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A bill for an act

relating to energy; requiring electric utilities to meet resource needs using carbon-free resources; requiring a study; requiring a cost of service evaluation; amending Minnesota Statutes 2020, sections 216B.03; 216B.16, subdivisions 6, 13; 216B.1645, subdivisions 1, 2; 216B.1691, subdivision 9; 216B.2422, subdivisions 1, 2, by adding subdivisions; 216B.243, subdivision 3b; proposing coding for new law in Minnesota Statutes, chapters 216B; 216C; repealing Minnesota Statutes 2020, section 216B.2422, subdivision 4.

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

Section 1. Minnesota Statutes 2020, section 216B.03, is amended to read:

216B.03 REASONABLE RATE.

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers. To the maximum reasonable extent, the commission shall set rates ~~to encourage~~ based on cost of service, while considering noncost factors such as economic growth, job retention, energy conservation, and renewable energy use and to further the goals of sections 216B.164, 216B.1696, 216B.241, and 216C.05. Any doubt as to reasonableness should be resolved in favor of the consumer. For rate-making purposes a public utility may treat two or more municipalities served by it as a single class wherever the populations are comparable in size or the conditions of service are similar.

Sec. 2. Minnesota Statutes 2020, section 216B.16, subdivision 6, is amended to read:

Subd. 6. **Factors considered, generally.** The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for public utilities, shall give due

consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property. In determining the rate base upon which the utility is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. For purposes of determining rate base, the commission shall consider the original cost of utility property included in the base and shall make no allowance for its estimated current replacement value. If the commission orders a generating facility to terminate its operations before the end of the facility's physical life in order to comply with a specific state or federal energy statute or policy, or as part of a resource planning order under section 216B.2422, the commission may allow the public utility to recover any positive net book value of the facility as determined by the commission.

Sec. 3. Minnesota Statutes 2020, section 216B.16, subdivision 13, is amended to read:

Subd. 13. **Economic and community development.** The commission may allow a public utility to recover from ratepayers the expenses incurred for: (1) economic and community development; and (2) efforts to maximize employment of local workers to construct and maintain generation facilities that supply power to the utility's customers.

Sec. 4. **[216B.1623] DEMAND-SIDE MANAGEMENT PROGRAM.**

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

(b) "Demand" means the maximum integrated hourly sum of load, expressed in kilowatts, imposed by an eligible customer on the system of an investor-owned electric utility over a specified period, including a day, month, or year.

(c) "Demand response customer facilities" means the portion of the load that eligible customers commit to participation in a demand-side management program.

(d) "Demand-side management program" means a program under which demand response customer facilities are compensated for reducing demand or energy to a level specified in a contract or tariff, during both emergency and normal economic conditions.

(e) "Eligible customer" means customers of an investor-owned electric utility that are large industrial customers.

(f) "Energy" means an amount of electricity that is consumed over a period of time, measured in kilowatt-hours.

(g) "Large industrial customer" means a customer that either (1) takes electric service at a voltage of 69,000 voltage or greater; or (2) imposes a peak demand on an investor-owned electric utility's system of not less than 10,000 kilowatts at a single site, based upon the sum of measured demand of all meters for all buildings, structures, equipment, and installations at the single site, and including demand offset by on-site generation facilities.

Subd. 2. **Demand-side management program.** (a) No later than January 1, 2022, an investor-owned electric utility must petition the commission for approval of a new demand-side management program or seek modification of an existing demand-side management program.

(b) The commission may approve, disapprove, or modify a demand-side management program. Any demand-side management program approved by the commission must:

(1) be open to all eligible customers and designed in a manner that reasonably encourages eligible customer participation in the demand-side management program;

(2) fairly compensate the eligible customer, which must include consideration for the eligible customer's participation in the demand-side management program, any actual reduction of demand or energy on the investor-owned electric utility's system, any reduced need of the investor-owned electric utility for new capacity resources, and any reduction to the environmental costs, established under section 216B.2422, subdivision 3, associated with generating resources not utilized due to the demand response customer facilities;

(3) allow the investor-owned electric utility to recover the actual cost of compensation pursuant to a cost-recovery rider or other mechanism, provided that the utility must not recover any cost of compensation or other cost associated with a demand-side management program from a demand response customer facility; and

(4) be reasonably consistent with programs offered by the Midcontinent Independent System Operator or its successor.

Sec. 5. Minnesota Statutes 2020, section 216B.1645, subdivision 1, is amended to read:

Subdivision 1. **Commission authority.** Upon the petition of a public utility, the Public Utilities Commission shall approve or disapprove power purchase contracts, investments,

or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.169, 216B.2423, and 216B.2424, and to satisfy the renewable energy objectives and standards set forth in section 216B.1691, including reasonable investments and expenditures made to:

(1) transmit the electricity generated from sources developed under those sections that is ultimately used to provide service to the utility's retail customers, including studies necessary to identify new transmission facilities needed to transmit electricity to Minnesota retail customers from generating facilities constructed to satisfy the renewable energy objectives and standards, provided that the costs of the studies have not been recovered previously under existing tariffs and the utility has filed an application for a certificate of need or for certification as a priority project under section 216B.2425 for the new transmission facilities identified in the studies;

(2) provide storage facilities for renewable energy generation facilities that contribute to the reliability, efficiency, or cost-effectiveness of the renewable facilities; ~~or~~

(3) develop renewable energy sources from the account required in section 116C.779~~.~~; or

(4) upgrade or modify existing transmission facilities primarily used to transmit electricity generated by a carbon-free resource, as defined in section 216B.2422, subdivision 1, paragraph (f), regardless of whether the public utility has satisfied the standards under section 216B.1691.

Sec. 6. Minnesota Statutes 2020, section 216B.1645, subdivision 2, is amended to read:

Subd. 2. **Cost recovery.** The expenses incurred by the utility over the duration of the approved contract or useful life of the investment ~~and~~, expenditures made pursuant to section 116C.779 ~~shall be~~, and efforts to maximize employment of local workers to construct and maintain generation facilities that supply power to the utility's customers are recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission under subdivision 1, which, in the case of transmission expenditures, are limited to the portion of actual transmission costs that are directly allocable to the need to transmit power from the renewable sources of energy. The commission may not approve recovery of the costs for that portion of the power generated from sources governed by this section that the utility sells into the wholesale market.

Sec. 7. Minnesota Statutes 2020, section 216B.1691, subdivision 9, is amended to read:

Subd. 9. **Local benefits.** The commission shall take all reasonable actions within its statutory authority to ensure this section is implemented to maximize benefits to Minnesota citizens and local workers as defined in section 216B.2422, subdivision 1, balancing factors such as local ownership of or participation in energy production, local job impacts as defined in section 216B.2422, subdivision 1, development and ownership of eligible energy technology facilities by independent power producers, Minnesota utility ownership of eligible energy technology facilities, the costs of energy generation to satisfy the renewable standard, and the reliability of electric service to Minnesotans.

Sec. 8. Minnesota Statutes 2020, section 216B.2422, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Utility" means an entity with the capability of generating 100,000 kilowatts or more of electric power and serving, either directly or indirectly, the needs of 10,000 retail customers in Minnesota. Utility does not include federal power agencies.

(c) "Renewable energy" means electricity generated through use of any of the following resources:

(1) wind;

(2) solar;

(3) geothermal;

(4) hydro;

(5) trees or other vegetation;

(6) landfill gas, anaerobic digestion, and mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste; or

(7) predominantly organic components of wastewater effluent, sludge, or related by-products from publicly owned treatment works, but not including incineration of wastewater sludge.

(d) "Resource plan" means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs. These resource options include using,

refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation.

(e) "Refurbish" means to rebuild or substantially modify an existing electricity generating resource of ~~30~~ 40 megawatts or greater.

(f) "Carbon-free resource" means a generation facility that, when operating, does not contribute to statewide greenhouse gas emissions, as defined in section 216H.01, subdivision 2, or a program or practice that reduces the need for energy generation. Carbon-free resource includes a generation facility, or a program or practice, that uses one or more of the following:

(1) renewable energy;

(2) energy storage;

(3) conservation, energy efficiency, and load management, as defined by section 216B.241, subdivision 1;

(4) nuclear energy;

(5) hydrogen technologies; or

(6) power generation utilizing carbon capture and storage technology, if the carbon capture and storage facility captures, on an annual basis, at least 80 percent of the carbon dioxide the facility produces from burning fuel to generate electricity and:

(i) injects carbon dioxide captured into a geologic formation to prevent its release into the atmosphere;

(ii) makes commercial use of the carbon dioxide captured, including by transferring it to a third party for commercial use; or

(iii) employs a combination of items (i) and (ii).

(g) "Energy storage system" means a commercially available technology that:

(1) uses mechanical, chemical, or thermal processes to:

(i) store energy~~, including energy generated from renewable resources and energy that would otherwise be wasted,~~ and deliver the stored energy for use at a later time; or

(ii) store thermal energy for direct use for heating or cooling at a later time in a manner that reduces the demand for electricity at the later time;

(2) is composed of stationary equipment;

(3) if being used for electric grid benefits, is operationally visible and capable of being controlled by the distribution or transmission entity managing it, to enable and optimize the safe and reliable operation of the electric system; ~~and~~

(4) facilitates the use of other carbon-free resources; and

(5) achieves any of the following:

(i) reduces peak or electrical demand;

(ii) defers the need or substitutes for an investment in electric generation, transmission, or distribution assets;

(iii) improves the reliable operation of the electrical transmission or distribution systems~~, while ensuring transmission or distribution needs are not created~~; or

(iv) lowers customer costs by storing energy when the cost of generating or purchasing ~~it~~ energy is low and delivering ~~it~~ energy to customers when the costs are high.

(h) "Carbon-emitting resource" means a generation facility that is not a carbon-free resource.

(i) "Local job impacts" means the impacts of an integrated resource plan, a power purchase agreement, or a certificate of need for a new or refurbished energy facility on the availability of high-quality construction and mining employment opportunities to local workers.

(j) "Local workers" means workers, employed to construct or maintain energy infrastructure, who are Minnesota residents, residents of the utility's service territory, or who permanently reside within 150 miles of a proposed new or refurbished energy facility.

Sec. 9. Minnesota Statutes 2020, section 216B.2422, subdivision 2, is amended to read:

Subd. 2. **Resource plan filing and approval.** (a) A utility shall file a resource plan with the commission periodically in accordance with rules adopted by the commission. The commission shall approve, reject, or modify the plan of a public utility, as defined in section 216B.02, subdivision 4, consistent with the public interest.

(b) In the resource plan proceedings of all other utilities, the commission's order shall be advisory and the order's findings and conclusions shall constitute prima facie evidence which may be rebutted by substantial evidence in all other proceedings. With respect to utilities other than those defined in section 216B.02, subdivision 4, the commission shall consider the filing requirements and decisions in any comparable proceedings in another jurisdiction.

(c) As a part of its resource plan filing, a utility shall include the least cost plan for meeting 50 and 75 percent of all new energy needs from both new and refurbished generating facilities through ~~a combination of conservation and renewable energy~~ carbon-free resources.

Sec. 10. Minnesota Statutes 2020, section 216B.2422, is amended by adding a subdivision to read:

Subd. 4a. **Preference for carbon-free resources.** (a) The commission is prohibited from (1) approving a new or refurbished carbon-emitting resource in Minnesota in an integrated resource plan or a certificate of need pursuant to section 216B.243, (2) approving a power purchase agreement for a new or refurbished carbon-emitting resource in Minnesota, or (3) authorizing rate recovery pursuant to section 216B.16 for a carbon-emitting resource, unless the utility has demonstrated that a carbon-free resource, alone or in combination with other carbon-free resources, is not in the public interest.

(b) When making the public interest determination under paragraph (a), the commission must consider, based on projections in the integrated resource plan:

(1) whether the resource need must be met by a carbon-emitting resource in Minnesota to avoid an unreasonable increase in customer rates or a decrease in local or regional grid reliability or energy adequacy;

(2) whether the resource need could be met at lower cost by utilizing existing infrastructure or a site that has previously held electric generation;

(3) whether the resource need could be met at a lower cost by refueling an existing carbon-emitting resource with a less-carbon-intensive or noncarbon fuel supply, including but not limited to combinations of natural gas, bionatural gas, or hydrogen, whether the proposed resource helps the utility facilitate the reduction of greenhouse gas emissions or 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;

(4) utility and ratepayer impacts resulting from the intermittent nature of renewable energy facilities, including but not limited to the costs of purchasing wholesale electricity in the market and the costs of providing reliability and ancillary services;

(5) utility and ratepayer impacts resulting from reduced exposure to fuel price volatility, changes in transmission costs, portfolio diversification, and environmental compliance costs, as well as utility and ratepayer impacts that might result from additional investment in carbon-emitting resources;

(6) ratepayer impacts of resource options on customer bills and utility rates, provided any doubt regarding the various resource options before the commission must be resolved in favor of supporting the economy, job growth, and job retention; and

(7) the contribution of proposed resources to local and regional reliability, considering the ability of proposed resources to provide energy, capacity, and essential reliability services needed by the utility customers or the electric system, including, to the extent feasible, frequency response, balancing services, or voltage control.

(c) If the commission finds the utility has demonstrated a carbon-free resource or combination of carbon-free resources is not in the public interest under paragraph (a), the commission may approve a utility's proposal for a new or refurbished carbon-emitting resource.

(d) This subdivision does not apply to energy facilities in a resource plan previously approved by the commission, an energy facility approved by the legislature under Laws 2017, chapter 5, or to commission approval of an affiliated interest agreement for an energy facility in docket number E015/AI-17-568.

(e) The commission is prohibited from approving a resource plan under this subdivision submitted by a public utility that has at least 100,000 customers, but no more than 200,000 customers in Minnesota, if the resource plan includes the retirement of a generating facility that has a positive net book value, unless the public utility has demonstrated that:

(1) the retirement is consistent with the public interest;

(2) the resource plan promotes the energy policy of the state to ensure competitive electric rates for energy-intensive, trade-exposed customers, as required in section 216B.1696, subdivision 2, paragraph (a); and

(3) the costs of operating and maintaining the facility exceed the costs of retirement based on the following factors:

(i) all costs associated with decommissioning the generating resource;

(ii) any stranded asset costs, including but not limited to costs that have not been depreciated and recovered by the utility having an ownership interest in the asset;

(iii) any investments in replacement generation, including the utility's transmission and distribution systems, to ensure all utility system reliability, energy, and capacity needs are met once the generating resource is retired;

(iv) any projected investments necessary to continue operating the generation facility; and

(v) any operation and maintenance saving from retiring the generation facility.

(f) If the commission approves a resource plan that includes the retirement of a carbon-emitting resource owned by a public utility, the public utility is entitled to own the generation, transmission, and other facilities necessary to replace the accredited capacity and energy of the retiring facility, provided:

(1) the resource plan of the public utility with more than 200,000 retail electric customers in Minnesota results in an 80 percent or greater reduction in carbon emissions from 2005 levels by the year 2030 and thereafter;

(2) the resource plan of the public utility with between 50,000 and 200,000 retail electric customers in Minnesota results in a 65 percent reduction in carbon emissions from 2005 levels by the year 2030 and thereafter; and

(3) each public utility demonstrates the public utility's ownership of replacement resources is in the public interest, considering customer impacts and benefits.

(g) Nothing in this subdivision impacts a decision to continue operating a peaking generation facility with no more than ten percent annual capacity factor that is generating energy in Minnesota.

(h) This subdivision does not apply to utility decisions to purchase capacity, energy, and ancillary services for up to an annual period from any independent system operator market or auction, or to otherwise participate in a wholesale market administered by an independent system operator.

Sec. 11. Minnesota Statutes 2020, section 216B.2422, is amended by adding a subdivision to read:

Subd. 4b. **Preference for local job creation.** As a part of its resource plan filing, a utility must report, to the extent known, on associated local job impacts and the steps the utility and the utility's energy suppliers and contractors are taking to maximize the availability of construction employment opportunities for local workers. The commission must consider local job impacts and give preference to proposals that maximize the creation of construction employment opportunities for local workers, consistent with the public interest, when evaluating any utility proposal that involves the selection or construction of facilities used to generate or deliver energy to serve the utility's customers, including but not limited to an

integrated resource plan, a certificate of need, a power purchase agreement, or commission approval of a new or refurbished electric generation facility.

Sec. 12. Minnesota Statutes 2020, section 216B.2422, is amended by adding a subdivision to read:

Subd. 6a. **Resource planning conference.** The commissioner of commerce may, as circumstances warrant, convene utilities subject to this section and stakeholders interested in resource planning to: (1) facilitate the sharing of best practices and planning innovations from one utility resource plan to the next; (2) help resolve issues that impact all utilities during the resource plan development process; and (3) promote coordination across resource plans. The commissioner must seek input from likely attendees regarding topics the resource planning conference should cover. In addition, the agenda for the conference should review key decisions by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation that could impact resource planning, as well as recent and ongoing transmission studies and market innovations from the Midcontinent Independent System Operator.

Sec. 13. Minnesota Statutes 2020, section 216B.243, subdivision 3b, is amended to read:

Subd. 3b. ~~**Nuclear power plant; new construction prohibited; relicensing**~~ **Additional storage of spent nuclear fuel.** ~~(a) The commission may not issue a certificate of need for the construction of a new nuclear-powered electric generating plant.~~

~~(b)~~ Any certificate of need for additional storage of spent nuclear fuel for a facility seeking a license extension shall address the impacts of continued operations over the period for which approval is sought.

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

Sec. 14. **[216C.46] POWER PLANT HOST COMMUNITY TRANSITION PLANNING.**

The commissioner of commerce must coordinate with the commissioner of labor and industry and the commissioner of employment and economic development to develop plans, programs, and other recommendations to mitigate the impacts on host communities in Minnesota and workers resulting from the eventual retirement of large generation facilities. The commissioners must coordinate this work with representatives of: (1) the local government units that host large generation facilities; (2) the workers at large generation

facilities, including full-time employees and contractors; and (3) the utilities that own large generation facilities.

Sec. 15. **COORDINATED ELECTRIC TRANSMISSION STUDY.**

(a) The commissioner of commerce must request the Midcontinent Independent System Operator (MISO) to conduct an engineering study of the impacts on reliability and estimated costs and benefits of operational changes and enhancements to the transmission system necessary to support increased use of carbon-free electrical generation sources for Minnesota and throughout the MISO footprint, along with the possible eventual retirement of existing generation resources serving Minnesota customers.

(b) If the request is accepted, MISO is responsible for completing the study work, with the support of the electric utilities subject to transmission planning under Minnesota Rules, chapter 7848. Prior to the start of the study, MISO must appoint a technical review committee with experience and expertise in electric transmission system engineering, power system operation, and renewable and carbon-free energy technologies to review the study's proposed methods, work plan, models, and preliminary and near final results. The technical review committee must be chaired by a representative from MISO and include representatives from Minnesota electric utilities, including one representative from a utility that owns nuclear generation, one from a generation and transmission cooperative, one from a transmission company, one from a municipal utility, and one from a municipal power agency. In addition, MISO must work with state utility regulators, as well as stakeholders from across the electricity industry, nongovernmental organization, consumer advocates, and labor representatives.

(c) To the extent possible, the study must integrate and optimize the study and resulting potential transmission projects with previous and current study efforts, coordinate with neighboring regions to the MISO footprint and adjacent regional transmission organizations, and identify barriers, challenges, and opportunities.

(d) The study must include, but is not limited to:

(1) establishing scenarios for study of increased carbon-free energy resources and energy storage and retirement of existing generation;

(2) identifying new power system operating challenges and possible mitigation strategies and areas where new strategies are required but are not yet discernible;

(3) developing conceptual level plans of the required new and modified transmission, including time frames and indicative cost;

(4) identifying when ascertainable, likely new significant transmission projects or modifications, including time frames and indicative cost; and

(5) identifying functional requirements for and time frames when nontransmission technology may be needed to augment the transmission in conceptual plan and the new projects or modifications.

(e) The first meeting of the technical review committee must be held no later than July 15, 2021, and the study should be complete, with a comprehensive report submitted to the Public Utilities Commission no later than December 1, 2022.

Sec. 16. **COST OF SERVICE ALLOCATION EVALUATION.**

(a) The Public Utilities Commission, in consultation with the commissioner of commerce, must evaluate the current cost of service allocation for public utilities, as defined in Minnesota Statutes, section 216B.02, providing electric service in this state. The commission must report for each utility: (1) the cost allocation between residential, commercial, industrial, and energy-intensive trade exposed customers, as defined in Minnesota Statutes, section 216B.1696, subdivision 1, paragraph (c), relative to a single coincident peak cost allocation methodology; and (2) whether rates for the utility's energy intensive trade exposed customers comply with the state policy of ensuring competitive rates for those customers as established in Minnesota Statutes, section 216B.1696.

(b) The commission must also include in the evaluation: (1) an analysis of historical rates for each public utility for the previous ten years; and (2) any recommendations to help ensure that future electric energy costs remain stable for energy intensive trade exposed customers.

(c) The commission must submit the evaluation required under this section to the chairs and ranking minority members of legislative committees with jurisdiction over energy policy and finance by January 15, 2022.

Sec. 17. **REPEALER.**

Minnesota Statutes 2020, section 216B.2422, subdivision 4, is repealed.

Sec. 18. **EFFECTIVE DATE.**

Sections 1 to 12 and 14 to 17 are effective August 1, 2021, and apply only to dockets initiated at the Public Utilities Commission on or after that date.

216B.2422 RESOURCE PLANNING; RENEWABLE ENERGY.

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. When making the public interest determination, the commission must consider:

(1) 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;

(2) impacts on local and regional grid reliability;

(3) utility and ratepayer impacts resulting from the intermittent nature of renewable energy facilities, including but not limited to the costs of purchasing wholesale electricity in the market and the costs of providing ancillary services; and

(4) utility and ratepayer impacts resulting from reduced exposure to fuel price volatility, changes in transmission costs, portfolio diversification, and environmental compliance costs.