CHAPTER 157--S.F.No. 3131

An act relating to local government; listing reimbursable costs for purposes of a power purchase agreement; authorizing an increase in Hibbing's Public Utility Commission membership; abolishing and replacing existing council member wards of the city of Hibbing; changing form of government of the city of Hibbing;amending Minnesota Statutes 2014, section 216B.2424, subdivision 5a; Laws 1949, chapter 422, section 2, as amended.

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

Section 1. Minnesota Statutes 2014, section 216B.2424, subdivision 5a, is amended to read:

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

(b) The Public Utilities Commission shall approve a request pending before the commission as of May 15, 2003, for amendments to and assignment of a power purchase agreement with the owner of a facility that uses short-rotation, woody crops as its primary fuel previously approved to satisfy a portion of the biomass mandate if the owner of the project agrees to reduce the size of its project from 50 megawatts to 35 megawatts, while maintaining an average price for energy in nominal dollars measured over the term of the power purchase agreement at or below $104 per megawatt-hour, exclusive of any price adjustments that may take effect subsequent to commission approval of the power purchase agreement, as amended. The commission shall also approve, as necessary, any subsequent assignment or sale of the power purchase agreement or ownership of the project to an entity owned or controlled, directly or indirectly, by two municipal utilities located north of Constitutional Route No. 8, as described in section 161.114, which currently own electric and steam generation facilities using coal as a fuel and which propose to retrofit their existing municipal electrical generating facilities to utilize biomass fuels in order to perform the power purchase agreement.

(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 prudency review by the commission, the public utility may recover from its Minnesota retail customers 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.

Copyright © 2016 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(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 14, 2013, and must apply to prices paid after January 1, 2014. The average price for energy in nominal dollars measured over the term of the power purchase agreement must not exceed $109.20 per megawatt hour. The public utility shall request approval of the amendment by the commission within 30 days of execution of the amended power purchase agreement. The amendment is not effective until approval by the commission. The commission shall act on the amendment within 90 days of submission of the request by the public utility. Upon approval of the amended power purchase agreement, the commission shall allow the public utility to recover the costs of the amended power purchase agreement, as provided in section 216B.1645.

(f) With respect to the power purchase agreement described in paragraph (b), and amended and approved by the commission pursuant to paragraphs (c) and (e), upon request by the project owner, the public utility shall agree to amend the power purchase agreement to include a fuel cost adjustment clause which requires the public utility to reimburse the project owner monthly for all costs incurred by the project owner during the applicable month to procure and transport all fuel used to produce energy for delivery to the public utility pursuant to the power purchase agreement to the extent such costs exceeded $3.40 per million metric British thermal unit (MMBTU), in addition to the price to be paid for the energy produced and delivered by the project owner. Reimbursable costs include but are not limited to: (1) all costs incurred to load fuel at its source; (2) costs to transport fuel (i) to the biomass-fueled generating facilities or to an intermediate woodyard, storage facility, or handling facility, or (ii) from a facility to the biomass-fueled generating facilities; (3) depreciation of any depreciable loading, woodyard, storage, handling, or transportation equipment whether the vehicle or equipment is located at the fuel source, a woodyard, storage facility, handling facility, or at the generating facilities; and (4) costs to unload fuel at the generating facilities. Beginning with 2014, at the end of each calendar year of the term of the power purchase agreement, the project owner shall calculate the amount by which actual fuel costs for the year exceeded $3.40 per MMBTU, and prior monthly payment for such fuel costs shall be reconciled against actual fuel costs for the applicable calendar year. If such prior monthly fuel payments for the year in the aggregate exceed the amount due based on the annual calculation, the project owner shall credit the public utility for the excess paid. If the annual calculation of fuel costs due exceeds the prior monthly fuel payments for the year in the aggregate, the project owner shall be entitled to be paid for the deficiency with the next invoice to the public utility. The amendment shall be negotiated and executed within 45 days of May 13, 2013, and shall be effective for fuel costs incurred and prices after January 1, 2014. The public utility shall request approval of the amendment by the commission, and the commission shall approve the amendment as reasonable and in the public interest and allow the public utility to recover from its Minnesota retail customers the amounts paid by the public utility to the project owner pursuant to the power purchase agreement during the full term of the power purchase agreement, including the reimbursement of fuel costs pursuant to the power purchase agreement amendment, reimbursable costs as provided in this paragraph, pursuant to section 216B.1645, or otherwise.

Copyright © 2016 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(g) With respect to the power purchase agreement described in paragraph (b) and approved by the commission pursuant to paragraphs (c) and (e), the public utility is prohibited from recovering from the project owner any costs which were not actually and reasonably incurred by the utility, notwithstanding any provision in the power purchase agreement to the contrary. In addition, beginning with 2012, the public utility shall pay for all energy delivered by the project owner pursuant to the power purchase agreement at the full price for such energy in the power purchase agreement approved and amended pursuant to paragraph (e), provided that the project owner does not deliver more than 110 percent of the amount scheduled for delivery in any year of the power purchase agreement, and does not deliver, on average over any five consecutive years of the power purchase agreement, an amount greater than 105 percent of the amount scheduled for delivery over the five-year period.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2014.

Sec. 2. Laws 1949, chapter 422, section 2, as amended by Laws 1951, chapter 680, section 2, is amended to read:

Sec. 2. **MEMBERS; APPOINTMENT, TERM, MEETINGS, QUORUM.**

~~The commission, consisting of three members, shall be appointed by the village council for a term of three years. The original appointees shall serve one, two and three years respectively as designated by the council. Each commissioner shall hold office until his successor is appointed and qualified by subscribing to an oath that he will faithfully and impartially perform the duties of this office. A member of the commission shall be chairman of the commission during the last year of the term for which he is appointed. All members of any such existing commission shall remain in office until the expiration of their respective terms and until the appointment and qualification of their successors in office. The commission shall meet at least twice each month. Special meetings may be called by the chairman of the commission, and in addition, a majority of the members may call a special meeting by giving two days' written mailed notice thereof to all members who have not joined in the request for such special meeting. Two members of said commission constitute a quorum.~~ The commission shall consist of five members appointed by the city council. The three members serving on the effective date of this section shall continue in office until their terms expire and their successors have been appointed and qualified. The council shall appoint two additional members, one to serve for two years and one to serve for three years. Thereafter, each member shall serve a three-year term and until the member's successor is appointed and qualified. To be qualified, a member must take an oath that the member will faithfully and impartially perform the duties of the office. The commission shall elect a member to serve as chair of the commission at the first commission meeting in April each year. A member may not serve as chair for two consecutive years. The commission shall meet at least twice each month. Special meetings may be called by the chair, and, in addition, a majority of the commission may call a special meeting by giving two days' written notice sent by first class mail to each member that did not join in the request for the special meeting. Three members of the commission constitute a quorum.

LOCAL APPROVAL. This section is effective the day after the Hibbing City Council and the city's chief clerical officer timely complete compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3.

Sec. 3. **CITY OF HIBBING; CHANGING WARD SYSTEM; ADOPTING OPTIONAL PLAN A.**

Subdivision 1. **Abolishing existing ward system.** Notwithstanding Minnesota Statutes, section 414.031, subdivision 4a, paragraph (d), the ward system for the election of council persons that was es-

Copyright © 2016 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

tablished by the Order in the Matter of the Joint Resolution of the Town of Stuntz and the City of Hibbing for Annexation of the Town of Stuntz to the City of Hibbing, dated July 25, 1979, is abolished.

Subd. 2. **Plan of government; council members; wards.** (a) The city of Hibbing must operate under the Optional Plan A form of government. Notwithstanding Minnesota Statutes, section 412.551, no referendum is required. The council must consist of a mayor and six council members. Two council members are elected at-large and four council members are elected by ward. The mayor and council members serve staggered, four-year terms.

(b) The city council shall, by ordinance, define the ward boundaries for new wards 1, 2, 3, and 4. The wards must comply with the requirements of Minnesota Statutes, section 205.84. The city council shall hold a public hearing on the proposed ordinance before its adoption. The city clerk must publish notice in the official newspaper one week before the hearing. The ordinance shall be published no earlier than 90 days before the primary election in 2018 and no later than on the date of the primary election in 2018. The ordinance shall be effective on the date of publication in the official newspaper of the city of Hibbing.

Subd. 3. **Transition.** (a) The city clerk-treasurer serving in office on the effective date of this act shall complete the term. The clerk-treasurer position shall become an appointed position when the term expires or the clerk-treasurer chooses to leave office, whichever is sooner.

(b) The members in office on the effective date of this act shall finish the terms to which the members were elected. The mayor, one at-large council member, and council members for wards 1 and 2 shall be elected in 2018 and serve four-year terms. One at-large council member and council members for wards 3 and 4 shall be elected in 2018 and serve two-year terms. Thereafter, the mayor and all council members shall serve four-year terms.

EFFECTIVE DATE. This section is effective the day after the governing body of the city of Hibbing and its chief clerical officer timely complete their compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3.

Presented to the governor May 22, 2016

Copyright © 2016 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.