State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1146

03/04/2013 Authored by Morgan
The bill was read for the first time and referred to the Committee on Energy Policy

A bill for an act

relating to energy; solar energy; requiring the Public Utilities Commission to initiate a proceeding regarding interconnection of distributed generation facilities; providing for the establishment and operation of community solar generating facilities; amending provisions governing the ownership of renewable energy credits; establishing residential solar design standards; amending Minnesota Statutes 2012, sections 216B.02, subdivision 4; 216B.1611, subdivision 2; 216B.1691, subdivisions 1, 4; proposing coding for new law in Minnesota Statutes, chapters 216B; 500.

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

Section 1. **TITLE.**

This act may be cited as the Solar Power Cost Reduction Act of 2013.

Sec. 2. Minnesota Statutes 2012, section 216B.02, subdivision 4, is amended to read:

Subd. 4. **Public utility.** (a) "Public utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service; (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility; or (3) a retail seller of electricity used to recharge a battery that powers an electric vehicle, as defined in section 169.011, subdivision 26a, and that is not otherwise a public utility under this chapter.

(b) Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale. In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility.

(c) No person shall be deemed to be a public utility:

(1) if it furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person~~. No person shall be deemed to be a public utility if it~~;

(2) furnishes service to occupants of a manufactured home or trailer park owned, leased, or operated by such person~~. No person shall be deemed to be a public utility if it~~;

(3) produces or furnishes service to less than 25 persons; or

(4) solely as a result of producing or furnishing electric service to customers who own or lease the real property on which solar photovoltaic devices are located, provided that the nameplate capacity of the solar photovoltaic devices is sized to supply no more than 120 percent of the average amount of electricity consumed annually by customers at that property over the previous three years.

Sec. 3. Minnesota Statutes 2012, section 216B.1611, subdivision 2, is amended to read:

Subd. 2. **Distributed generation; generic proceeding.** (a) The commission shall initiate a proceeding within 30 days of July 1, ~~2001~~ 2013, to establish, by order, generic standards for utility tariffs for the interconnection and parallel operation of distributed generation fueled by natural gas or a renewable fuel, or another similarly clean fuel or combination of fuels of no more than ten megawatts of interconnected capacity. At a minimum, these tariff standards must:

(1) to the extent possible, be consistent with industry and other federal and state operational and safety standards;

(2) provide for the low-cost, safe, and standardized interconnection of facilities;

(3) take into account differing system requirements and hardware, as well as the overall demand load requirements of individual utilities by establishing standards and requirements for interconnection for at least four separate categories of distributed

generation facilities that vary by nameplate capacity and level of complexity and that address the following issues for each interconnection category:

(i) applicable technical standards;

(ii) timelines with specific deadlines for all utility decisions and actions;

(iii) screening criteria;

(iv) insurance;

(v) metering and monitoring;

(vi) facility testing, controls, and inspections;

(vii) permissible interconnection fees and charges that may be fixed or based on approved formulas or rates; and

(viii) other issues determined by the commission;

(4) allow for reasonable terms and conditions, consistent with the interconnection level's cost and operating characteristics of the various technologies, so that a utility can reasonably be assured of the reliable, safe, and efficient operation of the interconnected equipment; and

(5) establish for each interconnection level:

(i) a standard interconnection agreement that sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system;; and

(ii) a standard application for interconnection and parallel operation with the utility system.

(b) The commission may develop financial incentives based on a public utility's performance in encouraging residential and small business customers to participate in on-site generation.

(c) The commission shall ensure tariff standards established under this paragraph require that:

(1) interconnection applications, on a standard form determined by the commission, are reviewed in the order received;

(2) utilities develop and maintain the capacity to accept interconnection applications online;

(3) the type and amount of interconnection fees and charges not expressly approved by the commission are prohibited;

(4) each utility prepare an interconnection manual containing a description of the interconnection process, standards, and requirements, as well as all required forms and standard agreements;

(5) utilities must negotiate with agents hired by the applicant; and

(6) an interconnection application dispute resolution process is established.

(d) In developing its order, the commission shall consider relevant federal laws and rules as well as interconnection standards that have been developed by states and other appropriate entities. In adopting standards and requirements under this subdivision, the commission shall seek to prevent barriers to new technologies and shall not make compliance unduly burdensome and expensive.

Sec. 4. **[216B.1641] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 216B.1641 to 216B.1644, the following definitions have the meanings given.

Subd. 2. **Community solar generating facility.** "Community solar generating facility" means a facility:

(1) that generates electricity by means of a solar photovoltaic device that has a capacity of less than two megawatts;

(2) that is interconnected with a utility's distribution system under the jurisdiction of the commission;

(3) that is located in the electric service area of the utility with which it is interconnected;

(4) whose subscribers purchase, under long-term contract with the community solar generating facility, the right to consume the electricity generated from a specified portion of the facility's generating capacity;

(5) that is not owned by a utility; and

(6) that has at least two subscribers.

Subd. 3. **Facility manager.** "Facility manager" means an entity that manages a community solar generating facility for the benefit of subscribers and may, in addition, develop, construct, own, or operate the community solar generating facility. A facility manager may not be a utility, but may be:

(1) a person whose sole purpose is to beneficially own and operate a community solar generating facility;

(2) a Minnesota nonprofit corporation organized under chapter 317A;

(3) a Minnesota cooperative association organized under chapter 308A or 308B;

(4) a Minnesota political subdivision or local government including, but not limited to, a county, statutory or home rule charter city, town, school district, public or private higher education institution, or any other local or regional governmental organization such as a board, commission, or association; or

(5) a tribal council.

Subd. 4. **Renewable energy credit.** "Renewable energy credit" has the meaning given in section 216B.1691, subdivision 1, paragraph (d).

Subd. 5. **Solar photovoltaic device.** "Solar photovoltaic device" has the meaning given in section 216C.06, subdivision 16.

Subd. 6. **Subscriber.** "Subscriber" means a retail customer of a utility who owns one or more subscriptions of a community solar generating facility interconnected with that utility. A facility manager may be a subscriber.

Subd. 7. **Subscription.** "Subscription" means a contract between a subscriber and a community solar generating facility that has a term of no less than 20 years and that provides to the subscriber a portion of the capacity of the community solar generating facility and a corresponding proportion of the electricity generated by the community solar generating facility.

Subd. 8. **Utility.** "Utility" means a utility subject to section 216B.164.

Sec. 5. **[216B.1642] SUBSCRIPTIONS.**

Subdivision 1. **Presale of subscriptions.** A community solar generating facility may not commence construction of the facility until contracts have been executed for subscriptions, excluding the subscription of the facility manager, that represent 80 percent of the proposed nameplate capacity of the community solar generating facility.

Subd. 2. **Size.** (a) A subscription must be a portion of the community solar generating facility's nameplate capacity sized so as to produce no more than 120 percent of the annual average amount of electricity consumed over the previous three years at the site where the subscriber's meter is located. If the site is newly constructed, the subscription must be sized based on 120 percent of the average annual amount of electricity consumed by a facility of similar size and type in the utility's service area, as determined by the facility manager.

(b) A subscriber may not own one or more subscriptions whose total capacity exceeds 40 kilowatts.

(c) A facility manager may not own subscriptions whose total capacity exceeds the maximum subscription size allowed under paragraph (a) plus ten percent of the remaining available nameplate capacity in the community solar generating facility, subject to the limit in paragraph (b).

(d) The maximum subscription size for a subscriber consuming electricity generated from an eligible energy technology, as defined in section 216B.1691, subdivision 1, at any time during the term of the subscriber's subscription, is the maximum subscription size allowed under paragraph (a) minus the nameplate capacity of the eligible energy technology device providing electricity to the subscriber, subject to the limit in paragraph (b).

Subd. 3. **Certification.** Prior to the sale of a subscription, a facility manager must provide certification to the subscriber signed by the facility manager under penalty of perjury:

(1) identifying the rate of insolation at the community solar generating facility;

(2) certifying that the solar photovoltaic devices employed by the community solar generating facility to generate electricity have an electrical energy degradation rate of no more than 0.5 percent annually; and

(3) certifying that the community solar generating facility is in full compliance with all applicable federal and state utility, securities, and tax laws.

Subd. 4. **On-site subscriber.** A subscriber who owns the property on which a community solar generating facility is located has no more rights with respect to subscription size or price than any other subscriber.

Subd. 5. **Subscription prices.** The price for a subscription to a community solar generating facility is not subject to regulation by the commission and is negotiated between the prospective subscriber and the facility manager.

Subd. 6. **Subscription transfer.** A subscriber that terminates the contract between the subscriber and the community solar generating facility must transfer the subscription to a person eligible to be a subscriber or to the facility manager at a price negotiated by both parties.

Subd. 7. **New subscribers.** Within 30 days of the execution of a contract between the community solar generating facility and a new subscriber, the facility manager shall submit the following information to the utility serving the community solar generating facility:

(1) the new subscriber's name, address, number of meters, and utility customer account; and

(2) the share of the community solar generating facility's nameplate capacity owned by the new subscriber.

Subd. 8. **Meter change.** A subscriber that moves to a different property served by the community solar generating facility from the property at which the subscriber resided at the time the contract between the subscriber and the community solar generating facility was executed, or that changes the number of meters attached to the subscriber's account, must notify the facility manager within 30 days of the change.

Subd. 9. **Renewable energy credits.** (a) Notwithstanding any other law, a subscriber owns the renewable energy credits associated with the electricity allocated to the subscriber's subscription. A utility may purchase renewable energy credits under a contract with a subscriber.

(b) Renewable energy credits may not be assigned to a utility as a condition of entering into a contract or an interconnection agreement with a community solar generating facility.

Subd. 10. **Disputes.** The dispute resolution provisions available under section 216B.164 shall be used to resolve disputes between a facility manager and the utility serving the community solar generating facility.

Sec. 6. **[216B.1643] DISPOSITION OF ELECTRICITY GENERATED.**

Subdivision 1. **Allocation.** (a) The total amount of electricity available for allocation to all subscribers of a community solar generating facility shall be determined by a production meter installed by the utility.

(b) The total amount of electricity available to a subscriber shall be the total amount of electricity available for allocation to all subscribers of a community solar generating facility prorated by a subscriber's subscription size in relation to the nameplate capacity of the community solar generating facility.

(c) A subscriber may not resell electricity governed by the subscriber's contract with a community solar generating facility.

(d) All electricity generated by a community solar generating facility that is not consumed by subscribers must be sold to the utility interconnected with the community solar generating facility.

Subd. 2. **Utility purchases.** The utility to which the community solar generating facility is interconnected shall purchase all electricity generated by the community solar generating facility that is not consumed by subscribers. The price paid to the community solar generating facility by the utility is governed by section 216B.164, or any law superseding section 216B.164, that governs the price a utility must pay to purchase electricity from a solar photovoltaic device.

Subd. 3. **Interconnection.** The commission shall establish uniform fees for the interconnection of a community solar generating facility with a utility.

Subd. 4. **Nonutility status.** Notwithstanding section 216B.02, a community solar generating facility is not a public utility.

Sec. 7. **[216B.1644] BILLING.**

Subdivision 1. **Billing procedure.** A subscriber to a community solar generating facility must be:

(1) charged by the utility interconnected with the community solar generating facility the utility's applicable rate schedule for sales to that class of customer for all electricity consumed by the subscriber;

(2) paid by the utility the maximum rate allowable under section 216B.164, or any other law that may govern the price a utility must pay to purchase electricity from a solar photovoltaic device, for a portion of all electricity the utility purchases from the community solar generating facility that is equal to the ratio of the subscriber's subscription to the nameplate capacity of the community solar generating facility;

(3) provided by the utility with a monthly bill that contains, in addition to the amounts in clauses (1) and (2), the net amount owed to the utility or net credit realized by the owner for that month and on a year-to-date basis; and

(4) provided by the utility with a meter that allows for the separate calculation of the amount of electricity consumed and generated at the property.

Subd. 2. **Billing system.** The Department of Commerce shall, by January 1, 2014, establish a uniform administrative system to credit the utility accounts of subscribers to a community solar generating facility. In determining the uniform administrative system, the commission shall solicit comments and recommendations from utilities, ratepayers, and other interested parties, and shall review commercially available administrative systems and administrative systems used in jurisdictions where entities similar to community solar generating facilities are operating.

Sec. 8. Minnesota Statutes 2012, section 216B.1691, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) Unless otherwise specified in law, "eligible energy technology" means an energy technology that generates electricity from the following renewable energy sources:

(1) solar;

(2) wind;

(3) hydroelectric with a capacity of less than 100 megawatts;

(4) hydrogen, provided that after January 1, 2010, the hydrogen must be generated from the resources listed in this paragraph; or

(5) biomass, which includes, without limitation, landfill gas; an anaerobic digester system; the predominantly organic components of wastewater effluent, sludge, or related by-products from publicly owned treatment works, but not including incineration of wastewater sludge to produce electricity; and an energy recovery facility used to capture the heat value of mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste as a primary fuel.

(b) "Electric utility" means a public utility providing electric service, a generation and transmission cooperative electric association, a municipal power agency, or a power district.

(c) "Total retail electric sales" means the kilowatt-hours of electricity sold in a year by an electric utility to retail customers of the electric utility or to a distribution utility for distribution to the retail customers of the distribution utility. "Total retail electric sales" does not include the sale of hydroelectricity supplied by a federal power marketing administration or other federal agency, regardless of whether the sales are directly to a distribution utility or are made to a generation and transmission utility and pooled for further allocation to a distribution utility.

(d) "Renewable energy credit" means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system approved by the commission under subdivision 4, stating that one unit of electricity was generated and delivered by an eligible renewable energy resource. A renewable energy credit includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource.

Sec. 9. Minnesota Statutes 2012, section 216B.1691, subdivision 4, is amended to read:

Subd. 4. **Renewable energy credits.** (a) To facilitate compliance with this section, the commission, by rule or order, shall establish by January 1, 2008, a program for tradable renewable energy credits for electricity generated by eligible energy technology. The credits must represent energy produced by an eligible energy technology, as defined in subdivision 1. Each kilowatt-hour of renewable energy credits must be treated the same as a kilowatt-hour of eligible energy technology generated or procured by an electric utility if it is produced by an eligible energy technology. The program must permit a credit to be used only once. The program must treat all eligible energy technology equally and shall not give more or less credit to energy based on the state where the energy was generated or the technology with which the energy was generated. The commission must determine the period in which the credits may be used for purposes of the program.

(b) A renewable energy credit produced in Minnesota is owned by the owner of the eligible energy technology facility that generated the electricity associated with the renewable energy credit unless:

(1) the credit is expressly assigned to another entity by law;

(2) the credit was expressly transferred to another entity by contract executed prior to July 1, 2013; or

(3) the credit was assigned to another entity by order of the commission prior to July 1, 2013.

(c) A renewable energy credit may be transferred only through a contract. A public utility may not require transfer of a renewable energy credit as a condition for approval of a contract required under section 216B.1611 or 216B.164.

(d) In lieu of generating or procuring energy directly to satisfy the eligible energy technology objective or standard of this section, an electric utility may utilize renewable energy credits allowed under the program to satisfy the objective or standard.

~~(c)~~ (e) The commission shall facilitate the trading of renewable energy credits between states.

~~(d)~~ (f) The commission shall require all electric utilities to participate in a commission-approved credit-tracking system or systems. Once a credit-tracking system is in operation, the commission shall issue an order establishing protocols for trading credits.

~~(e)~~ (g) An electric utility subject to subdivision 2a, paragraph (b), may not sell renewable energy credits to an electric utility subject to subdivision 2a, paragraph (a), until 2021.

Sec. 10. **[500.216] RESIDENTIAL SOLAR DESIGN STANDARDS.**

Subdivision 1. **General rule.** (a) Any covenant, restriction, or condition contained in any deed, security instrument, homeowners association document, or any other instrument affecting the transfer or sale of, or any interest in, real property that prohibits or has the effect of prohibiting the owner of a single-family house or townhouse from installing, maintaining, or using a solar energy system is void and unenforceable.

(b) The owner of a single-family house or townhouse, with respect to the owner's residential property, may not be denied permission to install, maintain, or use a solar energy system by any private entity.

Subd. 2. **Definitions.** (a) "Homeowners association document" means a document containing the declaration, articles of incorporation, bylaws, and rules and regulations of:

(1) a common interest community, as defined in section 515B.1-103, paragraph (10), regardless of whether the common interest community is subject to chapter 515B; and

(2) a residential community that is not a common interest community, as defined in section 515B.1-103, paragraph (10).

(b) "Private entity" means any homeowners association, community association, condominium association, cooperative, or any other nongovernmental entity with covenants, bylaws, or administrative provisions with which the homeowner is required to comply by any covenant, restriction, or condition contained in any deed, security instrument, homeowners association document, or other instrument affecting the transfer or sale of, or any interest in, real property.

(c) "Significantly" means:

(1) for a solar water heating installation, an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed; and

(2) for a solar photovoltaic installation, an amount not to exceed $2,000 above the solar energy system cost as originally specified and proposed, or a decrease in a solar energy system's efficiency, as originally specified and proposed, of more than 20 percent.

(d) "Solar energy system" means a set of devices whose primary purpose is to collect, convert, and store solar energy for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy.

(e) "Townhouse" means any single-family dwelling unit:

(1) which extends from the foundation to the roof;

(2) is constructed with a wall attached to another unit on at least one side;

(3) has at least two sides which are unattached to any other building; and

(4) where the owner of the unit is responsible for maintenance and repair of the unit's roof.

Subd. 3. **Conditions.** (a) A private entity may impose reasonable restrictions on the installation, maintenance, and use of solar energy systems, provided that those restrictions do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance. For the purposes of this section, a private entity may require that:

(1) a licensed contractor install the solar energy system;

(2) the installer of a solar energy system indemnify or reimburse the private entity or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system;

(3) the owner and each successive owner of the solar energy system provide a certificate of insurance naming the private entity as an additional insured on the homeowner's insurance policy;

(4) the owner and each successive owner be responsible for any costs for damages to the solar energy system, common elements, limited common elements, and any adjacent units arising or resulting from the installation, maintenance, repair, removal, or replacement of the solar energy system, and that the repair, maintenance, removal, and replacement responsibilities shall be assumed by each successive owner until the solar energy device has been removed from the common elements or limited common elements; and

(5) the owner and any successive owner be responsible for removing the solar energy device if reasonably necessary for the repair, maintenance, or replacement of common elements or limited common elements.

(b) A solar energy system shall meet applicable standards and requirements imposed by the state and by governmental units, as defined by section 462.384.

(c) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) Whenever approval by a private entity is required for the installation or use of a solar energy system, the application for approval shall be processed and approved in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. A private entity shall approve or deny an application in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved unless the delay is the result of a reasonable request for additional information.

Subd. 4. **Recovery of attorney fees; civil penalty.** (a) If an owner or tenant of residential property is denied the right provided by this section, the owner or tenant is entitled to recover from the party who denied the right reasonable attorney fees and expenses if the owner or tenant prevails in enforcing the right. If a solar energy system is installed, maintained, or operated in violation of enforceable restrictions or limitations, the party enforcing the restrictions or limitations is entitled to recover from the owner of the solar energy system reasonable attorney fees and expenses if the enforcing party prevails in enforcing the restrictions or limitations.

(b) Any private entity that willfully violates this section shall be liable to the applicant or other party for actual damages resulting from the violation and shall pay a civil penalty to the applicant or other party in an amount not to exceed $1,000.