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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

**EIGHTY-SIXTH  
SESSION**

**HOUSE FILE No. 1836**

March 18, 2009

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

1.1 A bill for an act  
1.2 relating to energy; requiring amendment to contract entered into under biomass  
1.3 mandate and allowing cost recovery; amending Minnesota Statutes 2008, section  
1.4 216B.2424, subdivision 5a.

1.5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:**

1.6 Section 1. Minnesota Statutes 2008, section 216B.2424, subdivision 5a, is amended to  
1.7 read:

1.8 Subd. 5a. **Reduction of biomass mandate.** (a) Notwithstanding subdivision 5, the  
1.9 biomass electric energy mandate must be reduced from 125 megawatts to 110 megawatts.

1.10 (b) The Public Utilities Commission shall approve a request pending before the  
1.11 commission as of May 15, 2003, for amendments to and assignment of a power purchase  
1.12 agreement with the owner of a facility that uses short-rotation, woody crops as its primary  
1.13 fuel previously approved to satisfy a portion of the biomass mandate if the owner of  
1.14 the project agrees to reduce the size of its project from 50 megawatts to 35 megawatts,  
1.15 while maintaining an average price for energy in nominal dollars measured over the term  
1.16 of the power purchase agreement at or below \$104 per megawatt-hour, exclusive of any  
1.17 price adjustments that may take effect subsequent to commission approval of the power  
1.18 purchase agreement, as amended. The commission shall also approve, as necessary, any  
1.19 subsequent assignment or sale of the power purchase agreement or ownership of the  
1.20 project to an entity owned or controlled, directly or indirectly, by two municipal utilities  
1.21 located north of Constitutional Route No. 8, as described in section 161.114, which  
1.22 currently own electric and steam generation facilities using coal as a fuel and which  
1.23 propose to retrofit their existing municipal electrical generating facilities to utilize biomass  
1.24 fuels in order to perform the power purchase agreement.

2.1 (c) If the power purchase agreement described in paragraph (b) is assigned to an  
2.2 entity that is, or becomes, owned or controlled, directly or indirectly, by two municipal  
2.3 entities as described in paragraph (b), and the power purchase agreement meets the  
2.4 price requirements of paragraph (b), the commission shall approve any amendments to  
2.5 the power purchase agreement necessary to reflect the changes in project location and  
2.6 ownership and any other amendments made necessary by those changes. The commission  
2.7 shall also specifically find that:

2.8 (1) the power purchase agreement complies with and fully satisfies the provisions of  
2.9 this section to the full extent of its 35-megawatt capacity;

2.10 (2) all costs incurred by the public utility and all amounts to be paid by the public  
2.11 utility to the project owner under the terms of the power purchase agreement are fully  
2.12 recoverable pursuant to section 216B.1645;

2.13 (3) subject to prudence review by the commission, the public utility may recover  
2.14 from its Minnesota retail customers the Minnesota jurisdictional portion of the amounts  
2.15 that may be incurred and paid by the public utility during the full term of the power  
2.16 purchase agreement; and

2.17 (4) if the purchase power agreement meets the requirements of this subdivision,  
2.18 it is reasonable and in the public interest.

2.19 (d) The commission shall specifically approve recovery by the public utility of  
2.20 any and all Minnesota jurisdictional costs incurred by the public utility to improve,  
2.21 construct, install, or upgrade transmission, distribution, or other electrical facilities owned  
2.22 by the public utility or other persons in order to permit interconnection of the retrofitted  
2.23 biomass-fueled generating facilities or to obtain transmission service for the energy  
2.24 provided by the facilities to the public utility pursuant to section 216B.1645, and shall  
2.25 disapprove any provision in the power purchase agreement that requires the developer  
2.26 or owner of the project to pay the jurisdictional costs or that permit the public utility to  
2.27 terminate the power purchase agreement as a result of the existence of those costs or the  
2.28 public utility's obligation to pay any or all of those costs.

2.29 (e) Upon request by the project owner, the public utility shall agree to amend the  
2.30 power purchase agreement described in paragraph (b) and approved by the commission  
2.31 as required by paragraph (c) to include a fuel cost adjustment clause requiring the public  
2.32 utility to reimburse the project owner monthly for all costs incurred by the project owner  
2.33 to procure, transport, process, handle, and burn all fuel used to produce energy for delivery  
2.34 to the public utility under the power purchase agreement. The existing prices in the power  
2.35 purchase agreement for each year after the fuel cost adjustment clause is implemented  
2.36 must be reduced by an amount equal to the project owner's projected fuel costs contained

3.1 in the power purchase agreement as provided by the project owner. The amendment must  
3.2 be negotiated and executed within 45 days of the effective date of this section and must  
3.3 apply to fuel costs incurred and prices paid after January 1, 2009. The public utility  
3.4 shall request approval of the amendment by the commission and the commission shall  
3.5 approve the amendment as (1) a reasonable method for calculating and implementing a  
3.6 fuel adjustment mechanism and (2) in the public interest. The commission shall allow the  
3.7 public utility to recover from its Minnesota retail customers the Minnesota jurisdictional  
3.8 portion of the amounts paid by the public utility to the project owner during the full term  
3.9 of the power purchase agreement, including the reimbursement of fuel costs under the  
3.10 amendment described in this paragraph, as provided in section 216B.1645.

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