RECs provides a check on the cost to ratepayers.

A shelf life is commonly established for RECs to be used for compliance with renewable portfolio standards (RPS) due to the fact that many RPS's, including Minnesota's, are set as a percentage of a utility's retail sales in a given year. A utility will not know the precise level of its retail sales until the year is complete, and retail sales will vary from year to year—as can the amount of renewable generation. In addition, shelf life is used as a policy tool to deal with the “lumpy” additions of renewable resources. Establishing a shelf life for a REC allows a utility to save a REC for retirement in a later year in case of unexpectedly lower retail sales in a particular year or higher than expected renewable generation.

In its December 18, 2007 ORDER ESTABLISHING PROTOCOLS FOR TRADING RENEWABLE ENERGY CREDITS in Dockets 03-869 and 04-1616, the Commission established a four year shelf life for RECs (that is, RECs may be used for RES compliance in the year they are generated or the four years following that initial year). Wisconsin had also established a four year shelf life. At the time the Commission adopted the four year shelf life for RECs, staff surveyed other states, and the four years was in the middle of the range of existing shelf lives.

Minnesota's RPS statute, Minn. Stat. §216B.1691, does not establish a shelf life for RECs used to meet the RES. However, the new SES legislation provides some guidance on shelf life:

¹ The Commission's generic dockets implementing the RES are E999/CI-03-869 and E999/CI-04-1616. Nine Orders have been issued in the 03-869 docket, relating to issues from which utilities are subject to the RES, how to measure compliance, whether out of state generation counts toward the RES, the types of generation that are eligible, the shelf life of RECs, and reporting requirements.

(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.²

Party Comments: S-REC shelf life

Two commenters, SMMPA and OTP, state that the statutory language suggests that S-RECs never expire. OTP states:

Otter Tail believes that Subd. 2f “Solar energy standard” is sufficiently clear on this issue. There is no expiration date on S-RECs for solar facilities. The terminology “[n]otwithstanding any law to the contrary” and the express reference to the period of time S-RECs are available for use underscore this point. Also noteworthy is the Legislature’s decision to preclude public utilities from using solar energy under Subd. 2f to satisfy obligations under subdivision 2a (and vice versa). In our view this underscores the need for flexibility with respect to S-RECs under subdivision 2f.³

SMMPA cites not only a statutory but a policy reason for an indefinite life on S-RECs:

A S-REC represents the environmental value of 1 megawatt hour of a non-emitting solar generation. When that 1 megawatt hour was generated, that negated 1 megawatt hour of fossil fuel emissions. That offset emissions benefit is never lost and can never be negated. It is totally irrelevant as to whether the benefit is retired in the year it was created in any subsequent year.⁴

Other parties suggest variations on the Commission’s current four-year shelf life requirement.

Geronimo Energy suggests that S-RECs generated after August 1, 2013 through December 31, 2015 could be retired for compliance in the year 2020, and for S-RECs generated in 2016 and beyond, the Commission’s current 4 year shelf life apply. In reply comments, the Environmental Organizations⁵ agree with Geronimo.

Xcel recommends that the Commission’s current four year shelf life apply, and does not read subdivision 2f(f) to mean that all solar RECs associated with energy generated after August 1,

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

³ OTP initial comments, page 2.

⁴ SMMPA initial comments, page 2.

⁵ The Environmental Organizations are the Environmental Law and Policy Center, Fresh Energy, and Izaak Walton League.

2013 may be counted toward compliance in 2020 in a cumulative manner. Rather, Xcel believes that subd. 2f(f) provides direction about what solar energy will be eligible to count toward compliance in 2020 by specifically identifying which facilities can produce eligible energy.

The Department quotes the Commission's original reason for setting the four year shelf life:

it achieves a balance between the goals of encouraging new generation and allowing utilities to reap incentives and efficiencies from longer-range planning in the development of new renewable resources and compliance strategies, while avoiding the creation of a glut of renewable energy credits on the emerging market.⁶

The Department then observes that the goal of subdivision 2f(f) is to ensure that utilities are not penalized for acquiring solar energy early and then having S-RECs become ineligible for retirement in 2020 because they have exceeded the established shelf life. Once the SES requirements are in place in 2020 and ongoing, the Department believes a four-year shelf life is appropriate. The Department stated its recommendation as follows:

Thus, in order to accommodate the early development and acquisition of solar energy prior to 2020, the Department recommends that the four-year shelf life for all S-RECs coming on-line between the effective date of the statute and January 2020 commences in 2020. In other words, S-RECs with a vintage falling between the effective date of the statute and January 2020 would not have the time prior to January 2020 count against their four-year shelf life. Instead, their shelf lives would be established as if their generation had occurred in 2020, plus the four subsequent years.⁷

Invenergy did not express an opinion on the shelf life of S-RECs, but in response to the Notice, did suggest that clarification around how S-RECs are treated following the SES deadline would be helpful to the industry. Invenergy stated that it is unclear whether the S-REC requirement continues into perpetuity, once the standard has been met, or if an S-REC sunsets at 2020 upon satisfying the SES requirement. (*Staff note:* because this is a slightly different issue, staff has moved this to the last section for further discussion.)

Innovative Power Systems (submitted as a public comment) briefly stated it did not believe S-RECs accumulated in previous years should contribute to a particular year's compliance.

Staff Comment

⁶ Department comments, page 3, quoting the Commission's December 18, 2007 ORDER ESTABLISHING INITIAL PROTOCOLS FOR TRADING RENEWABLE ENERGY CREDITS, Docket E999/CI-03-869 and E999/CI-04-1616.

⁷ Department comments, p. 3.

The language of this provision of the statute could lead the Commission to adopt OTP's and SMMPA's interpretation that S-RECs from facilities installed and generating between August 1, 2013 and December 31, 2019 never expire. The phrase "may be used to meet the solar energy standard" could be read to suggest that as long as the solar energy standard is in effect, an S-REC meeting the requirements of subd. 2f(f) must be allowed to be retired to demonstrate compliance. Since the SES starts in 2020 and does not have an ending date, one option is to interpret the statute and find that an S-REC's shelf life is infinite.

However, it is unlikely this is what the legislature intended. The shelf life of RECs are a common phenomenon and the legislation would have used more direct language had it wanted to set an infinite shelf life. It appears that the intent of the legislation was, as the Department points out, to ensure that early adopters are not penalized by having their S-RECs expire before the requirement to retire S-RECs for SES compliance begins in 2020. In particular, the legislation only singles out facilities installed after August 1, 2013, but before 2020, which bolsters the Department's argument that allowing for early adoption was the goal of this provision.

If the Commission agrees that some shelf life can be set, then it may choose between Geronimo's proposal (S-RECs generated August 1, 2013 through December 31, 2015 could be retired for compliance in the year 2020, and for S-RECs generated in 2016 and beyond, the Commission's current 4 year shelf life apply) or the Department's proposal (all S-RECs from facilities coming on-line between the effective date of the SES statute and January 2020, and with a vintage prior to 2020, will have a four-year shelf life commencing January 2020). Staff believes that the Department's recommendation more fully takes into account the Commission's past policy reasons for setting a shelf life. In contrast, Geronimo's proposal would result in a significant amount of S-RECs generated from the relevant facilities all expiring in 2020—a result which does not reward early adopters to the extent that the Department's proposal does. Staff has crafted an alternative decision option to the Department's language which is not intended to change the substance of the recommendation, but uses the terminology from the statute.

Staff does not agree with Xcel that the relevant provision relates to eligibility rather than shelf life. Eligibility is very clearly addressed in subdivision 1 of the statute. In addition, if Xcel's interpretation were adopted, then only solar PV facilities installed between August 1, 2013 and prior to 2020 in Minnesota would be eligible to meet the SES. This would mean facilities installed after 2020 would not be eligible to meet the SES in years after 2020; likewise, solar facilities installed in 2012 and still generating in 2020 could not be used to meet the SES.

It is also worth mentioning that no commenter provided a comparison of S-REC shelf life in states with solar standards. Staff recommends adopting a shelf life now to provide clarity, but at a later date it may be informative to know what other states have adopted. SMMPA's comments also suggest that REC shelf life be re-examined.

II. Shelf Life for S-RECs Generated Outside of Minnesota

Background: Shelf Life for S-RECs Generated Outside of Minnesota

Subd. 2f(f) of the new legislation states:

(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.⁸ (Emphasis added)

Commission staff received inquiries about the “in Minnesota” portion of this legislation and therefore included a question in the Notice about shelf life for S-RECs generated outside Minnesota.

Comments

All commenters agreed that while the statute only addresses S-RECs in Minnesota, S-RECs generated outside Minnesota should be granted the same shelf life, for both legal and policy reasons. As Invenergy stated:

The SES should treat all eligible solar generation equally and should not ascribe more or less credit to solar generated in Minnesota or elsewhere within M-RETS. Further, the SES statute itself draws no distinction based on geographic location of the solar generation. Minn. Stat. §216B.1691, subd. 2f (a) states:

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 (emphasis added).

Drawing any distinction between in-state and out-of-state solar generation would not only raise serious legal concerns, due to potential Commerce Clause issues, but would artificially suppress competition and drive up the cost of SES compliance and ultimately the cost to ratepayers. Such a SES compliance requirement runs directly counter to the public interest given that S-RECs delivered to M-RETS, either in Minnesota or elsewhere, provide the lowest cost alternative for SES compliance and ultimately for the state’s ratepayers.⁹

Other commenters made the same points as Invenergy. Xcel noted an additional point: the SES is contained within the RES statute, and subdivision 4(a) of the RES statute states that the REC program designated by the Commission “...shall not give more or less credit to energy based on

⁸ Minn. Stat. §216B.1691, subd. 2f(f).

⁹ Invenergy comments, pp. 3-4.

the state where the energy was generated or the technology with which the energy was generated.”¹⁰

Staff Comment

Staff agrees with the recommendations of the commenters. Whatever shelf life the Commission designates for S-RECs in Minnesota should apply to S-RECs generated outside of Minnesota. This is consistent with the Commission’s practice for other RECs used to meet the RES because to restrict S-RECs to facilities located in Minnesota would suppress competition and drive up the cost of SES compliance which are ultimately passed on to ratepayers. The recommendation is also legally sound.

Staff suggests that the Commission make this clarification in its order since subd. 2f(f) refers only to S-RECs in Minnesota and outside stakeholders have asked this question to Commission staff. Having this clarification memorialized in an Order will provide more certainty to stakeholders.

III. Commission Authority in Case of Noncompliance with SES

Background: The RES statute states that the Commission must regularly investigate whether a utility is in compliance “with subdivision 2” and “subdivision 2a.”¹¹ If the Commission finds noncompliance, “it may order the electric utility to construct facilities, purchase energy generated by eligible energy technology, purchase renewable energy credits, or engage in other activities to achieve compliance. If an electric utility fails to comply with an order under this subdivision, the commission may impose a financial penalty on the electric utility in an amount not to exceed the estimated cost of the electric utility to achieve compliance.”

However, the SES is subdivision 2f, not 2 or 2a. Some outside stakeholders have asked Commission staff if the compliance and enforcement language applies to subdivision 2f. A 2013 addition did include the following language as Minn. Stat. §216B.1691, subd. 2f(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.”

Party Comments

Izaak Walton League, Invenergy¹², MnSEIA, MP, Xcel, and OTP all agreed that the language in subd. 2f(b) allowed the Commission the authority to monitor noncompliance and to take action if necessary. The Department and SMMPA did not comment on this issue.

¹⁰ Minn. Stat. §216B.1691, subd. 4(a).

¹¹ Minn. Stat. §216B.1691, subd. 7.

¹² Invenergy additionally recommended that if the Commission were to assess penalties, the funds should be used in a manner providing certainty to the solar industry or promotes the development of solar. Staff has not addressed this issue because the statute already specifies how penalty funds would be used.

Staff Comment

Staff agrees with the commenters that the Commission retains the authority to take a number of actions in the event of non-compliance with the SES. Well established and clear reporting requirements, reviewed annually, are an important first step to overseeing compliance. Staff does not have a recommendation on whether the Commission should issue a clarification, however. While the question was asked of an outside stakeholder, the SES does not begin until 2020 and there is no noncompliance issue pending before the Commission. Staff leaves it to the Commission's discretion on whether to issue a clarification.

IV. Annual Reports on SES

Background

Minn. Stat. §216B.1691, subd. 2f(g) states:

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.

Staff requested comments on what should be included in the annual reports. (The Department had previously offered brief comments on what may be included in the reports).

The purpose of the reports is for the Commission and stakeholders to be informed on the utilities' progress in meeting the SES and for the Commission to take action on noncompliance if necessary.

For ease of comparison, the chart below lists what items have been suggested in the annual reports, by whom, and other relevant insight.

Content	Recommended By	Agree	Other
Annual Minnesota retail sales	DOC	Environmental Commenters, MP, OTP, Xcel	
Annual excluded customer sales	DOC	Environmental Commenters, MP, OTP, Xcel	
Annual Solar generation	DOC	Environmental Commenters, MP, OTP, Xcel	
Estimated amount of solar generation a utility would be	DOC		

required to obtain			
Short summary of ongoing efforts to obtain solar energy	DOC		DOC: As 2020 gets closer, may wish to supplement with additional information.
Progress towards compliance with the 10 percent carve out for <20kW systems	Environmental commenters, OTP		
Anticipated mix of projected sizes for SES compliance	Environmental commenters		
Zip code of system	Environmental commenters		Staff has a concern, as listed below.
Customer's installed cost of system	Environmental commenters		Staff has a concern, as listed below.
Project structure (customer-sited versus community solar)	Environmental commenters		
Generation point of their S-RECs satisfying the SES on a state level	Invenergy		Staff has a concern, as listed below.
Location of solar resources	Invenergy		

Timing/Process	Recommended By	Agree	Other
Included with June 1 annual RES reporting	Department	Xcel	
Include in biennial process at this time	Invenergy	Xcel, OTP (OTP states that obstacles and solutions should be stated in the biennial reports as well)	Invenergy also clarifies that the process could be modified if found ineffective
Use the streamlined reporting process now used for the RES	SMMPA, MP		
Preserve Commission's ability to revise SES reporting requirements in future	Environmental Commenters		Listed in reply comments.

Staff Comment

While there are several different recommendations from the commenters, no one filed comments outright disagreeing with other parties' recommendations.

Some of the data points recommended by the Environmental Commenters overlap with issues being raised in the Commission's privacy docket, Docket E,G999/CI-12-1344. Specifically, because the Solar Energy Standard contemplates small systems being used towards compliance, including, potentially, solar systems installed on residential households, the reporting of zip codes and location implicates those homeowners' privacy interests.¹³ The Commission's privacy docket is currently examining what types of data about customers should be revealed; staff suggests the Commission at this time not order this data to be reported, but be willing to revisit the issue at a later time¹⁴.

In addition, the reporting of the customer's installed cost of a solar system may be problematic, because utilities would not possess that information, and some customers may be unwilling to share it.

Staff suggests that the Commission grant the authority to the Executive Secretary to issue a Notice requiring the following to be provided in annual SES reports, and to use the following process:

Content of Reports:

1. *Annual Minnesota retail sales for the previous calendar year;*
2. *Annual excluded customer sales for the previous calendar year;*
3. *A list of customers requesting exclusion from the requirements of the SES, the NAICS code associated with their manufacturing activity, and their annual kWh usage;*
4. *The total Minnesota retail sales for customers excluded from the SES requirement;*

¹³ In particular, some stakeholders are concerned that the sharing of information by zip code has more implications for customers in rural areas, where, for example, it could be combined with the size of the system and cost of the system to identify specific customers.

¹⁴ Bills introduced in the 2014 legislative session would require utilities to collect and report to the Commissioner of Commerce the following information regarding distributed generation facilities: nameplate capacity, total pre-incentive installed cost, energy source, and zip code. The legislation classifies this data as non-public, but requires Commerce to make non-project specific data public on a periodic basis. See H.F. 2834, Section 3 (originally a separate bill, HF) 2844) and SF 2501. This serves as an additional reason for the Commission not to require it in these annual reports; if the bill passes, the data will already be gathered elsewhere; if not, the Commission's privacy docket should be allowed to consider the issue first.

5. *Annual solar generation on the utilities' system for the previous calendar year (including the total number of units registered in M-RETS to that utility and S-RECs generated in the past year from those units);*
6. *Estimated amount of solar generation (expressed as capacity) a utility would be required to obtain in 2020;*
7. *Estimated solar energy requirements to meet the SES in 2020;*
8. *Short summary of ongoing efforts to obtain solar energy (including a brief summary of the anticipated mix of project sizes for SES compliance);*
9. *Progress toward compliance with the ten (10) percent carveout for systems less than 20 kW¹⁵;*
10. *Brief summary of the state(s) in which the solar generation is located or anticipated to be located.*
11. *Purchases and sales of S-RECs to meet the SES.*

Process and Timing of Reports:

Direct utilities to file annual reports by June 1 of each year¹⁶ in the docket number established in the Commission's Notice. Further process on the SES annual reports will be developed in response to any party comments on the reports.

Staff has drafted the list of data points to be included in the reports based upon the most commonly requested items in party comments.¹⁷ Staff has included some locational data and project mix information requested by the Environmental Commenters, modified to remove any issues that are currently being examined in the privacy docket.

As to the process, there was less common agreement regarding whether the utilities' SES reports needed to also be a part of the Commission's biennial RES process. Staff notes that by statute, the SES reports must be annual, whereas the RES reports are biennial; therefore, the SES reports could only be combined with the RES reports every other year¹⁸. The annual SES reports are forward looking, like the biennial RES reports process is, so it may require some thought and examination before they were included in the biennial process. Because the first SES reports are due by June 1, 2014, they could not easily be combined this year. The Commission may want to consider whether the annual SES reports should be a part of the biennial process in the future after it has experience with the review of the 2014 reports.

¹⁵ In the future, the Commission may need to consider how the units less than 20 kW will be tracked.

¹⁶ While the legislation requires the reports by July 1, it appeared from the comments that utilities did not object to filing them by June 1, since their RES reports are due on June 1.

¹⁷ Staff has reworded some of the items requested, for clarity. If staff has misinterpreted the parties' intent, parties should recommend alternative language.

¹⁸ The Commission does require annual RES REC retirement reports. However, these reports are limited to information necessary to assure that the proper number of RECs were retired for the previous reporting year. They are not forward looking or qualitative.

Staff recommends that the Commission authorize the Executive Secretary to issue the content and timing of these reports in a Notice so that the list can be issued immediately and utilities can compile this information for their June 1, 2014 reports.

This is an initial set of information requirements and could be revised in future years to assist the Commission in its oversight role to ensure utilities meet the SES.

V. Tracking System

Background

Minn. Stat. §216B.1691, subd. 4(d) states that “The commission shall require all electric utilities to participate in a commission-approved credit-tracking system or systems.” The Commission has already authorized the Midwest Renewable Energy Tracking System (M-RETS) for the creation and tracking of Renewable Energy Credits (RECs) for the RES. The Commission Notice asked whether the Commission should consider an additional tracking system for the SES.

Party Comments

All parties suggested that the Commission continue to use M-RETS for the SES. Two commenters, the Environmental Commenters and Xcel, noted that any tracking system the Commission authorizes should be able to address the differences between tracking S-RECs, some of which may be generated from smaller facilities. The Department suggested the following finding by the Commission: “All S-RECs must be registered in M-RETS to be eligible for SES compliance.”

Staff Comment

Staff has no comments different from the commenters on this topic. As to the Department’s recommendation, staff notes that the Commission previously issued an Order stating, “All Minnesota utilities subject to Minn. Stat. §216B.1691 shall participate in M-RETS.”¹⁹

Since the SES is part of Minn. Stat. §216B.1691, the investor-owned utilities subject to the SES are required to participate in M-RETS. However, if the Commission wishes to affirm for clarity that facilities must be registered in M-RETS to be eligible to count towards the SES, the Commission could choose to adopt the Department’s recommendation.

VI. Miscellaneous Issues

¹⁹ Docket E999/CI-04-1616, ORDER APPROVING MIDWEST RENEWABLE ENERGY TRACKING SYSTEM (M-RETS) UNDER MINN. STAT. §216B.1691, SUBD. 4(d) AND REQUIRING UTILITIES TO PARTICIPATE IN M-RETS, Ordering paragraph 2, page 4.

The final question in the Commission's Notice asked stakeholders whether there were any other topics related to how the SES is to be read in light of its inclusion in the full RES statute, Minn. Stat. §216B.1691. Two commenters raised issues.

First, Invenegy stated that it is unclear whether the requirement to retire S-RECs continues into perpetuity once the 2020 standard has been met, or if an S-REC sunsets at 2020 upon satisfying the SES requirement.

Second, MP noted that while not the Company's intent, the inclusion of the SES in Minn. Stat. §216B.1691 has the effect of allowing the Commission to grant a modification or delay to the SES.

Staff Comment

Whether the SES continues beyond 2020

As to Invenegy's comment, staff considers that it could almost go without saying that the 1.5% SES requirement for 2020 continues into perpetuity, such that S-RECs to meet the standard need to be retired each year after 2020 as well. The statute also sets a goal, but not a standard, of 10% solar by 2030, supporting the intent that the standard would continue. Achieving such a goal would require significantly increased amounts of solar generation in the future.

Staff notes that the Commission previously made a similar clarification with respect to the RES. Minnesota's RES includes milestones prior to the 25% standard by 2025; for example, in 2016, the standard is 17 percent. In its March 19, 2010 Order in Docket 03-869, the Commission clarified that for years beyond the milestones listed in the statute, the applicable percentages still applied (that is, they did not drop to zero). The Commission stated, "*Once set, each percentage remains in effect for all subsequent years, until the next mandated percentage goes into effect.*"²⁰ Staff believes the same reasoning clearly applies here; while 2020 is the year listed in the statute for utilities to comply with the SES, the percentage would not drop to zero in 2021. Instead, the percentage continues in later years indefinitely, unless the legislature changes the standard or the Commission grants an off-ramp under Minn. Stat. §216B.1691, subd. 2b.

"Off-Ramps"

Staff agrees with MP that the Commission may grant modifications or delays (more informally known as "off-ramps") of the SES. Staff has not included a decision option to this effect because the decision option on the previous item may offer that clarification.

Overall Staff Comment

²⁰ Emphasis added. ORDER CLARIFYING CRITERIA AND STANDARDS FOR DETERMINING COMPLIANCE UNDER MINN. STAT. §216b.1691, Docket E999/CI-03-869, Issued March 19, 2010.

Staff observes that the clarifications raised in this docket might be characterized as “declaratory orders,” decisions made in advance of an actual dispute. While the Commission normally disfavors declaratory orders, in the instance of the RES/SES statute, the legislation specifically encouraged the Commission to issue declaratory orders to implement the statute.²¹

The Commission has issued at least nine (9) orders issuing clarifications to implement the RES statute, and staff believes it is reasonable to issue an order with some clarifications, to assist in implementing the new SES portions of the statute.

Decision Options

- I. Shelf Life of Solar Renewable Energy Credits
 - A. Find that S-RECs have infinite shelf life and do not expire. (*SMMPA, OTP*)
 - B. Find that S-RECs generated after August 1, 2013 through December 31, 2015 expire on December 31, 2020, and S-RECs generated in 2016 and beyond retain a four (4) year shelf life. (*Geronimo*)
 - C. Find that all eligible S-RECs from facilities coming on-line between the effective date of the Solar Energy Standard and January 2020, and with a vintage prior to January 2020, will have a four-year shelf life commencing January 2020. All S-RECs created after January 2020 will have a shelf life of four years. (*Department*)
 - D. Find that a solar renewable energy credit associated with a solar photovoltaic device installed and generating electricity in Minnesota after August 1, 2013 but before 2020 has a four-year shelf life commencing January 2020. All solar RECs created after January 2020 have a shelf life of four years. (*Department’s recommendation, language modified by staff*)
- II. Shelf Life for S-RECs Generated Outside Minnesota
 - A. Find that the shelf life set by the Commission for S-RECs generated outside Minnesota shall be identical to S-RECs generated within Minnesota. OR;
 - B. Take other action.
- III. Commission Authority in the Event of Noncompliance with SES
 - A. Find that the Commission’s investigative and enforcement authority under Minn. Stat. §216B.1691, subd. 7 applies to the solar energy standard. OR;
 - B. Take no action.
- IV. Annual Reports on SES
 - A. Find that the utilities shall file reports containing all of the information listed below to meet the reporting requirement of Minn. Stat. §216B.1691, subd. 2f(g). Further, delegate authority to the Executive Secretary to issue a Notice listing the reporting requirements, to be filed in a separate docket:

²¹ See Minn. Stat. §216B.1691, subd. 2d: “The commission shall issue necessary orders detailing the criteria and standards by which it will measure...[portions of the statute].”

1. Annual Minnesota retail sales for the previous calendar year;
 2. Annual excluded customer sales for the previous calendar year;
 3. A list of customers requesting exclusion from the requirements of the SES, the NAICS code associated with their manufacturing activity, and their annual kWh usage;
 4. The total Minnesota retail sales for customers excluded from the SES requirement;
 5. Annual solar generation on the utilities' system for the previous calendar year (including the total number of units registered in M-RETS to that utility and S-RECs generated in the past year from those units);
 6. Estimated amount of solar generation (expressed as capacity) a utility would be required to obtain in 2020;
 7. Estimated solar energy requirements to meet the SES in 2020;
 8. Short summary of ongoing efforts to obtain solar energy (including a brief summary of the anticipated mix of project sizes for SES compliance);
 9. Progress toward compliance with the ten (10) percent carveout for systems less than 20 kW;
 10. Brief summary of the state(s) in which the solar generation is located or anticipated to be located.
 11. Purchases and sales of S-RECs to meet the SES.
- B. Direct utilities to file annual reports by June 1 of each year in the docket number established in the Commission's Notice. Further process on the SES annual reports will be developed in response to any party comments on the reports.
- V. Tracking System for RECs
- A. Find that all S-RECs must be generated from facilities registered in M-RETS to be eligible for SES compliance; OR
 - B. Take no action.
- VI. Other Clarifications
- A. Find that the requirement to meet the SES and retire sufficient S-RECs to do so continues each year after the 2020 initial date into the future until and unless changed by legislation or Commission order.