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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 357

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The bill was read for the first time and referred to the Energy Finance and Policy Division

February 26, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Commerce and Labor

March 26, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to energy; modifying provisions relating to tariffs and contracts for
1.3 community-based energy development projects; amending Minnesota Statutes
1.4 2008, section 216B.1612, subdivisions 1, 3, 5, 7; proposing coding for new law
1.5 in Minnesota Statutes, chapter 216B.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2008, section 216B.1612, subdivision 1, is amended to
1.8 read:

1.9 Subdivision 1. **Tariff establishment.** A tariff shall be established:

1.10 (1) to optimize local, regional, and state benefits from renewable energy
1.11 development ~~and~~;

1.12 (2) to facilitate widespread development of community-based renewable energy
1.13 projects throughout Minnesota, especially in rural communities; and

1.14 (3) to enable Minnesotans to develop, own, and invest in renewable electric
1.15 generation.

1.16 Sec. 2. Minnesota Statutes 2008, section 216B.1612, subdivision 3, is amended to read:

1.17 Subd. 3. **Tariff rate.** (a) The tariff described in subdivision 4 must have a rate
1.18 schedule that allows for a net present value rate over the 20-year life of the power
1.19 purchase agreement. The tariff must provide for a rate that is higher in the first ten years
1.20 of the power purchase agreement than in the last ten years. The discount rate required
1.21 to calculate the net present value must be the utility's normal discount rate used for its
1.22 other business purposes.

1.23 (b) ~~The commission shall consider mechanisms to encourage the aggregation of~~
1.24 ~~C-BED projects.~~ The tariff for a C-BED project of five megawatts or less must be the net

2.1 present value rate equal to the annual average of the previous year's Midwest Independent
2.2 System Operator (MISO) Minnesota Hub Average Day Ahead Market Price calculated
2.3 over the term of the contract, which must extend at least 20 years.

2.4 (c) The commission shall require that qualifying and nonqualifying owners provide
2.5 sufficient security to secure performance under the power purchase agreement, and shall
2.6 prohibit the transfer of the C-BED project to a nonqualifying owner during the initial
2.7 20 years of the contract.

2.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.9 Sec. 3. Minnesota Statutes 2008, section 216B.1612, subdivision 5, is amended to read:

2.10 Subd. 5. **Priority for C-BED projects.** (a) A utility subject to section 216B.1691,
2.11 except a municipal utility or a cooperative association, that needs to construct new
2.12 generation, or purchase the output from new generation, as part of its plan to satisfy
2.13 its good faith objective and standard under that section must take reasonable steps to
2.14 determine if one or more C-BED projects are available ~~that meet the utility's cost and~~
2.15 ~~reliability requirements, applying standard reliability criteria,~~ to fulfill some or all of the
2.16 identified need at minimal impact to customer rates.

2.17 ~~Nothing in this section shall be construed to obligate a utility to enter into a power~~
2.18 ~~purchase agreement under a C-BED tariff developed under this section.~~

2.19 (b) Between the effective date of this section and December 31, 2010, utilities, as
2.20 defined in section 216B.169, subdivision 1, paragraph (a), but not including a municipal
2.21 utility or cooperative electric association, must purchase or contract to purchase energy
2.22 from a sufficient number of renewable energy projects with a nameplate capacity of five
2.23 megawatts or less so as to total at least 200 megawatts in the aggregate. Such projects must
2.24 meet the eligibility requirements for a renewable energy incentive under the American
2.25 Recovery and Reinvestment Act of 2009, the federal Rural Energy for America Program,
2.26 or other renewable energy incentive program. During that period, public utilities must
2.27 undertake such projects in approximate proportion to their share of the electrical energy
2.28 generated within this state. This requirement shall not prevent a public utility from
2.29 developing or acquiring electrical energy from other sources either within or outside the
2.30 state regardless of whether such sources use renewable energy.

2.31 ~~(b)~~ (c) Each utility shall include in its resource plan submitted under section
2.32 216B.2422 a description of its efforts to purchase energy from C-BED projects, including
2.33 a list of the projects under contract and the amount of C-BED energy purchased.

3.1 ~~(e)~~ (d) The commission shall consider the efforts and activities of a utility to
3.2 purchase energy from C-BED projects when evaluating its good faith effort towards
3.3 meeting the renewable energy objective under section 216B.1691.

3.4 ~~(d)~~ (e) A municipal power agency or generation and transmission cooperative shall,
3.5 when issuing a request for proposals for C-BED projects to satisfy its standard obligation
3.6 under section 216B.1691, provide notice to its member distribution utilities that they
3.7 may propose, in partnership with other qualifying owners, a C-BED project for the
3.8 consideration of the municipal power agency or generation and transmission cooperative.

3.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.10 Sec. 4. Minnesota Statutes 2008, section 216B.1612, subdivision 7, is amended to read:

3.11 Subd. 7. **Other C-BED tariff issues.** (a) A community-based project developer
3.12 and a utility shall negotiate the rate and power purchase agreement terms consistent with
3.13 the tariff established under subdivision 4.

3.14 (b) At the discretion of the developer, a community-based project developer and
3.15 a utility may negotiate a power purchase agreement with terms different from the tariff
3.16 established under subdivision 4.

3.17 ~~(c) A qualifying owner, or any combination of qualifying owners, may develop a
3.18 joint venture project with a nonqualifying renewable energy project developer. However,
3.19 the terms of the C-BED tariff may only apply to the portion of the energy production of
3.20 the total project that is directly proportional to the equity share of the project owned
3.21 by the qualifying owners.~~

3.22 ~~(d)~~ A project that is operating under a power purchase agreement under a C-BED
3.23 tariff is not eligible for net energy billing under section 216B.164, subdivision 3, or for
3.24 production incentives under section 216C.41.

3.25 ~~(e)~~ (d) A public utility must receive commission approval of a power purchase
3.26 agreement for a C-BED tariffed project. The commission shall provide the utility's
3.27 ratepayers an opportunity to address the reasonableness of the proposed power purchase
3.28 agreement. Unless a party objects to a contract within 30 days of submission of the
3.29 contract to the commission the contract is deemed approved.

3.30 (e) Each contract for a C-BED project with a nameplate capacity of five megawatts
3.31 or less must contain a provision requiring the qualified owners to make a deposit each
3.32 year throughout the term of the contract into a maintenance reserve account. The annual
3.33 payment must be of a magnitude to reasonably insure that revenues in the account are
3.34 sufficient to pay projected maintenance costs over the term of the contract, including
3.35 provision for contingencies.

4.1 (f) A qualifying owner of a C-BED project with a nameplate capacity of five
4.2 megawatts or less that is aggregated into a larger project may not sign a contract to receive
4.3 the price established in subdivision 3, paragraph (b).

4.4 (g) A qualifying owner receiving the rate established in subdivision 3, paragraph
4.5 (b), may not participate in the ownership of another C-BED project receiving the rate
4.6 established in subdivision 3, paragraph (b), if the second project is located within a
4.7 five-mile radius of the project receiving that rate.

4.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.9 **Sec. 5. [216B.1613] STANDARDIZED C-BED CONTRACT.**

4.10 Within 60 days of the effective date of this section, each utility, as defined in
4.11 section 216B.169, subdivision 1, paragraph (a), but not including a municipal utility or
4.12 cooperative electric association, shall file with the commission a standardized contract
4.13 form for the purchase of electricity from C-BED projects of five megawatts and less.
4.14 That standardized contract form shall be similar in all material respects to the standard
4.15 contract form previously filed with the commission under section 216B.2423, subdivision
4.16 3, including any revisions to that contract on file with the commission as of the effective
4.17 date of this section. After consultation with wind developers and producers, a utility
4.18 governed by this section may modify the standardized contract currently on file prior to
4.19 the utility submitting its standard contract form to the commission, if the modifications are
4.20 reasonably necessary to account for circumstances that are unique to that particular utility.

4.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.