

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 10

01/07/2021 Authored by Stephenson, Long, Frazier, Reyer, Acomb and others
The bill was read for the first time and referred to the Committee on Climate and Energy Finance and Policy

1.1 A bill for an act
1.2 relating to energy; establishing a Clean Energy First Act; amending Minnesota
1.3 Statutes 2020, sections 216B.16, subdivisions 6, 13; 216B.1645, subdivisions 1,
1.4 2; 216B.1691, subdivision 9; 216B.2422, subdivisions 1, 2, 3, 4, 5, by adding
1.5 subdivisions; 216E.03, subdivision 10; 216F.04.

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

1.7 Section 1. TITLE.

1.8 This act may be referred to as the "Clean Energy First Act."

1.9 Sec. 2. Minnesota Statutes 2020, section 216B.16, subdivision 6, is amended to read:

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

2.1 to terminate its operations before the end of the facility's physical life in order to comply
 2.2 with a specific state or federal energy ~~statute or~~ policy, the commission may allow the public
 2.3 utility to recover any positive net book value of the facility as determined by the commission.

2.4 Sec. 3. Minnesota Statutes 2020, section 216B.16, subdivision 13, is amended to read:

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

2.9 Sec. 4. Minnesota Statutes 2020, section 216B.1645, subdivision 1, is amended to read:

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

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

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

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

2.27 Sec. 5. Minnesota Statutes 2020, section 216B.1645, subdivision 2, is amended to read:

2.28 Subd. 2. **Cost recovery.** The expenses incurred by the utility over the duration of the
 2.29 approved contract or useful life of the investment ~~and~~, expenditures made pursuant to section
 2.30 116C.779 ~~shall be~~, and the expenses incurred to employ local workers to construct and
 2.31 maintain generation facilities that supply power to the utility's customers are recoverable
 2.32 from the ratepayers of the utility; to the extent ~~they~~ the expenses or expenditures are not

3.1 offset by utility revenues attributable to the contracts, investments, or expenditures, and if
 3.2 the expenses or expenditures are deemed reasonable. Upon petition by a public utility, the
 3.3 commission shall approve or approve as modified a rate schedule providing for the automatic
 3.4 adjustment of charges to recover the expenses or costs approved by the commission under
 3.5 subdivision 1, which, in the case of transmission expenditures, are limited to the portion of
 3.6 actual transmission costs that are directly allocable to the need to transmit power from the
 3.7 renewable sources of energy. The commission may not approve recovery of the costs for
 3.8 that portion of the power generated from sources governed by this section that the utility
 3.9 sells into the wholesale market.

3.10 Sec. 6. Minnesota Statutes 2020, section 216B.1691, subdivision 9, is amended to read:

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

3.19 Sec. 7. Minnesota Statutes 2020, section 216B.2422, subdivision 1, is amended to read:

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

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

3.25 (c) "Renewable energy" ~~means electricity generated through use of any of the following~~
 3.26 ~~resources;~~ has the meaning given in section 216B.1691, subdivision 1.

3.27 ~~(1) wind;~~

3.28 ~~(2) solar;~~

3.29 ~~(3) geothermal;~~

3.30 ~~(4) hydro;~~

3.31 ~~(5) trees or other vegetation;~~

4.1 ~~(6) landfill gas; or~~

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

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

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

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

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

4.15 (i) store carbon-free or renewable energy, ~~including energy generated from renewable~~
 4.16 ~~resources and energy that would otherwise be wasted~~, and deliver the stored energy for use
 4.17 at a later time; or

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

4.20 ~~(2) is composed of stationary equipment;~~

4.21 ~~(3)~~ (2) if being used for electric grid benefits, is (i) operationally visible to the distribution
 4.22 or transmission entity managing it, and (ii) capable of being controlled by the distribution
 4.23 or transmission entity managing it, to enable and optimize the safe and reliable operation
 4.24 of the electric system; and

4.25 ~~(4)~~ (3) achieves ~~any~~ of the following:

4.26 (i) reduces peak or electrical demand;

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

4.29 (iii) improves the reliable operation of the electrical transmission or distribution systems;
 4.30 ~~while ensuring transmission or distribution needs are not created; or~~ and

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

5.3 (g) "Clean energy resource" means: (1) renewable energy, an energy storage system
 5.4 using renewable energy resources and energy efficiency, and load management, as defined
 5.5 in section 216B.241, subdivision 1; or (2) a carbon-free resource, as defined under paragraph
 5.6 (h) and as determined by the commission under subdivision 4, paragraph (g).

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

5.10 (i) "Nonrenewable energy facility" means a generation facility that does not use a
 5.11 renewable energy or other clean energy resource. Nonrenewable facility does not include
 5.12 a nuclear facility.

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

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

5.19 Sec. 8. Minnesota Statutes 2020, section 216B.2422, subdivision 2, is amended to read:

5.20 Subd. 2. **Resource plan filing and approval.** (a) A utility shall file a resource plan with
 5.21 the commission periodically in accordance with rules adopted by the commission. The
 5.22 commission shall approve, reject, or modify the plan of a public utility, as defined in section
 5.23 216B.02, subdivision 4, consistent with the public interest.

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

5.30 (c) As a part of its resource plan filing, a utility shall include the least cost plan for
 5.31 meeting ~~50 and~~ 75, and 100 percent of all energy needs from both new and refurbished
 5.32 generating facilities through a combination of ~~conservation and renewable~~ clean energy and
 5.33 carbon-free resources.

6.1 Sec. 9. Minnesota Statutes 2020, section 216B.2422, subdivision 3, is amended to read:

6.2 Subd. 3. **Environmental costs.** ~~(a)~~ The commission shall, to the extent practicable,
 6.3 quantify and establish a range of environmental costs associated with each method of
 6.4 electricity generation. A utility shall use the values established by the commission in
 6.5 conjunction with other external factors, including socioeconomic costs, when evaluating
 6.6 and selecting resource options in all proceedings before the commission, including for power
 6.7 purchase agreement, resource plan, and certificate of need proceedings. When evaluating
 6.8 resource options, the commission must include and consider the environmental cost values
 6.9 adopted under this subdivision. When considering the costs of a nonrenewable energy
 6.10 facility under this section, the commission must consider only nonzero values for the
 6.11 environmental costs that must be analyzed under this subdivision, including both the low
 6.12 and high values of any cost range adopted by the commission.

6.13 ~~(b) The commission shall establish interim environmental cost values associated with~~
 6.14 ~~each method of electricity generation by March 1, 1994. These values expire on the date~~
 6.15 ~~the commission establishes environmental cost values under paragraph (a).~~

6.16 Sec. 10. Minnesota Statutes 2020, section 216B.2422, is amended by adding a subdivision
 6.17 to read:

6.18 Subd. 3a. **Favored electric resources; state policy.** It is the policy of the state that: (1)
 6.19 in order to hasten the achievement of the greenhouse gas reduction goals under section
 6.20 216H.02, the renewable energy standard under section 216B.1691, subdivision 2a, and the
 6.21 solar energy standard under section 216B.1691, subdivision 2f; and (2) given the significant
 6.22 and continuing reductions in the cost of wind technologies, solar technologies, energy
 6.23 storage systems, and demand-response technologies, the favored method to meet electricity
 6.24 demand in Minnesota is a combination of clean energy resources.

6.25 Sec. 11. Minnesota Statutes 2020, section 216B.2422, subdivision 4, is amended to read:

6.26 Subd. 4. **Preference for renewable clean energy facility resources.** (a) The commission
 6.27 shall not approve a new or refurbished nonrenewable energy facility in ~~an integrated resource~~
 6.28 ~~plan or~~ a certificate of need, pursuant to section 216B.243, nor shall the commission approve
 6.29 a power purchase agreement or allow rate recovery pursuant to section 216B.16 for such a
 6.30 nonrenewable energy facility, unless the utility has demonstrated by clear and convincing
 6.31 evidence that a renewable energy facility, alone or in combination with other clean energy
 6.32 resources, is not in the public interest. When making the public interest determination, the
 6.33 commission must consider:

7.1 ~~(1) whether the resource plan helps the utility achieve the greenhouse gas reduction~~
7.2 ~~goals under section 216H.02, the renewable energy standard under section 216B.1691, or~~
7.3 ~~the solar energy standard under section 216B.1691, subdivision 2f;~~

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

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

7.8 ~~(4) utility and ratepayer impacts resulting from reduced exposure to fuel price volatility,~~
7.9 ~~changes in transmission costs, portfolio diversification, and environmental compliance~~
7.10 ~~costs.~~

7.11 (b) In order to find that a renewable energy facility, alone or in combination with other
7.12 clean energy resources, is not in the public interest, the commission must find by clear and
7.13 convincing evidence that using renewable or clean energy resources to meet the need for
7.14 resources is not affordable or reliable.

7.15 (c) In order to determine whether a renewable or clean energy resource is affordable,
7.16 the commission must consider utility and ratepayer effects resulting from:

7.17 (1) the intermittent nature of renewable energy facilities, including but not limited to
7.18 the cost to purchase wholesale electricity in the market and the cost to provide ancillary
7.19 services;

7.20 (2) reduced exposure to fuel price volatility, changes in transmission and distribution
7.21 costs, portfolio diversification, and environmental compliance costs; and

7.22 (3) other environmental costs resulting from a nonrenewable energy facility, as determined
7.23 by the commission under subdivision 3.

7.24 (d) In order to determine whether a renewable or clean energy resource is reliable, the
7.25 commission must consider, to the extent reasonable, the ability of the proposed energy
7.26 resources or facilities to provide essential reliability services, including frequency response,
7.27 balancing services, and voltage control.

7.28 (e) When considering the costs of a nonrenewable energy facility under this section, the
7.29 commission must consider only nonzero values for the environmental costs that must be
7.30 analyzed under subdivision 3, including both the low and high values of any cost range
7.31 adopted by the commission.

8.1 (f) The commission must make a written determination describing its findings and
8.2 conclusions regarding whether a renewable or clean energy resource is affordable and
8.3 reliable under this subdivision. The commission must also make a written determination as
8.4 to whether the energy resources approved by the commission:

8.5 (1) help the state achieve the greenhouse gas reduction goals under section 216H.02;
8.6 and

8.7 (2) help the utility achieve the renewable energy standard under section 216B.1691 or
8.8 the solar energy standard under section 216B.1691, subdivision 2f.

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

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

8.16 (i) If the commission approves a resource plan that includes the retirement of a
8.17 carbon-emitting resource owned by a public utility, the public utility is entitled to own at
8.18 least a portion of the generation, transmission, and other facilities necessary to replace the
8.19 accredited capacity and energy of the retiring facility, provided:

8.20 (1) the resource plan of the public utility with more than 200,000 retail electric customers
8.21 in Minnesota results in an 80 percent or greater reduction in carbon emissions from 2005
8.22 levels by the year 2030 and thereafter;

8.23 (2) the resource plan of the public utility with between 50,000 and 200,000 retail electric
8.24 customers in Minnesota results in a 65 percent reduction in carbon emissions from 2005
8.25 levels by the year 2030 and thereafter;

8.26 (3) each public utility demonstrates that the public utility's ownership of replacement
8.27 resources is reasonably in the public interest, considering customer impacts and benefits;
8.28 and

8.29 (4) the commission determines that the public utility's ownership of needed replacement
8.30 resources is reasonable and in the public interest, considering customer impacts and benefits
8.31 compared to alternatives.

9.1 Sec. 12. Minnesota Statutes 2020, section 216B.2422, is amended by adding a subdivision
9.2 to read:

9.3 Subd. 4a. **Preference for local job creation.** As a part of a resource plan filing, a utility
9.4 must report on associated local job impacts and the steps the utility and the utility's energy
9.5 suppliers and contractors are taking to maximize the availability of construction employment
9.6 opportunities for local workers. The commission must consider local job impacts and give
9.7 preference to proposals that maximize the creation of construction employment opportunities
9.8 for local workers, consistent with the public interest, when evaluating any utility proposal
9.9 that involves the selection or construction of facilities used to generate or deliver energy to
9.10 serve the utility's customers, including but not limited to an integrated resource plan, a
9.11 certificate of need, a power purchase agreement, or commission approval of a new or
9.12 refurbished electric generation facility. The commission must, to the maximum extent
9.13 possible, prioritize the hiring of workers from communities hosting retiring power plants.

9.14 Sec. 13. Minnesota Statutes 2020, section 216B.2422, subdivision 5, is amended to read:

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

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

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

9.28 Sec. 14. Minnesota Statutes 2020, section 216B.2422, is amended by adding a subdivision
9.29 to read:

9.30 Subd. 8. **Transmission planning in advance of generation retirement.** A utility must
9.31 identify in a resource plan each nonrenewable resource on the utility's system that has a
9.32 depreciation term, probable service life, or operating license term that ends within 15 years
9.33 of the resource plan filing date. For each resource identified, the utility must include in the

10.1 resource plan an initial plan to (1) replace the resource if retired, and (2) upgrade any
10.2 transmission or other grid capabilities needed to support the retirement of that resource.

10.3 Sec. 15. Minnesota Statutes 2020, section 216E.03, subdivision 10, is amended to read:

10.4 Subd. 10. **Final decision.** (a) No site permit shall be issued in violation of the site
10.5 selection standards and criteria established in this section and in rules adopted by the
10.6 commission. When the commission designates a site, it shall issue a site permit to the
10.7 applicant with any appropriate conditions. The commission shall publish a notice of its
10.8 decision in the State Register within 30 days of issuance of the site permit.

10.9 (b) No route permit shall be issued in violation of the route selection standards and
10.10 criteria established in this section and in rules adopted by the commission. When the
10.11 commission designates a route, it shall issue a permit for the construction of a high-voltage
10.12 transmission line specifying the design, routing, right-of-way preparation, and facility
10.13 construction it deems necessary, and with any other appropriate conditions. The commission
10.14 may order the construction of high-voltage transmission line facilities that are capable of
10.15 expansion in transmission capacity through multiple circuiting or design modifications. The
10.16 commission shall publish a notice of its decision in the State Register within 30 days of
10.17 issuance of the permit.

10.18 (c) The commission may require, as a condition of permit issuance, that the recipient of
10.19 a site permit to construct a large electric power generating plant and all of the permit
10.20 recipient's construction contractors and subcontractors on the project pay no less than the
10.21 prevailing wage rate, as defined in section 177.42. The commission may also require, as a
10.22 condition of modifying a site permit for a large electric power generating plant repowering
10.23 project as defined in section 216B.243, subdivision 8, paragraph (b), that the recipient of
10.24 the site permit and all of the permit recipient's construction contractors and subcontractors
10.25 on the repowering project pay no less than the prevailing wage rate, as defined in section
10.26 177.42. When deciding whether to require payment of no less than the prevailing wage rate
10.27 under this paragraph, the commission must consider relevant factors, including the direct
10.28 and indirect economic impact as well as the quality, efficiency, and safety of construction.

10.29 Sec. 16. Minnesota Statutes 2020, section 216F.04, is amended to read:

10.30 **216F.04 SITE PERMIT.**

10.31 (a) No person may construct an LWECs without a site permit issued by the Public
10.32 Utilities Commission.

11.1 (b) Any person seeking to construct an LWECS shall submit an application to the
11.2 commission for a site permit in accordance with this chapter and any rules adopted by the
11.3 commission. The permitted site need not be contiguous land.

11.4 (c) The commission shall make a final decision on an application for a site permit for
11.5 an LWECS within 180 days after acceptance of a complete application by the commission.
11.6 The commission may extend this deadline for cause.

11.7 (d) The commission may place conditions in a permit and may deny, modify, suspend,
11.8 or revoke a permit.

11.9 (e) The commission may require, as a condition of permit issuance, that the recipient of
11.10 a site permit to construct an LWECS with a nameplate capacity above 25,000 kilowatts and
11.11 all of the permit recipient's construction contractors and subcontractors on the project pay
11.12 no less than the prevailing wage rate, as defined in section 177.42. The commission may
11.13 also require, as a condition of modifying a site permit for an LWECS repowering project
11.14 as defined in section 216B.243, subdivision 8, paragraph (b), that the recipient of the site
11.15 permit and all of the permit recipient's construction contractors and subcontractors on the
11.16 repowering project pay no less than the prevailing wage rate as defined in section 177.42.
11.17 When deciding whether to require payment of no less than the prevailing wage rate under
11.18 this paragraph, the commission must consider relevant factors, including the direct and
11.19 indirect economic impact as well as the quality, efficiency, and safety of construction.

11.20 Sec. 17. **EFFECTIVE DATE.**

11.21 This act is effective August 1, 2021, and applies to dockets initiated at the Public Utilities
11.22 Commission on or after that date.