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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1170

03/04/2013 Authored by Falk, Bly, Hortman, Atkins, Hansen and others
The bill was read for the first time and referred to the Committee on Energy Policy

A bill for an act

relating to energy; amending the maximum capacity at which small electricity generators qualify for net metering; amending the definition of a rate at which small generators may elect to be paid by utilities; amending the treatment of a purchase from a small generator by a nongenerating utility supplied by a municipal power agency; amending Minnesota Statutes 2012, section 216B.164, subdivisions 3, 5, 6, by adding a subdivision.

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

Section 1. 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~~ 105-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~~ 105-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (b) or (c).

(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) Notwithstanding any provision in this chapter to the contrary, a qualifying facility having less than ~~40-kilowatt~~ 105-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 plus the premium charged by the utility to customers of that customer class who elect to purchase renewable electricity under section 216B.169. If the utility does not offer a renewable rate under section 216B.169, the rate that a qualifying facility may elect to receive under this paragraph is the average rate charged under section 216B.169 to the applicable customer class by the three utilities that offer such a rate whose service areas are located closest to that of the utility that does not offer a rate under section 216B.169.

"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 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 having less than ~~40-kilowatt~~ 105-kilowatt capacity may, at the customer's option, elect to be governed by the provisions of subdivision 4.

(e) A utility may elect to take possession of any renewable energy credits attached to electricity purchased under this section.

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

Sec. 2. Minnesota Statutes 2012, section 216B.164, subdivision 5, is amended to read:

Subd. 5. **Nondiscrimination; dispute; resolution.** (a) A utility may not impose unduly burdensome conditions or stipulations on, and may not discriminate against, a qualifying facility seeking to interconnect with and sell electric power to the utility.

(b) In the event of disputes between an electric utility and a qualifying facility, either party may request a determination of the issue by the commission. In any such determination, the burden of proof shall be on the utility. The commission in its order resolving each such dispute shall require payments to the prevailing party of the prevailing party's costs, disbursements, and reasonable attorneys' fees, except that the qualifying facility will be required to pay the costs, disbursements, and attorneys' fees of the utility only if the commission finds that the claims of the qualifying facility in the dispute have been made in bad faith, or are a sham, or are frivolous.

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

3.1 Sec. 3. Minnesota Statutes 2012, section 216B.164, subdivision 6, is amended to read:

3.2 Subd. 6. **Rules and uniform contract.** (a) The commission shall promulgate rules
3.3 to implement the provisions of this section. The commission shall also establish a uniform
3.4 statewide form of contract for use between utilities and a qualifying facility having less
3.5 than ~~40-kilowatt~~ 105-kilowatt capacity.

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

3.11 (c) The uniform statewide form of contract shall be applied to all new and existing
3.12 interconnections established between a utility and a qualifying facility having less than
3.13 ~~40-kilowatt~~ 105-kilowatt capacity, except that existing contracts may remain in force
3.14 until written notice of election that the uniform statewide contract form applies is given
3.15 by either party to the other, with the notice being of the shortest time period permitted
3.16 under the existing contract for termination of the existing contract by either party, but
3.17 not less than ten nor longer than 30 days.

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

3.19 Sec. 4. Minnesota Statutes 2012, section 216B.164, is amended by adding a
3.20 subdivision to read:

3.21 Subd. 6a. **Generation exceeding capacity.** Electrical generation that exceeds a
3.22 qualifying facility's nameplate capacity:

3.23 (1) does not nullify the contract between a qualifying facility and a utility purchasing
3.24 electricity under this section; and

3.25 (2) must be purchased at the utility's avoided cost rate, as defined by the commission
3.26 under subdivision 3 or 4, as applicable.

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