A bill for an act

relating to energy; modifying community-based energy development program; amending Minnesota Statutes 2008, section 216B.1612, subdivisions 3, 5, 7, by adding a subdivision; Minnesota Statutes 2009 Supplement, section 216B.1612, subdivision 2.

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

Section 1. Minnesota Statutes 2009 Supplement, section 216B.1612, subdivision 2, is amended to read:

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~~ beneficiary" 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~~, but only in proportion to the ownership by 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; or

(7) a corporation, limited liability company, or partnership whose principal place of business or principal executive office is located in Minnesota.

A public utility, as defined in section 216B.02, subdivision 4, is not a qualifying beneficiary.

(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.~~ "Qualifying revenue" includes, but is not limited to:

(1) royalties, distributions, and dividends flowing to individuals who are qualifying beneficiaries;

(2) fees for consulting, development, professional, construction, and operations and maintenance services paid to qualifying beneficiaries;

(3) interest and bank fees paid to qualifying beneficiaries;

(4) the value-added portion of payments for goods manufactured in Minnesota; and

(5) production taxes.

(e) "Discount rate" means the ten-year United States Treasury Yield as quoted in the Wall Street Journal as of the date of application for determination under subdivision 10, plus five percent; except that the discount rate applicable to any qualifying revenues contingent upon an equity investor earning a specified internal rate of return is the ten-year United States Treasury Yield, plus eight percent.

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

~~(g)~~ (h) "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 <u>of the net present value </u>of the gross revenues from a power purchase agreement over the life of the project ~~will flow to~~ <u>are</u> qualifying ~~owners and other local entities~~<u> revenues</u>; and

~~(3)~~ <u>(2) </u>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.

<u>(i) "Value-added portion" means the difference between the total sales price and the total cost of components, materials, and services purchased from or provided outside of Minnesota.</u>

Sec. 2. Minnesota Statutes 2008, section 216B.1612, subdivision 3, is amended to read:

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~~ <u>C-BED projects </u>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~~.

Sec. 3. Minnesota Statutes 2008, section 216B.1612, subdivision 5, is amended to read:

Subd. 5. **Priority for C-BED projects.** (a) A utility subject to section 216B.1691that 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~~ <u>beneficiaries</u>, a C-BED project for the consideration of the municipal power agency or generation and transmission cooperative.

Sec. 4. Minnesota Statutes 2008, section 216B.1612, subdivision 7, is amended to read:

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~~ <u>C-BED project may be jointly developed with a non-C-BED project</u>. 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~~ <u>energy produced by the C-BED project</u>.

~~(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)~~ <u>(d)</u> 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.

Sec. 5. Minnesota Statutes 2008, section 216B.1612, is amended by adding a subdivision to read:

Subd. 10. **C-BED eligibility determination.** (a) A project may seek a predetermination of C-BED eligibility from the commissioner at any time. Before construction, a project must obtain a determination of C-BED eligibility based on final financing terms. Preconstruction determinations must be made by the commission if approval of the power purchase agreement is required under subdivision 7, paragraph (d), or the commissioner if approval is not required under subdivision 7, paragraph (d).

(b) When seeking a determination under this subdivision, a community-based project developer must provide detailed financial projections demonstrating that, based on a net present value analysis, the project meets the requirements of subdivision 2, paragraph (h), clause (1). Under the net present value analysis, the community-based project developer shall apply the discount rate to qualifying revenues and revenues from the power purchase agreement over the life of the project.