

216B.1612 COMMUNITY-BASED ENERGY DEVELOPMENT; TARIFF.

Subdivision 1. **Tariff establishment.** A tariff shall be established to optimize local, regional, and state benefits from renewable energy development and to facilitate widespread development of community-based renewable energy projects throughout Minnesota.

Subd. 2. **Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "C-BED tariff" or "tariff" means a community-based energy development tariff.

(c) "Qualifying owner" means:

(1) a Minnesota resident;

(2) a limited liability company that is organized under chapter 322B and that is made up of members who are Minnesota residents;

(3) a Minnesota nonprofit organization organized under chapter 317A;

(4) a Minnesota cooperative association organized under chapter 308A or 308B, including a rural electric cooperative association or a generation and transmission cooperative on behalf of and at the request of a member distribution utility;

(5) a Minnesota political subdivision or local government including, but not limited to, a municipal electric utility, or a municipal power agency on behalf of and at the request of a member distribution utility; the office of the commissioner of Iron Range resources and rehabilitation; a county, statutory or home rule charter city, town, school district, or public or private higher education institution; or any other local or regional governmental organization such as a board, commission, or association; or

(6) a tribal council.

(d) "Net present value rate" means a rate equal to the net present value of the nominal payments to a project divided by the total expected energy production of the project over the life of its power purchase agreement.

(e) "Standard reliability criteria" means:

(1) can be safely integrated into and operated within the utility's grid without causing any adverse or unsafe consequences; and

(2) is consistent with the utility's resource needs as identified in its most recent resource plan submitted under section 216B.2422.

(f) "Renewable" refers to a technology listed in section 216B.1691, subdivision 1, paragraph (a).

(g) "Community-based energy development project" or "C-BED project" means a new renewable energy project that either as a stand-alone project or part of a partnership under subdivision 8:

(1) has no single qualifying owner owning more than 15 percent of a C-BED wind energy project unless: (i) the C-BED wind energy project consists of only one or two turbines; or (ii) the qualifying owner is a public entity listed under paragraph (c), clause (5), that is not a municipal utility;

(2) demonstrates that at least 51 percent of the gross revenues from a power purchase agreement over the life of the project will flow to qualifying owners and other local entities; and

(3) has a resolution of support adopted by the county board of each county in which the project is to be located, or in the case of a project located within the boundaries of a reservation, the tribal council for that reservation.

Subd. 3. **Tariff rate.** (a) The tariff described in subdivision 4 must have a rate schedule that allows for a net present value rate over the 20-year life of the power purchase agreement. The tariff must provide for a rate that is higher in the first ten years of the power purchase agreement than in the last ten years. The discount rate required to calculate the net present value must be the utility's normal discount rate used for its other business purposes.

(b) The commission shall consider mechanisms to encourage the aggregation of C-BED projects.

(c) The commission shall require that qualifying and nonqualifying owners provide sufficient security to secure performance under the power purchase agreement, and shall prohibit the transfer of the C-BED project to a nonqualifying owner during the initial 20 years of the contract.

Subd. 4. **Utilities to offer tariff.** By December 1, 2007, each public utility providing electric service at retail shall file for commission approval a community-based energy development tariff consistent with subdivision 3. Within 90 days of the first commission approval order under this subdivision, each municipal power agency and generation and transmission cooperative electric association shall adopt a community-based energy development tariff as consistent as possible with subdivision 3.

Subd. 5. **Priority for C-BED projects.** (a) A utility subject to section 216B.1691 that needs to construct new generation, or purchase the output from new generation, as part of its plan to satisfy its good faith objective and standard under that section must take reasonable steps to

determine if one or more C-BED projects are available that meet the utility's cost and reliability requirements, applying standard reliability criteria, to fulfill some or all of the identified need at minimal impact to customer rates.

Nothing in this section shall be construed to obligate a utility to enter into a power purchase agreement under a C-BED tariff developed under this section.

(b) Each utility shall include in its resource plan submitted under section 216B.2422 a description of its efforts to purchase energy from C-BED projects, including a list of the projects under contract and the amount of C-BED energy purchased.

(c) The commission shall consider the efforts and activities of a utility to purchase energy from C-BED projects when evaluating its good faith effort towards meeting the renewable energy objective under section 216B.1691.

(d) A municipal power agency or generation and transmission cooperative shall, when issuing a request for proposals for C-BED projects to satisfy its standard obligation under section 216B.1691, provide notice to its member distribution utilities that they may propose, in partnership with other qualifying owners, a C-BED project for the consideration of the municipal power agency or generation and transmission cooperative.

Subd. 6. Property owner participation. To the extent feasible, a developer of a C-BED project must provide, in writing, an opportunity to invest in the C-BED project to each property owner on whose property a high-voltage transmission line is constructed that will transmit the energy generated by the C-BED project to market. This subdivision applies if the property is located and the owner resides in the county where the C-BED project is located.

Subd. 7. Other C-BED tariff issues. (a) A community-based project developer and a utility shall negotiate the rate and power purchase agreement terms consistent with the tariff established under subdivision 4.

(b) At the discretion of the developer, a community-based project developer and a utility may negotiate a power purchase agreement with terms different from the tariff established under subdivision 4.

(c) A qualifying owner, or any combination of qualifying owners, may develop a joint venture project with a nonqualifying renewable energy project developer. However, the terms of the C-BED tariff may only apply to the portion of the energy production of the total project that is directly proportional to the equity share of the project owned by the qualifying owners.

(d) A project that is operating under a power purchase agreement under a C-BED tariff is not eligible for net energy billing under section 216B.164, subdivision 3, or for production incentives under section 216C.41.

(e) A public utility must receive commission approval of a power purchase agreement for a C-BED tariffed project. The commission shall provide the utility's ratepayers an opportunity to address the reasonableness of the proposed power purchase agreement. Unless a party objects to a contract within 30 days of submission of the contract to the commission the contract is deemed approved.

Subd. 8. Community energy partnerships. A utility providing electric service to retail or wholesale customers in Minnesota and an independent power producer may, subject to the limits specified in this section, participate in a community-based energy project, including as an owner, equity partner, or provider of technical or financial assistance.

Subd. 9. Local government and political subdivision powers. A Minnesota political subdivision or local government may plan, develop, purchase, acquire, construct, and own a C-BED project and may sell output from that project as provided for in this section. A Minnesota political subdivision or local government may not acquire property under this subdivision through eminent domain. A Minnesota political subdivision or local government may operate, maintain, improve, and expand the C-BED project subject to any restrictions in this section.

History: 2005 c 97 art 2 s 1; 2006 c 212 art 1 s 11; 2007 c 136 art 4 s 1-7; 2008 c 303 s 1; 2009 c 78 art 6 s 21