

February 21, 2014

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

Re: REPLY COMMENTS of Sam's East, Inc. and Wal-Mart Stores East, LP
In the Matter of a Commission Inquiry into Ownership of Renewable Energy Credits
used to Meet Minnesota Requirements (Docket Numbers: E999/CI-13-720)

In the December 30, 2013 order in the above-captioned docket, the Minnesota Public Utilities Commission (the "Commission") requested comments on a number of issues related to renewable energy credits ("RECs"), after the Commission decided in its net-metering docket (E002/M-13-642) to incorporate the REC ownership issue with respect to net metering into a separate docket. Sam's East, Inc. and Wal-Mart Stores East, LP ("Walmart") hereby respectfully submit reply comments (to the initial comments that interested parties filed on February 7) concerning the following issues:

- **Who owns the RECs from net metered customers? Does it matter if the QF is being paid the average retail rate or avoided cost rate?**

SUMMARY OF FILED COMMENTS ON ISSUES TO WHICH WALMART IS RESPONDING:

In its initial comments (p.3), Northern States Power Company, d/b/a Xcel Energy ("Xcel") claims that the utility should own the RECs associated with net metering where pricing is above avoided cost:

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.

Minnesota Power ("MP") argues that the utility should receive the RECs, not only for excess energy for which the utility pays above the avoided cost rate but also for excess energy for which the utility pays only the avoided cost rate. MP initial comments, p.2 (excess energy "at the retail rate, or any rate at or in excess of avoided cost"). Minnesota Power also argues that the utility should receive the RECs for energy that it does not purchase, i.e., for the energy that is generated and consumed on-site. *Id.*

The Department of Commerce, on the other hand, points out (DOC initial comments, p.4) that Minn Stat. §216B.164 expressly provides that RECs are awarded to the utility under the alternative Value of Solar tariff but that no such provision awards RECs to the utility for net metering. Therefore, the Department concludes that "RECs remain with the generator, not the utility, unless a Value of Solar tariff is in place or the generator is otherwise participating in the Made in Minnesota incentive program." *Id.*

Finally, the Environmental Law and Policy Center *et al.* (“ELPC”) argues that net meter customers do not receive a premium for excess energy delivered to the utility and the Commission should follow the industry’s “best practice” of awarding RECs to the net-metered generation owner, which ELPC states is also consistent with the practice of a substantial majority of jurisdictions that have determined this issue. ELPC Initial Comments, pp.3-6.

WALMART RESPONSE: Walmart agrees with the Department and ELPC that the renewable generator (or the generator’s assignee, such as an on-site customer who receives the renewable generation through its contract with the generator) should retain the RECs generated by the system, thereby, being able to designate that particular facility as operating, at least partially, off of renewable power.

Walmart currently has internal goals to scale renewables and drive the production or procurement of 7 billion kWh of renewable energy globally by December 31, 2020, an increase of over 600 percent over 2010. Certain rule structures can make our goals more difficult. Currently, if the renewable generator (or the on-site customer who receives the renewable generation and RECs through its contract with the generator) has to give up their RECs, they may not technically refer to themselves as using green power. Additionally, allowing the renewable generator to retain the RECs and have the flexibility to do with the RECs as they choose, including contracting with the on site customer who receives the renewable generation for ownership of the RECs, has the potential to spawn significant growth in renewable energy within the state.

Walmart appreciates that in order to ensure that the utilities achieve their RPS mandates, the Commission could allow the utilities to apply all of the renewable generation located in their service area as counting towards their RPS compliance mandate. Allowing the customer's net metered RECs to remain with the renewable generator should not conflict with the ability of the utilities to count all renewable generation in their service area toward their RPS compliance mandates. The price a customer is paid for net metered renewable energy, whether that price is at full retail rates (at the time of use) or avoided cost, has nothing to do with the value of RECs associated with the net metered kWh. In essence, the approach of simply deeming the utilities to own the RECs confiscates the RECs without adequate compensation to the entity who creates the REC. In the event the Commission nevertheless deems it necessary to allow the utility to claim the REC, the REC could be split into a compliance portion and a green portion with the compliance portion going towards satisfying the RPS and the green portion allowing the renewable generator or on-site customer who receives the renewable generation through contract negotiations, to make a valid claim to using that portion of renewable power. This approach would not only resolve the issues faced by proactive renewable consumers but would simultaneously address the utility RPS mandates.

Walmart agrees with the analysis by the Department of the relevant statute. According to Minn. Stat. §216B.164 (Subdivision 1), the primary objective of the legislature in enacting this provision was to “give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.” The legislature expressly provided for the utilities to own the associated RECs in the optional value of solar portion of the renewable energy statute (*Id.* at subd. 10(i)), apparently to protect the ratepayers, and public in that particular situation where the utility is paying the full value of the solar generation, including its environmental value (*Id.* at subd. 10(f)) and where a solar generator opts to sell its generation

under this method. But the net metering portion of the statute has no such express provision and its valuation method is substantially different from the optional value of solar portion. Given the express statutory purpose of giving the maximum encouragement to cogeneration, in the net metering context, RECs should remain with the owner of the generation or the on-site customer who receives the renewable generation RECs through its contract with the generator.

Xcel argues that any rate above an avoided cost rate should result in the utility owning the net meter RECs, however, Minnesota Power is correct that the price being paid for excess energy is irrelevant for the issue of REC ownership. Of course, Minnesota Power would have the utility own the RECs if the utility pays any price (or no price at all as is the case for energy consumed on-site by the ratepayer). But the better approach, and the one consistent with the relevant statutory structure, is for the renewable generator to retain the RECs and have the flexibility to do with as they wish.

- **Who owns the RECs if a third party owns the PV system and leases to the business?**

As stated above, the generator of the renewable power should own the REC and be free to do with the REC as it chooses.

- **What factors should the Commission take into account when determining REC ownership?**

As stated above, the only factor that should be considered is who owns the generating system. Further, we believe that the entity who owns the contractual rights to the RECs should have the same treatment as for the owner of the generating system.

Respectfully submitted,

/s/ Ken Baker

Kenneth Baker

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