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State of Minnesota

Printed Page No. **80**

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **623**

02/14/2013 Authored by Melin, Metsa, Dill, Atkins, Hornstein and others
The bill was read for the first time and referred to the Committee on Energy Policy
03/13/2013 Adoption of Report: Pass as Amended and Read Second Time

1.1 A bill for an act
1.2 relating to energy; regulating a biomass mandate project; amending Minnesota
1.3 Statutes 2012, section 216B.2424, subdivision 5a.

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

1.5 Section 1. Minnesota Statutes 2012, section 216B.2424, subdivision 5a, is amended to
1.6 read:

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

1.9 (b) The Public Utilities Commission shall approve a request pending before the
1.10 commission as of May 15, 2003, for amendments to and assignment of a power purchase
1.11 agreement with the owner of a facility that uses short-rotation, woody crops as its primary
1.12 fuel previously approved to satisfy a portion of the biomass mandate if the owner of
1.13 the project agrees to reduce the size of its project from 50 megawatts to 35 megawatts,
1.14 while maintaining an average price for energy in nominal dollars measured over the term
1.15 of the power purchase agreement at or below \$104 per megawatt-hour, exclusive of any
1.16 price adjustments that may take effect subsequent to commission approval of the power
1.17 purchase agreement, as amended. The commission shall also approve, as necessary, any
1.18 subsequent assignment or sale of the power purchase agreement or ownership of the
1.19 project to an entity owned or controlled, directly or indirectly, by two municipal utilities
1.20 located north of Constitutional Route No. 8, as described in section 161.114, which
1.21 currently own electric and steam generation facilities using coal as a fuel and which
1.22 propose to retrofit their existing municipal electrical generating facilities to utilize biomass
1.23 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 as
2.31 required by paragraph (c). The amendment must be negotiated and executed within 45
2.32 days of ~~May 20, 2009~~ the effective date of this act, and must apply to prices paid after
2.33 January 1, ~~2009~~ 2014. The average price for energy in nominal dollars measured over the
2.34 term of the power purchase agreement must not exceed ~~\$104~~ \$109.20 per megawatt hour
2.35 ~~by more than five percent~~. The public utility shall request approval of the amendment by
2.36 the commission within 30 days of execution of the amended power purchase agreement.

3.1 The amendment is not effective until approval by the commission. The commission
3.2 shall act on the amendment within 90 days of submission of the request by the public
3.3 utility. Upon approval of the amended power purchase agreement, the commission shall
3.4 allow the public utility to recover the costs of the amended power purchase agreement, as
3.5 provided in section 216B.1645.

3.6 (f) With respect to the power purchase agreement described in paragraph (b), and
3.7 amended and approved by the commission pursuant to paragraphs (c) and (e), upon
3.8 request by the project owner, the public utility shall agree to amend the power purchase
3.9 agreement to include a fuel cost adjustment clause which requires the public utility to
3.10 reimburse the project owner monthly for all costs incurred by the project owner during
3.11 the applicable month to procure and transport all fuel used to produce energy for delivery
3.12 to the public utility pursuant to the power purchase agreement to the extent such costs
3.13 exceeded \$3.40 per million metric British thermal unit (MMBTU), in addition to the price
3.14 to be paid for the energy produced and delivered by the project owner. Beginning with
3.15 2014, at the end of each calendar year of the term of the power purchase agreement, the
3.16 project owner shall calculate the amount by which actual fuel costs for the year exceeded
3.17 \$3.40 per million metric British thermal unit, and prior monthly payment for such fuel
3.18 costs shall be reconciled against actual fuel costs for the applicable calendar year. If
3.19 such prior monthly fuel payments for the year in the aggregate exceed the amount due
3.20 based on the annual calculation, the project owner shall credit the public utility for the
3.21 excess paid. If the annual calculation of fuel costs due exceeds the prior monthly fuel
3.22 payments for the year in the aggregate, the project owner shall be entitled to be paid
3.23 for the deficiency with the next invoice to the public utility. The amendment shall be
3.24 negotiated and executed within 45 days of the enactment of this act and shall be effective
3.25 for fuel costs incurred and prices after January 1, 2014. The public utility shall request
3.26 approval of the amendment by the commission, and the commission shall approve the
3.27 amendment as reasonable and in the public interest and allow the public utility to recover
3.28 from its Minnesota retail customers the amounts paid by the public utility to the project
3.29 owner pursuant to the power purchase agreement during the full term of the power
3.30 purchase agreement, including the reimbursement of fuel costs pursuant to the power
3.31 purchase agreement amendment, pursuant to section 216B.1645, or otherwise.

3.32 (g) With respect to the power purchase agreement described in paragraph (b) and
3.33 approved by the commission pursuant to paragraphs (c) and (e), the public utility is
3.34 prohibited from recovering from the project owner any costs which were not actually and
3.35 reasonably incurred by the utility, notwithstanding any provision in the power purchase
3.36 agreement to the contrary. In addition, beginning with 2012, the public utility shall pay for

4.1 all energy delivered by the project owner pursuant to the power purchase agreement at
4.2 the full price for such energy in the power purchase agreement approved and amended
4.3 pursuant to paragraph (e), provided that the project owner does not deliver more than
4.4 110 percent of the amount scheduled for delivery in any year of the power purchase
4.5 agreement, and does not deliver, on average over any five consecutive years of the power
4.6 purchase agreement, an amount greater than 105 percent of the amount scheduled for
4.7 delivery over the five-year period.

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