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Bill Summary

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Article 1: Transmission Companies

Overview

Article 1 contains provisions that:

- provide conditions under which the Public Utilities Commission may approve the transfer of electric transmission assets to a transmission company that is under the jurisdiction of the Federal Energy Regulatory Commission
- extend to transmission companies commission jurisdiction in several regulatory areas
- specify conditions under which the commission may approve tariffs that allows utilities to automatically recover certain transmission costs
- direct the commission to take regional impacts on the electricity grid into account in evaluating need under the certificate of need process

- 1 1** **Transmission company.** Defines "transmission company" to exclude utilities owning transmission facilities.
- 2** **Transmission cost adjustment.** Allows the Public Utilities Commission to approve a tariff for the automatic adjustment of charges for the costs of new transmission facilities reviewed

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and approved by the commission as part of a state transmission plan or through the certificate of need process.

The commission may approve, modify, or reject a tariff that:

- allows a utility to recover costs, net of revenues, of facilities approved as part of a state transmission plan or certificate of need process
- allows a return on investment at the level approved in the utility's last general rate case, unless a different return is found to be in the public interest
- provides a return on current work in progress, provided that recovery of these costs is not sought through another mechanism
- allows other expenses to be recovered, if shown to promote a least-cost project option or is otherwise in the public interest
- allocates project costs appropriately between wholesale and retail customers
- provides a mechanism for recovery above cost if necessary to improve a project's economics or is otherwise in the public interest

A utility may file annual rate adjustments to be applied to customer bills under the tariff, which the commission shall approve if the costs to be recovered were or are expected to be prudently incurred and to improve the transmission system at the lowest feasible and prudent cost to ratepayers.

3 **Transmission assets transfer.** Allows owners of a transmission system to transfer operational control of it to a transmission company that is under Federal Energy Regulatory Commission (FERC) jurisdiction. The commission may review such a transfer in a general rate case or a separate proceeding, and may only approve a transfer it finds:

- is consistent with the public interest
- facilitates the development of transmission infrastructure necessary to ensure reliability, develop renewable resources and accommodate energy transfers within and between states
- protects Minnesota ratepayers from subsidizing wholesale transactions
- ensures that the state retains jurisdiction over the transferring utility for all aspects of service regulated under section 216B

A transfer requires commission approval under section 216B.50, which governs utility mergers and plant transfers. The commission's standard for approving such actions is that they are consistent with the public interest. The relationship between the transferring utility and the entity with operational control is subject to regulation under section 216B.48, which

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governs relations between utilities and affiliated interests, and requires the commission to approve any contract between the parties in excess of \$50,000. Under that section, the commission may exclude any payments to an affiliated interest from the accounts of the utility found to be unreasonable.

The commission may allow a utility to file for an automatic adjustment of charges to recover the costs of transmission services purchased under FERC-approved rates.

4 **Large energy facility.** Amends the definition of a high voltage transmission line, currently 200 kV or more, to require that it also be greater than 1,500 feet in length.

5 **List development; transmission projects report.** Requires transmission companies to submit a biennial report to the commission, as utilities are currently required to do, identifying future transmission inadequacies and offers means to address them.

6 **Opportunities for distributed generation.** The commission shall insure that opportunities to install distributed generation projects are considered in the resource planning process, the transmission planning process, and the certificate of need process.

7 **Showing required for construction.** Directs the commission, in assessing need during the certificate of need process, to evaluate, with respect to a high voltage transmission line or other large energy facility:

- the relationship of the line to proposed regional energy needs, as presented in the utility's transmission plan submitted under section 216B.2425
- the benefits of enhanced regional reliability, access, or deliverability that improves the robustness of the system or lower costs to consumers
- whether the applicant is in compliance with renewable energy objectives, state transmission plan requirements, or has filed or will file by a date certain an application for a certificate of need
- whether the applicant has shown, under section 216B. 243, subdivision 3a, that it has explored the option of generating power from renewable energy and demonstrated that the alternative selected is less expensive, including environmental costs
- for nonrenewable generation projects, the applicant's assessment of the risks of environmental costs and regulation on the proposed facility over the life of the plant, and how costs of those risks are proposed to be allocated

8 **Commission approval required.** Requires commission approval for a public utility to sell, acquire, lease or rent any plant in excess of \$100,000, or to merge with, a transmission company.

9 **Assessing transmission companies.** Allows the commission and the Department of Commerce to assess transmission companies for their proportionate share of expenses entailed in commission reviews and proceedings.

10 **Preventative maintenance.** Extends the commission's authority to order utilities to make infrastructure investments and preventative maintenance expenditures to a transmission

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company owning or operating transmission lines in Minnesota.

11 Local power quality zones. Allows the commission to establish, upon joint petition of a utility and a customer, a zone in the utility's service territory where the utility will install additional or upgraded equipment to decrease the risk of power outages. All customers in such a zone must approve the installation and a plan to recover the costs. The commission shall authorize the utility to recover the costs through tariffs and surcharges.

12 Stakeholder process and report. Requires the Legislative Electric Energy Task Force to convene a group of stakeholders representing utilities, consumer advocates, and affected state agencies to investigate whether current state administrative processes to certify and route transmission lines can be modified to increase their efficiency and effectiveness. A report summarizing the group's findings and recommendations must be submitted to the legislature by January 15, 2006.

Article 2: Community-Based Energy Tariff

Overview

Article 2 requires public utilities, municipal power agencies and generation and transmission cooperatives to establish a community-based energy development tariff to promote wind projects throughout the state. It defines who may own such projects, the rate that must be offered in such a tariff and how it must be structured, and other issues. Article 2 also provides for a statewide study to determine the impacts on rates and reliability of increasing wind capacity in Minnesota to 20 percent by 2020, and a study of alternative ways to compensate landowners on whose land high voltage transmission lines are constructed.

1 1 Community-based energy development; tariff.

Subd. 1. Tariff establishment. Directs that a tariff be established to facilitate development of community-based wind energy projects in this state.

Subd. 2. Definitions. Defines terms used in this section, including:

(c) "Qualifying owner" means a Minnesota resident; limited liability corporation made up of Minnesota residents; a Minnesota nonprofit organization organized under chapter 317A; a Minnesota cooperative association organized under chapter 308A or 308B, excluding a rural electric cooperative association or a generation and transmission cooperative; a Minnesota political subdivision, other than a municipal utility or municipal power agency; or 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 expected energy production over the life of the power purchase agreement.

(f) "Community-based energy project" or "C-BED project" means a new wind energy project that has no single qualifying owner owning more than 15 percent of a project consisting of two or more turbines, or, for one- and two-turbine projects, is owned

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entirely by qualifying owners, with at least 51 percent of the project's total financial benefits flowing to qualifying owners. A C-BED project must have a resolution of support adopted by the county board or, if applicable, a tribal council, where the project is located.

Subd. 3. Tariff rate. Directs the Public Utilities Commission to establish a model C-BED tariff by September 1, 2005. The rate must have a higher rate during the first ten years of the power purchase agreement than in the last ten years, and may be up to 2.7 cents per kilowatt hour in net present value terms. The discount rate used to compute the net present value must be the utility's normal discount rate used for other business purposes.

The model tariff shall require owners to provide sufficient security to insure performance under the power purchase agreement, and shall prohibit transfer of project ownership to a nonqualifying owner during the initial 20 years of the contract.

Subd. 4. Utilities to offer tariff. Requires public utilities and municipal power agencies and generation and transmission cooperatives to file a CBED-tariff with the commission within 90 days after the commission issues an order containing a model tariff.

Subd. 5. Priority for C-BED projects. Encourages a utility seeking to satisfy a renewable energy objective under section 216B.1691 to take reasonable steps to determine if C-BED projects that meet the utility's cost and reliability requirements are available to fulfill the objectives with minimal rate impact.

Subd. 6. Property owner participation. Requires a C-BED project developer to provide, to the extent feasible, an opportunity to invest in the project to each property owner on whose property a high voltage transmission line is constructed to transmit energy from the C-BED project, so long as the property owner resides in the county where the C-BED project is located, or in an adjacent county.

Subd. 7. Other C-BED tariff issues. Requires a C-BED project developer and a utility to negotiate a rate and power purchase agreement consistent with the requirements of the tariff offered in subdivision 4, but allows, at the discretion of the developer, for negotiation of an agreement with terms different from those requirements.

Any C-BED project that is a joint venture between qualifying and nonqualifying owners must utilize the terms of a C-BED tariff only for the portion of the project's energy production equal to the equity share of qualifying owners.

A project receiving a C-BED tariff is ineligible for net energy billing (section 216.164) and renewable energy production incentives (section 216C.41).

The commission must approve a C-BED tariff with a higher rate during the first ten years of the power purchase agreement than in the last ten years, and must provide

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ratepayers an opportunity to address the reasonableness of such an agreement.

- 2 **Commission authority.** Requires commission approval of contracts, investments or expenditures to satisfy a utility's renewable energy objectives, including reasonable costs of studies to identify new transmission facilities needed to transmit electricity to Minnesota retail consumers to satisfy those objectives.
- 3 **Priority transmission projects.** Requires the commission, until January 1, 2010, to certify as a priority electric transmission project those it determines are necessary to meet a utility's renewable energy objective. To make this finding, the commission must find:
- that the transmission facility is necessary to allow power from renewable energy sources to be delivered to Minnesota customers
 - that the applicant has signed or will sign power purchase agreements for resources to meet the objective that are dependent on or will use the transmission facility to deliver the energy to Minnesota customers
 - that the operation date of the renewable resources will match the planned in-service date of the transmission facility
 - that the transmission facility is consistent with a least cost solution to the utility's need for additional electricity
- 4 **Exemptions.** Adds a new category to projects exempted from seeking a certificate of need from the commission: a wind project generating 50,000 kW or more that serves Minnesota customers; is specifically intended to be used to meet the utility's renewable energy objectives or addresses a need identified in an integrated resource plan approved or reviewed by the commission; and which derives at least 10 percent of its nameplate capacity from C-BED projects.
- 5 **Renewable energy development.** Requires the Department of Commerce to assist renewable energy developers, regulators, and others to ensure cost-effective renewable energy development throughout the state.
- 6 **Wind integration study.** Requires the commission to order public utilities, municipal power associations and generation and transmission cooperative associations to participate in a statewide study of the impact on reliability and costs of increasing wind capacity in Minnesota to 20 percent of total electric retail sales by 2020. The reliability administrator (housed in the Minnesota Department of Commerce) is to select a contractor to conduct the study, which must be completed by November 30, 2006. Utilities are to incorporate the study's findings into their integrated resource plans.
- 7 **Landowner payments working group.** Requires the Legislative Electric Energy Task Force to convene a working group to study alternative methods of remunerating rural landowners on whose land high voltage transmission lines are constructed, and to issue a report by January 15, 2006.

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Article 3: Transfer of Siting and Routing Authority for Large Energy Facilities

Overview

Article 3 transfers responsibility for power plant siting and routing of high voltage transmission lines from the Environmental Quality Board to the Public Utilities Commission, leaving those processes largely unchanged. It thereby consolidates in the commission authority to issue a certificate of need for such projects and, following a review of the environmental impacts of the proposed project as compared with alternatives, siting, and routing permits. The bill makes joint hearings on both need and siting issues the norm.

The bill also specifies that the Department of Commerce will provide technical assistance with respect to environmental review for these projects, and transfers the position and responsibility of the Reliability Administrator from the Department of Commerce to the commission.

- 1 **1** **Commission.** Defines "commission" as the Public Utilities Commission.
- 2 **High voltage transmission line.** Amends the definition of high voltage transmission line, currently one operating at 100 kilovolts or more, to require that the line also be greater than 1,500 feet in length.
- 3 **Jurisdiction.** Substitutes "commission" for "board" as the holder of authority to select the route and site of and issuing permits for large electric power facilities from the board to the commission. Strikes language stating that issues of need, size, type of facility, and other issues are outside the board's (and by implication, the commission's) siting and routing authority.
- 4 **Site permit.** Substitutes "commission" for "board" with respect to specifying that a large electric generating plant may only be constructed on an approved site.
- 5 **Environmental review.** Specifies that the Department of Commerce shall prepare an environmental impact statement for the commission on a large electric generating plant or high voltage transmission line applying for a permit. Prohibits the commissioner of the Department of Commerce from considering questions of need regarding the project, even if the project has not obtained a certificate of need from the commission.
- 6 **Department of Commerce to provide technical assistance and other assistance.** Requires the Department of Commerce to provide technical expertise to the commission, including the sharing of staff, in evaluating the environmental impacts of alternative sites and routes for power plants, high voltage transmission lines and wind energy conversion systems. The commission will reimburse the agency for the cost of such assistance. At either agency's request, an interagency agreement will be entered into that establishes terms and conditions for the provision of assistance.
- 7 **Environmental review.** Designates that the Department of Commerce will prepare an environmental assessment for a project electing the alternative review procedure established under section 116C.575.
- 8 **Emergency permit.** Substitutes "commission" for "board" with respect to issuing an

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emergency permit for construction of a large electric generating plant or high voltage transmission line.

- 9 Annual hearing.** Substitutes "commission" for "board" with respect to the holding of an annual hearing on siting and routing issues.
- 10 State agency participation.** Directs an applicant for a siting and routing permit to notify the commissioner of agriculture if the proposed project will impact cultivated agricultural land. The commissioner of agriculture may make recommendations regarding issuance of the permit and actions that should be taken to mitigate impacts to cultivated agricultural land.
- 11 Site application fee.** Strikes language setting fees to applicants of \$500 per \$1,000,000 investment in the proposed generating plant and a ceiling of \$1,000 per \$1,000,000 invested. Provides that the commission set fees to recover "necessary and reasonable" costs of acting on the application. The commission is authorized to adopt rules regarding payment of the fee, which is exempted from the statutory requirement that the legislature set fees.
- 12 Route application fee.** Strikes language setting a base fee of \$35,000 and \$1,000 per mile for applications for a route permit for a high voltage transmission line. Provides that the commission set fees to recover "necessary and reasonable" costs of acting on the application. The commission is authorized to adopt rules regarding payment of the fee, which is exempted from the statutory requirement that the legislature set fees.
- 13 Application for certificate; hearing.** Strikes language requiring an applicant to apply for a certificate of need prior to applying for a site and route permit. A joint hearing on both need and siting and routing must be held unless the commission determines it is not feasible, not more efficient, or otherwise not in the public interest.
- 14 Approval, denial, or modification.** Extends the commission's deadline for approving a certificate of need from six to 12 months after an application is submitted. The commission may extend the time period further if the parties agree to an extension, or may do so on its own motion, for good cause.
- 15 Participation by other agency or political subdivision.** Directs an applicant for a certificate of need to notify the commissioner of agriculture if the proposed project will impact cultivated agricultural land. The commissioner of agriculture may make recommendations regarding issuance of the permit and actions that should be taken to mitigate impacts to cultivated agricultural land.
- 16 Reliability administrator.** Transfers the position of Reliability Administrator from the Department of Commerce to the commission and extends the position for an additional year, to June 30, 2007. Strikes language requiring the reliability administrator to advise the commissioner of commerce and the Legislative Energy Electric Task Force. Amends the reliability administrator's duties to including assisting the commission with respect to power plant siting and routing, emergency permits, eminent domain issues, wind systems, and pipelines.
- 17 Transferring power plant siting responsibilities.** Transfers all responsibilities for power plant siting and routing (sections 116C. 51 to 116C.69) and wind energy conversion systems (sections 116C.691 to 116C.697) and rules associated with them to the commission. Responsibilities for environmental review of siting, construction, and operation of an independent spent-fuel storage installation on the site of a Minnesota nuclear generating facility (section 116C.83, subdivision 6) are transferred to the Department of Commerce. The power plant siting staff of the environmental quality board is transferred to the Department of Commerce.

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18 Transferring reliability administrator responsibilities. Transfers all responsibilities of the Commerce Department relating to the reliability administrator and staff currently performing those duties to the commission.

19 Revisor's instruction. Instructs the revisor to change entity names, as appropriate.

20 Effective date. Sections 1 to 16 are effective July 1, 2005.

Article 4: Gas Infrastructure Cost Recovery

Overview

Article 4 provides a mechanism for gas utilities to recover, outside of a general rate case, the costs of relocating and replacing infrastructure that must be moved because of public construction projects.

1 1 Recovery of eligible infrastructure replacement costs by gas utilities.

Subd. 1. Definitions. "Gas utility infrastructure costs" ("GUIC") means gas utility projects that: 1) do not increase revenues by directly connecting new customers; 2) are in service but were not included in the company's last general rate case; and 3) replace or modify existing infrastructure.

"Gas utility projects" means relocation and replacement of natural gas facilities located in the public right-of-way required by the construction of a highway or other public work by the federal or state government, or a political subdivision.

Subd. 2. Filing. Allows a company to file to recover GUIC no more than once a year. The filing must contain sufficient information to satisfy the Public Utilities Commission regarding the proposed recovery, or it may deny the request. Necessary information includes, but is not limited to:

- ▶ the costs and salvage value associated with the infrastructure replaced or modified;
- ▶ the ratio of GUIC to the utility's base revenue approved by the commission in the utility's last general rate case, exclusive of gas purchase and transportation charges;
- ▶ the ratio of GUIC to the utility's capital expenditures since its last general rate case;
- ▶ documentation supporting the calculation of GUIC.

Subd. 3. Commission authority. The commission may issue orders and adopt rules to implement and administer this section.

2 2 Report to legislature. Requires the Department of Commerce to submit a report to the legislature on the operation and impact of the GUIC recovery mechanism on utilities and ratepayers four years after the effective date of this section.

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3 **Sunset.** Sections 1 and 2 expire on June 30, 2015.

Article 5: Miscellaneous

1 1 **Wind energy; property tax.** Allows an owner of a wind energy conversion system or a public utility purchasing wind-generated electricity to petition the commission to include in the price contained in a power purchase agreement the amount of production taxes paid by the utility. The commission is required to do so if it finds that the owner has paid production taxes that the power purchase agreement does not require the utility to pay. This adjustment must also be made in an agreement entered into prior to 1997 if the production taxes in any year exceeded the amount of property or production taxes included in the price paid to the utility.

2 **Conservation improvement by cooperative association or municipality.** Strikes obsolete standards pertaining to past years. Reduces filing requirements for municipalities and cooperatives filing overviews of their conservation improvement plan from at least every two years to at least every four years.

3 3 **Programs.** Public utilities are required to file conservation improvement plans at least every four years, and the programs themselves are to cover a four-year period.

Amends language specifying the amount of funds to be spent on residential conservation improvement programs addressing the needs of renters and low-income persons. Strikes current language requiring the commissioner to ensure that funds are spent in proportion to the rolling three-year average amount the utility has historically spent on such programs and replaces it with a requirement that the utility make a good faith effort to ensure that spending for this population varies proportionately with the utility's overall conservation spending.

4 4 **Application fees; rules.** Strikes language allowing the commission to require an additional fee cover the costs of a rehearing for a certificate of need. Allows costs exceeding the maximum fee allowed and reasonably necessary to complete the need evaluation to be recovered from an applicant. If the applicant is a utility or transmission company, the applicant may be assessed as provided in section 216B.62.

5 5 **Assessing cooperatives and municipals.** Expands the types of utilities that the commission and the Department of Commerce may assess for the costs of proceedings and the types of proceedings as well. This section subjects generation and transmission cooperative electric associations and municipal power agencies to such assessments, and includes proceedings for a certificate of need (section 216B.243) and those with respect to renewable energy objectives (section 216B.1691) among proceedings for which assessments can be made.

6 6 **Definitions.** Amends the definition of "qualified on-farm biogas recovery facility" by striking the requirement that the facility begin generating electricity after July 1, 2001.

7 7 **Legislative findings.** States that the utilization of the Internet by the commission and the Department of Commerce has expanded participation in commission proceedings, and that allowing documents to be electronically filed and retrieved will increase the ease of participation.

8 8 **Establishment of e-filing system; account; appropriation.** Establishes the commission's e-filing account and allows it to make a one-time assessment of \$315,000 to regulated utilities. Revenue in the account is appropriated to the commissions to establish an e-filing system, which is to be operational by September 30, 2005.

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- 9 9** **Study; biodiesel fuel for home heating.** Directs the reliability administrator to utilize up to \$25,000 from funds available to the commissioner of commerce for technical studies to conduct a technical and economic analysis of the benefits to be realized by using biodiesel fuel as a home heating fuel. A report of the study results shall be presented to the legislature by March 15, 2007.
- 10 10** **Joint venture authority.** Allows the City of Alexandria to enter into joint venture agreements with the Runestone Electric Association and two other named entities to provide certain telecommunications and information services.
- 11 11** **Repealer.** Repeals a sunset date for provisions governing certain procedures of the Public Utilities Commission, including appointing lead commissioners in certain dockets or issue areas.