SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 901

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DATE	D-PG	OFFICIAL STATUS
02/28/2013	453	Introduction and first reading Referred to Environment and Energy
04/02/2013		Comm report: To pass as amended and re-refer to Finance

A bill for an act

relating to energy; cogeneration and small power production; modifying provisions governing net metered systems and aggregation of meters; prohibiting limits on cumulative generation; authorizing rulemaking; establishing a solar electricity standard; clarifying the repayment period for the energy improvements program; amending Minnesota Statutes 2012, sections 216B.02, subdivision 4; 216B.164, subdivisions 3, 4, 6, by adding subdivisions; 216C.436, subdivisions 7, 8; proposing coding for new law in Minnesota Statutes, chapter 216B; repealing Minnesota Statutes 2012, section 216B.164, subdivision 1.

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

Section 1. Minnesota Statutes 2012, section 216B.02, subdivision 4, is amended to read:

Subd. 4. **Public utility.** "Public utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service; (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility; or (3) a retail seller of electricity used to recharge a battery that powers an electric vehicle, as defined in section 169.011, subdivision 26a, and that is not otherwise a public utility under this chapter. Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale. In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise

granted by the city, provided a resolution of the city council requesting exemption from regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility. No person shall be deemed to be a public utility if it furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a public utility if it furnishes service to occupants of a manufactured home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons. No person shall be deemed to be a public utility, a municipality, or a cooperative electric association organized under chapter 308A if the person only furnishes consumers with electricity or heat generated from solar generating equipment located on the consumer's property, provided the equipment is owned or operated by an entity other than the consumer.

Sec. 2. Minnesota Statutes 2012, section 216B.164, is amended by adding a subdivision to read:

Subd. 2a. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them:

(b)"Aggregated meter" means a meter located on the premises of a customer-generator's owned or leased property that is contiguous with the customer-generator's designated meter.

(c) "Cogeneration" means a combined process whereby electrical and useful thermal energy are produced simultaneously.

(d) "Contiguous property" means property owned or leased by the customer-generator, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(e) "Customer-generator" means the person who is named on the utility electric bill for the premises.

(f) "Designated meter" means a meter that is physically attached to the customer-generator's facility that the customer-generator designates as the primary meter for billing purposes in the case of meter aggregation.

(g) "High-efficiency, low emissions, distributed generation" means a distributed energy facility that includes waste heat, cogeneration, or fuel cell technology, and that uses natural gas, renewable energy, or a similarly clean fuel.

(h) "Net metered system" means an electric generation facility with the primary purpose of offsetting a customer-generator's energy use through the use of renewable energy or high-efficiency, low emissions, distributed generation sources.

(i) "Renewable energy" has the meaning given in section 216B.2411, subdivision 2.

Sec. 3. Minnesota Statutes 2012, section 216B.164, subdivision 3, is amended to read:

Subd. 3. **Purchases; small facilities.** (a) For a qualifying facility having less than ~~40-kilowatt~~ 1,000-kilowatt capacity, the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer. In the case of net input into the utility system by a qualifying facility having less than ~~40-kilowatt~~ 1,000-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (b) or (c). Compensation for net input into the utility system shall be applied as a credit to the customer's energy bill, carried forward and applied to subsequent energy bills for a period of up to 12 months. If any credit remains after the 12-month period, the value of the remaining credit must be returned to the customer, by check, within 15 days of the next billing date. The customer may choose the month in which the 12-month billing and credit period begins.

(b) In setting rates, the commission shall consider the fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge and shall ensure that the costs charged to the qualifying facility are not discriminatory in relation to the costs charged to other customers of the utility. The commission shall set the rates for net input into the utility system based on avoided costs as defined in the Code of Federal Regulations, title 18, section 292.101, paragraph (b)(6), the factors listed in Code of Federal Regulations, title 18, section 292.304, and all other relevant factors.

(c) For qualifying facilities generating electricity before January 1, 2015, and notwithstanding any provision in this chapter to the contrary, a qualifying facility having less than 40-kilowatt capacity may elect that the compensation for net input by the qualifying facility into the utility system shall be at the average retail utility energy rate. "Average retail utility energy rate" is defined as the average of the retail energy rates, exclusive of special rates based on income, age, or energy conservation, according to the applicable rate schedule of the utility for sales to that class of customer.

(d) If the qualifying facility or net metered system is interconnected with a nongenerating utility which has a sole source contract with a municipal power agency or a generation and transmission utility, the nongenerating utility may elect to treat its purchase of any net input under this subdivision as being made on behalf of its supplier and shall be reimbursed by its supplier for any additional costs incurred in making the

purchase. Qualifying facilities or net metered systems having less than ~~40-kilowatt~~ 1,000-kilowatt capacity may, at the customer's option, elect to be governed by the provisions of subdivision 4.

Sec. 4. Minnesota Statutes 2012, section 216B.164, subdivision 4, is amended to read:

Subd. 4. **Purchases; wheeling; costs.** (a) Except as otherwise provided in paragraph (c), this subdivision shall apply to all qualifying facilities having ~~40-kilowatt~~ 1,000-kilowatt capacity or more as well as qualifying facilities as defined in subdivision 3 and net metered systems under subdivision 4a which elect to be governed by its provisions.

(b) The utility to which the qualifying facility is interconnected shall purchase all energy and capacity made available by the qualifying facility. The qualifying facility shall be paid the utility's full avoided capacity and energy costs as negotiated by the parties, as set by the commission, or as determined through competitive bidding approved by the commission. The full avoided capacity and energy costs to be paid a qualifying facility that generates electric power by means of a renewable energy source are the utility's least cost renewable energy facility or the bid of a competing supplier of a least cost renewable energy facility, whichever is lower, unless the commission's resource plan order, under section 216B.2422, subdivision 2, provides that the use of a renewable resource to meet the identified capacity need is not in the public interest.

(c) For all qualifying facilities having 30-kilowatt capacity or more, the utility shall, at the qualifying facility's or the utility's request, provide wheeling or exchange agreements wherever practicable to sell the qualifying facility's output to any other Minnesota utility having generation expansion anticipated or planned for the ensuing ten years. The commission shall establish the methods and procedures to insure that except for reasonable wheeling charges and line losses, the qualifying facility receives the full avoided energy and capacity costs of the utility ultimately receiving the output.

(d) The commission shall set rates for electricity generated by renewable energy.

Sec. 5. Minnesota Statutes 2012, section 216B.164, is amended by adding a subdivision to read:

Subd. 4a. **Net metered systems.** Notwithstanding any provision of this chapter to the contrary, a customer with a net metered system having less than 1,000-kilowatt capacity may elect the compensation for net input by the customer-generator into the utility system. Compensation shall be in the form of a kilowatt-hour credit on the customer's energy bill carried forward and applied to subsequent energy bills. To the extent that net input by the customer-generator into the utility system exceeds the net

energy supplied by the utility during a 12-month period, compensation for net input by the customer-generator into the utility system shall be at the utility's average retail rate until December 31, 2014, then at the avoided cost rate set by the commission in subdivision 3, paragraph (b), beginning January 1, 2015. The customer-generator may choose the month in which the annual billing period begins.

Sec. 6. Minnesota Statutes 2012, section 216B.164, is amended by adding a subdivision to read:

Subd. 4b. **Aggregation of meters.** (a) For the purpose of measuring electricity under subdivisions 3 and 4a, a utility must aggregate for billing purposes a customer-generator's designated meter with one or more aggregated meters if a customer requests that it do so. Any aggregation of meters must conform with the requirements of this section.

(b) This subdivision is mandatory for a public utility only when:

(1) the aggregated meters are located on the customer-generator's contiguous property; and

(2) the electricity recorded by the designated meter and any aggregated meters is for the customer-generator's requirements.

(c) A customer-generator must give at least 60 days' notice to the utility to request that additional meters be included in meter aggregation. The specific meters must be identified at the time of the request. In the event that more than one meter is identified, the customer-generator must designate the rank order for the aggregated meters to which the net metered credits are to be applied, and must rank aggregated meters subject to the same rate schedule as the designated meter above any other meters. At least 60 days prior to the beginning of the next annual billing period, a customer-generator may amend the rank order of the aggregated meters, subject to the same requirements of this subdivision.

(d) The aggregation of meters will apply only to charges that use kilowatt-hours as the billing determinant. All other charges applicable to each meter account shall be billed to the customer-generator.

(e) The utility will first apply the kilowatt-hour credit to the charges for the designated meter and then to the charges for the aggregated meters in the rank order specified by the customer-generator. If the net metered facility supplies more electricity to the utility than the energy usage recorded by the customer-generator's designated and aggregated meters during a monthly billing period, the utility shall apply credits to the next monthly bill for the excess kilowatt-hours first to the designated meter, then to the aggregated meters in the rank order specified by the customer-generator.

(f) With the commission's prior approval, a utility may charge the customer-generator requesting to aggregate meters a reasonable fee to cover the administrative costs incurred in implementing the costs of this subdivision, pursuant to a tariff approved by the commission for a public utility or governing body for a municipal electric utility or electric cooperative.

Sec. 7. Minnesota Statutes 2012, section 216B.164, is amended by adding a subdivision to read:

Subd. 4c. **Limiting cumulative generation prohibited.** The commission and any other governing body regulating public utilities, municipal electric utilities, or electric cooperatives are prohibited from limiting the cumulative generation of net metered systems under subdivision 4a and qualifying facilities under subdivision 3 to less than five percent of a utility or cooperative's historic annual energy sales. After the cumulative limit of five percent has been reached, a public utility, municipal electric utility, or electric cooperative's obligation to offer net metering to a new customer-generator may be limited by the commission or governing body if it determines doing so is in the public interest. The commission may limit net metering obligations under this subdivision only after providing notice and opportunity for public comment. The governing body of a municipal electric utility or electric cooperative may limit net metering obligations under this subdivision only after providing the affected municipal electric utility or electric cooperative's customers with notice and opportunity to comment. When limiting net metering obligations under this subdivision, the commission or governing body shall consider:

(1) the environmental and other public policy benefits of net metered systems;

(2) the impact of net metered systems on the electricity costs for customers without net metered systems;

(3) the effects of net metering on the reliability of the electric system;

(4) technical advances or technical concerns; and

(5) other statutory obligations imposed on the commission or a utility.

The commission or governing body may limit net metering obligations under clauses (2) to (4) only if it finds implementation would cause significant rate impact, require significant measures to address reliability, or raise significant technical issues.

Sec. 8. Minnesota Statutes 2012, section 216B.164, subdivision 6, is amended to read:

Subd. 6. **Rules and uniform contract.** (a) The commission shall promulgate rules to implement the provisions of this section. The commission shall also establish a uniform statewide form of contract for use between utilities and a net metered or qualifying facility having less than ~~40-kilowatt~~ 1,000-kilowatt capacity.

(b) The commission shall require the qualifying facility to provide the utility with reasonable access to the premises and equipment of the qualifying facility if the particular configuration of the qualifying facility precludes disconnection or testing of the qualifying facility from the utility side of the interconnection with the utility remaining responsible for its personnel.

(c) The uniform statewide form of contract shall be applied to all new and existing interconnections established between a utility and a net metered or qualifying facility having less than ~~40-kilowatt~~ 1,000-kilowatt capacity, except that existing contracts may remain in force until ~~written notice of election that the uniform statewide contract form applies is given by either party to the other, with the notice being of the shortest time period permitted under the existing contract for termination of the existing contract by either party, but not less than ten nor longer than 30 days~~ terminated by mutual agreement between both parties.

(d) For generation facilities installed after the effective date of this section, a renewable energy credit is owned by the owner of the renewable energy resource from which it was derived, unless the generation owner explicitly transfers ownership of the renewable energy credit.

(e) Standby charges do not apply to net metered systems under subdivision 3 or 4a.

Sec. 9. **[216B.2427] SOLAR ELECTRICITY STANDARD.**

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

(b) "Electric utility" has the meaning given in section 216B.1691, subdivision 1, paragraph (b).

(c) "Total retail electric sales" has the meaning given in section 216B.1691, subdivision 1, paragraph (c).

Subd. 2. **Solar electricity standard.** (a) Except as otherwise provided in paragraph (b), each electric utility shall generate or procure solar electric generation capacity for its retail customers in Minnesota or the retail customers of a distribution utility to which the electric utility provides wholesale electric services. At a minimum, the following percentages of the electric utility's total retail sales to retail customers in Minnesota must be generated by solar energy by the end of the year indicated:

(1) 2016: ..... percent;

(2) 2020: ..... percent; and

(3) 2025: ..... percent.

(b) An electric utility that owned a nuclear generating facility as of January 1, 2013, must meet the requirements of this paragraph. An electric utility subject to this paragraph must generate or procure solar electric generation capacity for its retail customers in Minnesota or the retail customers of a distribution utility to which the electric utility provides wholesale electric service. At a minimum, the following percentages of the electric utility's total retail electric sales to retail customers in Minnesota must be generated by solar energy by the end of the year indicated:

(1) 2016: ..... percent; and

(2) 2020: ..... percent.

(c) An electric utility may not use energy required by the solar energy standard under this section to satisfy its standard obligation under section 216B.1691.

Subd. 3. **Use of integrated resource planning process.** The commission may exercise its authority under this subdivision to modify or delay implementation of a standard obligation as a part of an integrated resource planning proceeding under section 216B.2422. The commission's authority must be exercised according to this subdivision. The order to delay or modify shall not be considered advisory with respect to any electric utility. This subdivision shall not be construed to limit the commission's authority to modify or delay implementation of a standard obligation in other proceedings before it.

Subd. 4. **Utility plans filed with commission.** Each electric utility shall report to the commission on its plans, activities, and progress demonstrating the efforts made towards complying with this section. The report shall be included in its filings under section 216B.2422 or in a separate report submitted to the commission every two years, whichever is more frequent. In its resource plan or separate report, each electric utility shall provide a description of:

(1) the status of the utility's solar energy mix relative to the standards;

(2) efforts taken to meet the standards;

(3) any obstacles encountered or anticipated in meeting the standards;

(4) potential solutions to the identified obstacles; and

(5) an estimation of the rate impact related to measures taken by the electric utility necessary to comply with this section. The rate impact estimate must be for wholesale rates and, if the electric utility makes retail sales, an estimate shall also be completed for the impact on the electric utility's retail rates. Those activities include, without limitation, energy purchases, generation facility acquisition or construction, and transmission improvements. An estimation of rate impacts must also account for acquisition of energy capacity, distribution, and transmission upgrades avoided as a result of the standards.

Subd. 5. **Renewable energy credits.** In lieu of generating or procuring energy directly to satisfy the solar electricity standard of this section, an electric utility may use renewable energy credits that originate from a solar electricity generator to satisfy the standard. In doing so, an electric utility must follow protocols established by the commission for registering, tracking, and retiring credits.

Subd. 6. **Compliance; penalties.** (a) The commission must regularly investigate whether an electric utility is in compliance with its standard obligation under subdivision 2.

(b) If the commission finds noncompliance, it may order the electric utility to construct solar energy facilities, purchase solar energy, purchase renewable energy credits generated by solar energy, or engage in other activities to achieve compliance. If an electric utility fails to comply with an order under this subdivision, the commission may impose a financial penalty on the electric utility in an amount not to exceed the estimated cost of the electric utility to achieve compliance. The penalty may not exceed the lesser of the cost of constructing facilities or purchasing credits. The commission must deposit financial penalties imposed under this subdivision in the energy and conservation account established in the special revenue fund under section 216B.241, subdivision 2a.

(c) Nothing in this subdivision shall be construed to limit any other authority the commission possesses to enforce this section.

Sec. 10. Minnesota Statutes 2012, section 216C.436, subdivision 7, is amended to read:

Subd. 7. **Repayment.** An implementing entity that finances an energy improvement under this section must:

(1) secure payment with a lien against the ~~benefited~~ qualifying real property; and

(2) collect repayments as a special assessment as provided for in section 429.101 or by charter, provided that special assessments may be made payable in up to 20 equal annual installments.

If the implementing entity is an authority, the local government that authorized the authority to act as implementing entity shall impose and collect special assessments necessary to pay debt service on bonds issued by the implementing entity under subdivision 8, and shall transfer all collections of the assessments upon receipt to the authority.

Sec. 11. Minnesota Statutes 2012, section 216C.436, subdivision 8, is amended to read:

Subd. 8. **Bond issuance; repayment.** (a) An implementing entity may issue revenue bonds as provided in chapter 475 for the purposes of this section, provided the revenue bond must not be payable more than 20 years from the date of issuance.

(b) The bonds must be payable as to both principal and interest solely from the revenues from the assessments established in subdivision 7.

(c) No holder of bonds issued under this subdivision may compel any exercise of the taxing power of the implementing entity that issued the bonds to pay principal or interest on the bonds, and if the implementing entity is an authority, no holder of the bonds may compel any exercise of the taxing power of the local government. Bonds issued under this subdivision are not a debt or obligation of the issuer or any local government that issued them, nor is the payment of the bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

Sec. 12. **REPEALER.**

Minnesota Statutes 2012, section 216B.164, subdivision 1, is repealed.

216B.164 COGENERATION AND SMALL POWER PRODUCTION.

Subdivision 1. **Scope and purpose.** This section shall at all times be construed in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.