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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1405

02/18/2019 Authored by Stephenson, Sandell, Long and Acomb
The bill was read for the first time and referred to the Committee on Ways and Means

A bill for an act

relating to energy; establishing the Clean Energy First Act; requiring electric utilities to meet resource needs using clean energy resources; amending Minnesota Statutes 2018, sections 216B.16, subdivisions 6, 13; 216B.1645, subdivisions 1, 2; 216B.1691, subdivision 9; 216B.2422, subdivisions 1, 2, 4, 5, by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 216C.

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

Section 1. **TITLE.**

Sections 2 to 15 shall be referred to as the "Clean Energy First Act".

Sec. 2. Minnesota Statutes 2018, section 216B.16, subdivision 6, is amended to read:

Subd. 6. **Factors considered, generally.** The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property. In determining the rate base upon which the utility is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. For purposes of determining rate base, the commission shall consider the original cost of utility property included in the base and shall make no allowance

for its estimated current replacement value. If the commission orders a generating facility to terminate its operations before the end of the facility's physical life ~~in order to comply with a specific state or federal energy statute or policy~~ as part of a resource planning order under section 216B.2422, the commission ~~may~~ must allow the public utility to recover any positive net book value of the facility as determined by the commission.

Sec. 3. Minnesota Statutes 2018, section 216B.16, subdivision 13, is amended to read:

Subd. 13. **Economic and community development.** The commission may allow a public utility to recover from ratepayers the expenses incurred for (1) economic and community development, and (2) efforts to maximize employment of local workers to construct and maintain generation facilities that supply power to the utility's customers.

Sec. 4. Minnesota Statutes 2018, section 216B.1645, subdivision 1, is amended to read:

Subdivision 1. **Commission authority.** Upon the petition of a public utility, the Public Utilities Commission shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.169, 216B.2423, and 216B.2424, and to satisfy the renewable energy objectives and standards set forth in section 216B.1691, including reasonable investments and expenditures made to:

(1) transmit the electricity generated from sources developed under those sections that is ultimately used to provide service to the utility's retail customers, including studies necessary to identify new transmission facilities needed to transmit electricity to Minnesota retail customers from generating facilities constructed to satisfy the renewable energy objectives and standards, provided that the costs of the studies have not been recovered previously under existing tariffs and the utility has filed an application for a certificate of need or for certification as a priority project under section 216B.2425 for the new transmission facilities identified in the studies;

(2) provide storage facilities for renewable energy generation facilities that contribute to the reliability, efficiency, or cost-effectiveness of the renewable facilities; ~~or~~

(3) develop renewable energy sources from the account required in section 116C.779~~.~~; or

(4) upgrade or modify existing transmission facilities primarily used to transmit electricity generated by a clean energy resource, as defined in section 216B.2422, subdivision 1,

paragraph (f), regardless of whether the public utility has satisfied the standards set forth in section 216B.1691.

Sec. 5. Minnesota Statutes 2018, section 216B.1645, subdivision 2, is amended to read:

Subd. 2. **Cost recovery.** The expenses incurred by the utility over the duration of the approved contract or useful life of the investment ~~and~~, expenditures made pursuant to section 116C.779 ~~shall be~~, and efforts to maximize employment of local workers to construct and maintain generation facilities that supply power to the utility's customers, are recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission under subdivision 1, which, in the case of transmission expenditures, are limited to the portion of actual transmission costs that are directly allocable to the need to transmit power from the renewable sources of energy. The commission may not approve recovery of the costs for that portion of the power generated from sources governed by this section that the utility sells into the wholesale market.

Sec. 6. Minnesota Statutes 2018, section 216B.1691, subdivision 9, is amended to read:

Subd. 9. **Local benefits.** The commission shall take all reasonable actions within its statutory authority to ensure this section is implemented to maximize benefits to Minnesota citizens and local workers as defined in section 216B.2422, subdivision 1, balancing factors such as local ownership of or participation in energy production, local job impacts as defined in section 216B.2422, subdivision 1, development and ownership of eligible energy technology facilities by independent power producers, Minnesota utility ownership of eligible energy technology facilities, the costs of energy generation to satisfy the renewable standard, and the reliability of electric service to Minnesotans.

Sec. 7. Minnesota Statutes 2018, section 216B.2422, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Utility" means an entity with the capability of generating 100,000 kilowatts or more of electric power and serving, either directly or indirectly, the needs of 10,000 retail customers in Minnesota. Utility does not include federal power agencies.

(c) "Renewable energy" means electricity generated through use of any of the following resources:

(1) wind;

(2) solar;

(3) geothermal;

(4) hydro;

(5) trees or other vegetation;

(6) landfill gas; or

(7) predominantly organic components of wastewater effluent, sludge, or related by-products from publicly owned treatment works, but not including incineration of wastewater sludge.

(d) "Resource plan" means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs. These resource options include using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation.

(e) "Refurbish" means to rebuild or substantially modify an existing electricity generating resource of 30 megawatts or greater.

(f) "Clean energy resource" means renewable energy, an energy storage system, and energy efficiency and load management, as defined in section 216B.241, subdivision 1, or a carbon-free resource, as defined under paragraph (g) and determined by the commission under subdivision 4, paragraph (h).

(g) "Carbon-free resource" means a generation technology that, when operating, does not contribute to statewide greenhouse gas emissions, as defined in section 216H.01, subdivision 2.

(h) "Energy storage system" means a commercially available technology that:

(1) uses mechanical, chemical, or thermal processes to:

(i) store energy and deliver the stored energy for use at a later time; or

(ii) store thermal energy for direct use for heating or cooling at a later time in a manner that reduces the demand for electricity at the later time;

(2) if being used for electric grid benefits, is operationally visible and capable of being controlled by the distribution or transmission entity managing it to enable and optimize the safe and reliable operation of the electric system; and

(3) achieves any of the following:

(i) reduces peak electrical demand;

(ii) defers the need or substitutes for an investment in electric generation, transmission, or distribution assets;

(iii) improves the reliable operation of the electrical transmission or distribution systems; or

(iv) lowers customer costs by storing energy when the cost of generating or purchasing energy is low and delivering energy to customers when costs are high.

(i) "Nonrenewable energy facility" means a generation facility, other than a nuclear facility, that does not use a renewable energy or other clean energy resource.

(j) "Local job impacts" means the impacts of an integrated resource plan, a certificate of need, a power purchase agreement, or commission approval of a new or refurbished energy facility on the availability of construction employment opportunities to local workers.

(k) "Local workers" means workers employed to construct and maintain energy infrastructure that are Minnesota residents, residents of the utility's service territory, or who permanently reside within 150 miles of a proposed new or refurbished energy facility.

Sec. 8. Minnesota Statutes 2018, section 216B.2422, subdivision 2, is amended to read:

Subd. 2. **Resource plan filing and approval.** (a) A utility shall file a resource plan with the commission periodically in accordance with rules adopted by the commission. The commission shall approve, reject, or modify the plan of a public utility, as defined in section 216B.02, subdivision 4, consistent with the public interest.

(b) In the resource plan proceedings of all other utilities, the commission's order shall be advisory and the order's findings and conclusions shall constitute prima facie evidence which may be rebutted by substantial evidence in all other proceedings. With respect to utilities other than those defined in section 216B.02, subdivision 4, the commission shall consider the filing requirements and decisions in any comparable proceedings in another jurisdiction.

(c) As a part of its resource plan filing, a utility shall include the least cost plan for meeting 50 and 75 percent of all energy needs from both new and refurbished generating

facilities through a combination of ~~conservation~~ clean energy and ~~renewable energy~~ carbon-free resources.

Sec. 9. Minnesota Statutes 2018, section 216B.2422, subdivision 4, is amended to read:

Subd. 4. **Preference for ~~renewable energy facility~~ clean energy resources.** (a) The commission shall not approve a new or refurbished nonrenewable energy facility in an integrated resource plan or a certificate of need, pursuant to section 216B.243, nor shall the commission approve a power purchase agreement for a new or refurbished asset subject to its jurisdiction or allow rate recovery pursuant to section 216B.16 for such a nonrenewable energy facility, unless the utility has demonstrated that a renewable energy facility, alone or in combination with other clean energy resources, is not in the public interest.

(b) When making the public interest determination under paragraph (a), the commission must consider:

(1) whether the record in the resource plan, proposed certificate of need, or proposed power purchase agreement for the new or refurbished nonrenewable energy facility demonstrates the utility is unable affordably and reliably to meet the resource need the facility is proposed for solely through the addition of clean energy resources, after evaluation by the utility, the department, and other parties to the docket;

~~(1)~~ (2) whether the resource plan, proposed certificate of need, or proposed power purchase agreement helps the utility achieve the greenhouse gas reduction goals under section 216H.02, the renewable energy standard under section 216B.1691, or the solar energy standard under section 216B.1691, subdivision 2f;

~~(2)~~ (3) impacts on local and regional grid reliability;

~~(3)~~ (4) utility and ratepayer impacts resulting from the intermittent nature of renewable energy facilities, including but not limited to the costs of purchasing wholesale electricity in the market and the costs of providing ancillary services; and

~~(4)~~ (5) utility and ratepayer impacts resulting from reduced exposure to fuel price volatility, changes in transmission costs, portfolio diversification, and environmental compliance costs, as well as utility and ratepayer impacts that might result from additional investment in nonrenewable energy facilities.

(c) If the commission finds the utility has demonstrated a renewable energy facility is not in the public interest under paragraph (a), the commission may approve a utility's proposal for a new or refurbished nonrenewable energy facility at the size necessary to ensure reliable and affordable service to the utility's customers.

(d) This subdivision does not apply to an energy facility approved by the legislature under Laws 2017, chapter 5, or to commission approval of an affiliated interest agreement for an energy facility in docket number E015/AI-17-568.

(e) When evaluating the reliability of proposed resources, the commission must consider the ability of proposed resources to provide (1) essential reliability services needed by utility customers or the electric system, including frequency response, balancing services, and voltage control, and (2) energy and capacity.

(f) If the commission approves a resource plan that includes the retirement of a nonrenewable energy facility owned by a public utility, the public utility owns the generation, transmission, and other facilities necessary to replace the accredited capacity of the retiring facility, provided:

(1) the resource plan results in the utility having at least 85 percent of its electric supply by the year 2030 and thereafter from resources that do not contribute to statewide greenhouse gas emissions, as defined in section 216H.01, subdivision 2; and

(2) the utility demonstrates its ownership of replacement resources is in the public interest, considering customer impacts and benefits. The commission must give special consideration to a utility's proposal under this paragraph if the proposal replaces the capacity of a retiring nonrenewable energy facility entirely with clean energy resources.

(g) Nothing in this section impacts a decision to continue operating a nuclear facility that is generating energy in Minnesota as of June 1, 2019. If a decision is made to retire an existing nuclear unit, the process in paragraphs (a) to (c) applies to the identification of replacement resources.

(h) The commission may, by order, add to the list of resources it determines to be clean energy resources for the purposes of this section upon a determination that the resource is carbon free and cost competitive when compared with other carbon-free alternatives.

Sec. 10. Minnesota Statutes 2018, section 216B.2422, is amended by adding a subdivision to read:

Subd. 4a. **Preference for local job creation.** As a part of its resource plan filing, a utility must report on associated local job impacts and the steps the utility and its energy suppliers and contractors are taking to maximize the availability of construction employment opportunities for local workers. The commission must consider local job impacts and give preference to proposals that maximize the creation of construction employment opportunities for local workers, consistent with the public interest, when evaluating any utility proposal

that involves the selection or construction of facilities used to generate or deliver energy to serve the utility's customers, including but not limited to an integrated resource plan, a certificate of need, a power purchase agreement, or commission approval of a new or refurbished electric generation facility.

Sec. 11. Minnesota Statutes 2018, section 216B.2422, subdivision 5, is amended to read:

Subd. 5. **Bidding; exemption from certificate of need proceeding.** (a) A utility may select resources to meet its projected energy demand through a bidding process approved or established by the commission. A utility shall use the environmental cost estimates determined under subdivision 3 and consider local job impacts in evaluating bids submitted in a process established under this subdivision.

(b) Notwithstanding any other provision of this section, if an electric power generating plant, as described in section 216B.2421, subdivision 2, clause (1), is selected in a bidding process approved or established by the commission, a certificate of need proceeding under section 216B.243 is not required.

(c) A certificate of need proceeding is also not required for an electric power generating plant that has been selected in a bidding process approved or established by the commission, or such other selection process approved by the commission, to satisfy, in whole or in part, the wind power mandate of section 216B.2423 or the biomass mandate of section 216B.2424.

Sec. 12. Minnesota Statutes 2018, section 216B.2422, is amended by adding a subdivision to read:

Subd. 7. **Transmission planning in advance of generation retirement.** A utility must identify in its resource plan each nonrenewable resource on its system that has a depreciation term, probable service life, or operating license term that will end within 15 years of the resource plan filing date. For each resource identified, the utility must include in its resource plan an initial plan to (1) replace the resource if retired, and (2) upgrade any transmission or other grid capabilities needed to support the retirement of that resource.

Sec. 13. Minnesota Statutes 2018, section 216B.2422, is amended by adding a subdivision to read:

Subd. 8. **Biennial resource planning conference.** Every even-numbered year, the commissioner of commerce must convene utilities subject to this section and stakeholders interested in resource planning to (1) facilitate the sharing of best practices and planning innovations from one utility resource plan to the next, (2) help resolve issues that impact

all utilities during the resource plan development process, (3) and promote coordination across resource plans. The commissioner must seek input from likely attendees regarding topics the resource planning conference should cover. In addition, the agenda for the conference should review key decisions by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation that could impact resource planning, as well as recent and ongoing transmission studies and market innovations from the Midcontinent Independent System Operator.

Sec. 14. **[216C.45] POWER PLANT HOST COMMUNITY TRANSITION PLANNING.**

The commissioner of commerce must coordinate with the commissioner of labor and industry and the commissioner of employment and economic development to develop plans, programs, and other recommendations to mitigate the impacts on host communities and workers resulting from the eventual retirement of large generation facilities. The commissioners must coordinate this work with representatives of the local government units that host large generation facilities; the workers at large generation facilities, including full-time employees and contractors; and the utilities that own large generation facilities.

Sec. 15. **COORDINATED ELECTRIC TRANSMISSION STUDY.**

(a) Each entity subject to Minnesota Statutes, section 216B.2425, must participate in a coordinated engineering study to identify transmission network enhancements necessary to maintain system reliability in the event of the retirement of large generation resources. Specifically, the study must evaluate what enhancements are necessary in the event of the retirement of large generation resources that reach the end of the large generation resource's depreciation term or operating license term within 20 years of the effective date of this section. The study must also evaluate what transmission enhancements are necessary to interconnect replacement generation and renewable resource additions, including generation tie lines, anticipated by 2035 in any utility's integrated resource plan filed with or approved by the Public Utilities Commission.

(b) When setting the scope for the study, and as needed while the study is being conducted, utilities must consult with the commissioner of commerce, technical representatives of renewable energy resource developers, and other interested entities to discuss and identify needed generation tie lines to support the continued orderly development of renewable resources in Minnesota. The study must include any analysis performed by the Midcontinent Independent System Operator.

(c) A report on the study must be completed and submitted to the Public Utilities Commission by November 1, 2020, and include a preliminary plan to build the needed transmission network enhancements. Reasonable and prudent costs for the study are recoverable through the mechanism provided under Minnesota Statutes, section 216B.1645, subdivision 2.

Sec. 16. **EFFECTIVE DATE.**

Sections 1 to 15 are effective August 1, 2019, and apply only to dockets initiated at the Public Utilities Commission on or after that date.