

in Rosemount and Inver Grove Heights, subject to the commissioner of natural resources making a determination that the water remaining in the basin of origin will be adequate to meet the basin's need for water and approval by the commissioner of natural resources.

Sec. 4. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor April 4, 1996

Signed by the governor April 11, 1996, 11:30 a.m.

CHAPTER 444—H.F.No. 637

An act relating to energy; allowing for a market value exclusion for electric power generation facilities based on facility efficiency; permitting certain consumptive use of water; providing for electric supply agreements; providing for an analysis of utility taxation; proposing coding for new law in Minnesota Statutes, chapters 216B; and 272.

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

Section 1. **[216B.1621] ELECTRIC SERVICE AGREEMENTS.**

Subdivision 1. AGREEMENT. When a retail customer of a public utility proposes to acquire power from or construct a new electric power generation facility in the assigned service area of the utility serving the retail customer to provide all or part of the customer's electric service needs, the public utility may negotiate with and enter into an agreement with the customer to supply electric power to the customer in order to defer construction of the facility until the utility has need of power generated by the proposed facility, if the public utilities commission approves the agreement under subdivision 2.

Subd. 2. COMMISSION APPROVAL. The commission shall approve an agreement under this section upon finding that:

(1) the proposed electric service power generation facility could reasonably be expected to qualify for a market value exclusion under section 272.0211;

(2) the public utility has a contractual option to purchase electric power from the proposed facility; and

(3) the public utility can use the output from the proposed facility to meet its future need for power as demonstrated in the most recent resource plan filed with and approved by the commission under section 216B.2422.

Sections 216B.03, 216B.05, 216B.06, 216B.07, 216B.16, 216B.162, and 216B.23 do not apply to an agreement under this section.

Sec. 2. **[272.0211] SLIDING SCALE MARKET VALUE EXCLUSION FOR ELECTRIC POWER GENERATION EFFICIENCY.**

Subdivision 1. EFFICIENCY DETERMINATION AND CERTIFICATION. An owner or operator of a new or existing electric power generation facility, excluding

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wind energy conversion systems, may apply to the commissioner of revenue for a market value exclusion on the property as provided for in this section. This exclusion shall apply only to the market value of the equipment of the facility, and shall not apply to the structures and the land upon which the facility is located. The commissioner of revenue shall prescribe the forms and procedures for this application. Upon receiving the application, the commissioner of revenue shall request the commissioner of public service to make a determination of the efficiency of the applicant's electric power generation facility. In calculating the efficiency of a facility, the commissioner of public service shall use a definition of efficiency which calculates efficiency as the sum of:

- (1) the useful electrical power output; plus
- (2) the useful thermal energy output; plus
- (3) the fuel energy of the useful chemical products,

all divided by the total energy input to the facility, expressed as a percentage. The commissioner must include in this formula the energy used in any on-site preparation of materials necessary to convert the materials into the fuel used to generate electricity, such as a process to gasify petroleum coke. The commissioner shall use the high heating value for all substances in the commissioner's efficiency calculations. The applicant shall provide the commissioner of public service with whatever information the commissioner deems necessary to make the determination. Within 30 days of the receipt of the necessary information, the commissioner of public service shall certify the findings of the efficiency determination to the commissioner of revenue and to the applicant. The commissioner of public service shall determine the efficiency of the facility and certify the findings of that determination to the commissioner of revenue every two years thereafter from the date of the original certification.

Subd. 2. **SLIDING SCALE EXCLUSION.** Based upon the efficiency determination provided by the commissioner of public service as described in subdivision 1, the commissioner of revenue shall subtract five percent of the taxable market value of the qualifying property for each percentage point that the efficiency of the specific facility, as determined by the commissioner of public service, is above 35 percent. The reduction in taxable market value shall be reflected in the taxable market value of the facility beginning with the assessment year immediately following the determination. For a facility that is assessed by the county in which the facility is located, the commissioner of revenue shall certify to the assessor of that county the percentage of the taxable market value of the facility to be excluded.

Subd. 3. **REVOCATION.** (a) The commissioner of revenue shall revoke the market value reduction under this section, if:

- (1) the applicant exercises its right under federal law to require an electric utility to purchase power generated by the facility; and
- (2) the electric utility notifies the commissioner that the applicant has exercised its right to require purchase of power.

The revocation is effective beginning the first assessment year after notification of the commissioner.

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(b) For purposes of this subdivision, the following terms mean:

(1) "Federal law" is the federal Public Utility Regulatory Policies Act, United States Code, title 16, section 824a-3, and regulations promulgated under that section, including Code of Federal Regulations, title 18, sections 929.303 and 929.304.

(2) "Electric utility" means an electric utility as defined in federal law described in clause (1).

Subd. 4. **ELIGIBILITY.** An owner or operator of a new or existing electric power generation facility who offers electric power generated by the facility for sale is eligible for an exclusion under this section only if:

(1) the owner or operator has received a certificate of need under section 216B.243, if required under that section;

(2) the public utilities commission finds that an agreement exists or a good faith offer has been made to sell the majority of the net power generated by the facility to an electric utility which has a demonstrated need for the power. A right of first refusal satisfies the good faith offer requirement. The commission shall have 90 days from the date the commission receives notice of the application under subdivision 1 to make this determination; and

(3) the electric utility has agreed in advance not to offer the electric power for resale to a retail customer located outside of the utility's assigned service area, or, if the utility is a generation and transmission cooperative electric association, the assigned service area of its members, unless otherwise permitted by law.

For the purposes of this subdivision, "electric utility" means an entity whose primary business function is to operate, maintain, or control equipment or facilities for providing electric service at retail or wholesale, and includes distribution cooperative electric associations, generation and transmission cooperative electric associations, municipal utilities, and public utilities as defined in section 216B.02, subdivision 4.

Sec. 3. **LEGISLATIVE APPROVAL OF CONSUMPTIVE USE OF WATER.**

Pursuant to Minnesota Statutes, section 103G.265, subdivision 3, the legislature approves the consumptive use under a permit of more than 2,000,000 gallons per day average in a 30-day period in Rosemount and Inver Grove Heights in connection with a cogeneration power facility which utilizes gasified petroleum coke as its primary fuel source, subject to the commissioner of natural resources making a determination that the water remaining in the basin of origin will be adequate to meet the basin's need for water and subsequent approval by the commissioner.

Sec. 4. **ANALYSIS OF UTILITY TAXATION.**

The commissioner of revenue, in consultation with the commissioner of public service and the public utilities commission, shall undertake an analysis of the following issues and report the findings and recommendations of the analysis to legislative committees with jurisdiction over these issues by January 15, 1997:

(1) the amount of taxes paid by utilities in this state relative to other states;

(2) a comparison of taxes paid by investor-owned utilities, municipal gas and electric utilities, cooperative utilities, producers of cogeneration power, and independent power producers;

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(3) the competitive aspects and consequences of disparities in utility taxation, to the electric and gas industry and to the state, in light of the restructuring that is occurring in the industry; and

(4) other issues related to utility taxation and recommendations for reform of the utility tax system, including property taxes.

For the purposes of this section, "taxes paid" includes payments made in lieu of taxes and other payments and contributions of goods and services in the nature of payments in lieu of taxes.

Sec. 5. EFFECTIVE DATE.

Section 2 is effective for taxes levied in 1996 and thereafter, for taxes payable in 1997 and thereafter. Sections 1 and 3 are effective on the day following final enactment.

Presented to the governor April 4, 1996

Signed by the governor April 11, 1996, 11:32 a.m.

CHAPTER 445—S.F.No. 2381

An act relating to telecommunications; regulating intrastate interLATA telecommunications services; proposing coding for new law in Minnesota Statutes, chapter 237.

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

Section 1. [237.80] INTEREXCHANGE TELEPHONE SERVICE.

Subdivision 1. DEFINITION, FINDINGS, AND PURPOSE. (a) For purposes of this section, "act" means the federal Telecommunications Act of 1996, Public Law Number 104-104.

(b) The act establishes procedures whereby former Bell Operating Companies or their affiliates may obtain Federal Communications Commission authorization to provide intrastate interLATA telecommunications services and to promote the development of fair and reasonable competition.

(c) The purpose of this section is to promote the development of fair and reasonable competition in the telecommunications industry in Minnesota.

Subd. 2. CONSULTATION WITH THE FCC. Any investigation or proceeding by the Minnesota public utilities commission for the purpose of verifying compliance with the competitive checklist requirements of section 271(c) of the act must be completed by the commission and the resulting certification provided to the Federal Communications Commission within 90 days after receipt of a request for verification from the Federal Communications Commission.

Presented to the governor April 4, 1996

Signed by the governor April 11, 1996, 11:56 a.m.

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