

H. F. No. **623**

(c) If the power purchase agreement described in paragraph (b) is assigned to an entity that is, or becomes, owned or controlled, directly or indirectly, by two municipal entities as described in paragraph (b), and the power purchase agreement meets the price requirements of paragraph (b), the commission shall approve any amendments to the power purchase agreement necessary to reflect the changes in project location and ownership and any other amendments made necessary by those changes. The commission shall also specifically find that:

(1) the power purchase agreement complies with and fully satisfies the provisions of this section to the full extent of its 35-megawatt capacity;

(2) all costs incurred by the public utility and all amounts to be paid by the public utility to the project owner under the terms of the power purchase agreement are fully recoverable pursuant to section 216B.1645;

(3) subject to prudence review by the commission, the public utility may recover from its Minnesota retail customers the Minnesota jurisdictional portion of the amounts that may be incurred and paid by the public utility during the full term of the power purchase agreement; and

(4) if the purchase power agreement meets the requirements of this subdivision, it is reasonable and in the public interest.

(d) The commission shall specifically approve recovery by the public utility of any and all Minnesota jurisdictional costs incurred by the public utility to improve, construct, install, or upgrade transmission, distribution, or other electrical facilities owned by the public utility or other persons in order to permit interconnection of the retrofitted biomass-fueled generating facilities or to obtain transmission service for the energy provided by the facilities to the public utility pursuant to section 216B.1645, and shall disapprove any provision in the power purchase agreement that requires the developer or owner of the project to pay the jurisdictional costs or that permit the public utility to terminate the power purchase agreement as a result of the existence of those costs or the public utility's obligation to pay any or all of those costs.

(e) Upon request by the project owner, the public utility shall agree to amend the power purchase agreement described in paragraph (b) and approved by the commission as required by paragraph (c). The amendment must be negotiated and executed within 45 days of ~~May 20, 2009~~ March 31, 2013, and must apply to prices paid after January 1, ~~2009~~ 2014. The average price for energy in nominal dollars measured over the term of the power purchase agreement must not exceed ~~\$104~~ \$109.20 per megawatt hour ~~by more than five percent~~. The public utility shall request approval of the amendment by 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 request
3.8 by the project owner, the public utility shall agree to amend the power purchase agreement
3.9 to include a fuel cost adjustment clause which requires the public utility to reimburse the
3.10 project owner monthly for all costs incurred by the project owner to procure and transport
3.11 all fuel used to produce energy for delivery to the public utility pursuant to the power
3.12 purchase agreement. The prices in the power purchase agreement as amended pursuant to
3.13 paragraph (e) shall be adjusted by an amount equal to the project owner's assumed fuel
3.14 costs in those prices, as provided by the project owner. The amendment shall be negotiated
3.15 and executed within 45 days of the enactment of this act and shall be effective for fuel
3.16 costs incurred and prices after January 1, 2014. The public utility shall request approval of
3.17 the amendment by the commission, and the commission shall approve the amendment
3.18 as reasonable and in the public interest and allow the public utility to recover from its
3.19 Minnesota retail customers the Minnesota jurisdictional portion of the amounts paid by the
3.20 public utility to the project owner pursuant to the power purchase agreement during the full
3.21 term of the power purchase agreement, including the reimbursement of fuel costs pursuant
3.22 to the power purchase agreement amendment, pursuant to section 216B.1645, or otherwise.

3.23 (g) With respect to the power purchase agreement described in paragraph (b) and
3.24 approved by the commission pursuant to paragraphs (c) and (e), the public utility is
3.25 prohibited from recovering from the project owner any costs which were not actually and
3.26 reasonably incurred by the utility, notwithstanding any provision in the power purchase
3.27 agreement to the contrary. In addition, the public utility shall pay for all energy delivered
3.28 by the project owner pursuant to the power purchase agreement at the full price for such
3.29 energy in the power purchase agreement approved and amended pursuant to paragraph
3.30 (e), provided that the project owner does not deliver more than 110 percent of the amount
3.31 scheduled for delivery in any year of the power purchase agreement, and does not deliver,
3.32 on average over any five consecutive years of the power purchase agreement, an amount
3.33 greater than 105 percent of the amount scheduled for delivery over the five-year period.