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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 4620

03/24/2022 Authored by Swedzinski The bill was read for the first time and referred to the Committee on Climate and Energy Finance and Policy

1.1 A bill for an act
1.2 relating to energy; establishing a right to market-based power supply for certain
1.3 customers; proposing coding for new law in Minnesota Statutes, chapter 216B.

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

1.5 Section 1. [216B.1697] RIGHT TO MARKET-BASED POWER SUPPLY.

1.6 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
1.7 the meanings given them.

1.8 (b) "Average delivered cost of electric energy" means the total price that a large industrial
1.9 customer pays the electric utility on an annual basis for electric energy, divided by the large
1.10 industrial customer's total annual electric energy consumption, on a calendar year basis,
1.11 measured by the electric utility for billing purposes. Total price includes all costs assessed
1.12 by the electric utility, including but not limited to energy charges, demand charges, customer
1.13 charges, rider charges, sales or other true-up mechanisms, franchise fees, and standby
1.14 charges.

1.15 (c) "Eligible customer" means a large industrial customer whose annual average delivered
1.16 cost of electric energy, as measured on a dollar per kilowatt-hour basis, fails to comply with
1.17 section 216C.05, subdivision 2, clause (4). A large industrial customer remains an eligible
1.18 customer for a period of either (1) five years from the date the large industrial customer's
1.19 average delivered cost of energy first failed to comply with section 216C.05, subdivision
1.20 2, clause (4), or (2) the duration of any written contract entered into pursuant to this section
1.21 between an eligible customer and eligible service provider, whichever is longer. For purposes
1.22 of determining compliance under this paragraph, 2020 is the earliest possible noncompliance
1.23 date. For purposes of this paragraph, the national average under section 216C.05, subdivision

2.1 2, clause (4), is the most recent data reported by the United States Energy Information  
2.2 Administration, on an annual basis, for industrial customers of full-service providers. If the  
2.3 United States Energy Information Administration is replaced or the category for industrial  
2.4 customers of full-service providers is no longer reported, the replacement agency or the  
2.5 reporting category that most closely matches must be used.

2.6 (d) "Eligible service" means electric service furnished by an investor-owned electric  
2.7 utility to an eligible customer under terms and conditions mutually agreed upon in a written  
2.8 contract that sets the power supply price at either (1) the price the investor-owned electric  
2.9 utility pays for electric energy generated from a renewable energy resource, as defined under  
2.10 section 216B.2422, subdivision 1, paragraph (c), under a power purchase agreement entered  
2.11 into pursuant to the eligible customer's request, or (2) the locational marginal price of the  
2.12 wholesale market, as determined by reference to the Minnesota hub in the Midcontinent  
2.13 Independent System Operator system or a successor organization.

2.14 (e) "Fees" means all costs above the power supply price for eligible service, including  
2.15 but not limited to transmission-related costs an investor-owned electric utility incurs under  
2.16 a federally approved tariff governing transmission, distribution-related costs, credits or other  
2.17 value associated with renewable energy generation, and any premium above the power  
2.18 supply price.

2.19 (f) "Large industrial customer" means a customer of an investor-owned electric utility  
2.20 that either (1) takes electric service at a voltage of 69,000 volts or greater, or (2) imposes a  
2.21 peak demand on an investor-owned electric utility's system of not less than 10,000 kilowatts  
2.22 at a single site, based on the sum of measured demand of all meters for all buildings,  
2.23 structures, equipment, and installations at the single site, including demand offset by on-site  
2.24 generation facilities. For purposes of this paragraph, peak demand is measured in the same  
2.25 way as the investor-owned electric utility measures electrical demand for billing purposes.

2.26 Subd. 2. **Right to contract for eligible service.** (a) Notwithstanding any other provision  
2.27 in this chapter, an investor-owned public utility must offer an eligible customer eligible  
2.28 service within six months of the date the investor-owned utility receives written notice that  
2.29 the customer qualifies as an eligible customer. The contract for eligible service may be for  
2.30 all or a portion of the eligible customer's electric service requirements. Commission approval  
2.31 is not required for a contract entered into under this section. If an investor-owned electric  
2.32 utility fails to offer eligible service to an eligible customer within the time frame required  
2.33 under this paragraph, the eligible customer is entitled to recover from the investor-owned  
2.34 electric utility treble damages and reasonable attorney fees to compel compliance with this  
2.35 section.

3.1 (b) A written contract for eligible service must memorialize the terms and conditions  
3.2 under which an eligible customer receives eligible service. The written contract for eligible  
3.3 service may include fees. A contract for eligible service must not include fees that are more  
3.4 than ten percent above the power supply price.

3.5 (c) An eligible customer that enters into a contract under this section may continue to  
3.6 receive eligible service for the duration of the written contract, including any amendments,  
3.7 extensions, or renewals to the contract, regardless of whether the customer continues to  
3.8 meet the definition of an eligible customer in subdivision 1, paragraph (c), in subsequent  
3.9 years.

3.10 (d) A large energy facility, as defined in section 216B.2421, that begins construction  
3.11 after the effective date of this section and that provides eligible service to one or more  
3.12 eligible customers under this section is exempt from section 216B.243.

3.13 (e) The commission is prohibited from assessing a charge, rate, cost, or penalty against  
3.14 an eligible customer for receiving eligible service under this section.

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