

CHAPTER 132—H.F.No. 854

An act relating to energy; modifying provisions related to distributed generation and renewable energy; regulating conservation improvement investments for low-income programs; modifying eminent domain and condemnation procedures; amending Minnesota Statutes 2012, sections 216B.164, subdivision 3a, as added; 216B.241, subdivision 7; 216B.2422, subdivision 4; 216E.12, subdivision 4.

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

Section 1. Minnesota Statutes 2012, section 216B.164, subdivision 3a, as added by 2013 H.F. No. 729, article 9, section 4, if enacted, is amended to read:

Subd. 3a. **Net metered facility.** (a) Except for customers receiving a value of solar rate under subdivision 10, a customer with a net metered facility having ~~more than 40 kilowatt and less than 1,000 kilowatt capacity~~ a capacity of 40 kilowatts or greater but less than 1,000 kilowatts that is interconnected to a public utility may elect to be compensated for the customer's net input into the utility system in the form of a kilowatt-hour credit on the customer's energy bill carried forward and applied to subsequent energy bills. Any net input supplied by the customer into the utility system that exceeds energy supplied to the customer by the utility during a calendar year must be compensated at the applicable rate.

(b) A public utility may not impose a standby charge on a net metered or qualifying facility:

(1) of 100 kilowatts or less capacity; or

(2) of more than 100 kilowatts capacity, except in accordance with an order of the commission establishing the allowable costs to be recovered through standby charges.

EFFECTIVE DATE. This section is effective July 1, 2013.

Sec. 2. Minnesota Statutes 2012, section 216B.241, subdivision 7, is amended to read:

Subd. 7. **Low-income programs.** (a) The commissioner shall ensure that each utility and association provides low-income programs. When approving spending and energy-savings goals for low-income programs, the commissioner shall consider historic spending and participation levels, energy savings for low-income programs, and the number of low-income persons residing in the utility's service territory. A municipal utility that furnishes gas service must spend at least 0.2 percent, and a public utility furnishing gas service must spend at least 0.4 percent, of its most recent three-year average gross operating revenue from residential customers in the state on low-income programs. A utility or association that furnishes electric service must spend at least 0.1 percent of its gross operating revenue from residential customers in the state on low-income programs. For a generation and transmission cooperative association, this requirement shall apply to each association's members' aggregate gross operating revenue from sale of electricity to residential customers in the state. Beginning in 2010, a utility or association that furnishes electric service must spend 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs.

(b) To meet the requirements of paragraph (a), a utility or association may contribute money to the energy and conservation account. An energy conservation improvement plan must state the amount, if any,

of low-income energy conservation improvement funds the utility or association will contribute to the energy and conservation account. Contributions must be remitted to the commissioner by February 1 of each year.

(c) The commissioner shall establish low-income programs to utilize money contributed to the energy and conservation account under paragraph (b). In establishing low-income programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income persons. Money contributed to the energy and conservation account under paragraph (b) must provide programs for low-income persons, including low-income renters, in the service territory of the utility or association providing the money. The commissioner shall record and report expenditures and energy savings achieved as a result of low-income programs funded through the energy and conservation account in the report required under subdivision 1c, paragraph (g). The commissioner may contract with a political subdivision, nonprofit or community organization, public utility, municipality, or cooperative electric association to implement low-income programs funded through the energy and conservation account.

(d) A utility or association may petition the commissioner to modify its required spending under paragraph (a) if the utility or association and the commissioner have been unable to expend the amount required under paragraph (a) for three consecutive years.

(e) The costs and benefits associated with any approved low-income gas or electric conservation improvement program that is not cost-effective when considering the costs and benefits to the utility may, at the discretion of the utility, be excluded from the calculation of net economic benefits for purposes of calculating the financial incentive to the utility. The energy and demand savings may, at the discretion of the utility, be applied toward the calculation of overall portfolio energy and demand savings for purposes of determining progress toward annual goals and in the financial incentive mechanism.

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

Sec. 3. Minnesota Statutes 2012, section 216B.2422, subdivision 4, is amended to read:

Subd. 4. **Preference for renewable energy facility.** The commission shall not approve a new or refurbished nonrenewable energy facility in an integrated resource plan or a certificate of need, pursuant to section 216B.243, nor shall the commission allow rate recovery pursuant to section 216B.16 for such a nonrenewable energy facility, unless the utility has demonstrated that a renewable energy facility is not in the public interest. The public interest determination must include whether the resource plan helps the utility achieve the greenhouse gas reduction goals under section 216H.02, the renewable energy standard under section 216B.1691, or the solar energy standard under section 216B.1691, subdivision 2f.

Sec. 4. Minnesota Statutes 2012, section 216E.12, subdivision 4, is amended to read:

Subd. 4. **Contiguous land.** (a) When private real property that is an agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property, as those terms are defined in section 273.13 is proposed to be acquired for the construction of a site or route for a high-voltage transmission line with a capacity of 200 kilovolts or more by eminent domain proceedings, the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner, shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which the owner or vendee wholly owns or has contracted to own in undivided fee and elects in writing to transfer to the utility within 60 days after receipt of the notice of the objects of the petition filed pursuant to section 117.055. Commercial viability shall be determined without regard to the presence of the utility route or site. Within 60 days after receipt by the utility of an owner's election to exercise this option, the utility shall provide written notice to the owner

of any objection the utility has to the owner's election, and if no objection is made within that time, any objection shall be deemed waived. Within 120 days of the service of an objection by the utility, the district court having jurisdiction over the eminent domain proceeding shall hold a hearing to determine whether the utility's objection is upheld or rejected. The utility has the burden of proof to prove by a preponderance of the evidence that the property elected by the owner is not commercially viable. The owner or, when applicable, the contract vendee shall have only one such option and may not expand or otherwise modify an election without the consent of the utility. The required acquisition of land pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24, respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution in value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a right-of-way for a high-voltage transmission line with a capacity of 200 kilovolts or more shall automatically be converted into a fee taking.

(b) All rights and protections provided to an owner under chapter 117 apply to acquisition of land or an interest in land under this section.

(c) Within 120 days of an owner's election under this subdivision to require the utility to acquire land, or 120 days after a district court decision overruling a utility objection to an election made pursuant to paragraph (a), the utility must make a written offer to acquire that land and amend its condemnation petition to include the additional land.

(d) For purposes of this subdivision, "owner" means the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner.

EFFECTIVE DATE. (a) The amendments to paragraph (a) and paragraph (c) of this section are effective the day following final enactment and apply to actions commenced on or after that date.

(b) Paragraphs (b) and (d) of this section are effective the day following final enactment and apply to actions pending or commenced on or after that date.

(c) This section does not apply to proceedings or actions before the Minnesota Supreme Court on May 1, 2013.

(d) "Commenced" means when service of notice of the petition under Minnesota Statutes, section 117.055, is made.

Presented to the governor May 22, 2013

Signed by the governor May 24, 2013, 1:58 p.m.