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S.F. No. 1901 - PUC Cost-Recovery Authority Expansion

Author: Senator James P. Metzen

Prepared by: Matthew S. Grosser, Senate Research (651/296-1890)

Date: April 6, 2005

Section 1 adds a definition of a transmission company to the chapter of Minnesota statutes governing public utilities. "Transmission company" is defined as a legal entity other than a public utility, municipal power agency, cooperative electrical association, or generation and transmission cooperative power association, engaged in the business of operating, maintaining, or controlling equipment or facilities in this state for furnishing electric transmission service in Minnesota.

Section 2 specifies that Public Utility Commission costs exceeding the certificate of need application fee that are incurred by the Commission in evaluating the need for a proposed facility shall be recovered from the applicant, not to exceed two-fifths of one percent of the gross retail operating revenues of the applicant.

Section 3 adds municipal power agencies and generation and transmission cooperative associations to the subdivision governing PUC assessments of regulatory expenses on municipals and cooperatives.

Section 4 adds a subdivision governing the PUC's assessment of regulatory expenses on transmission companies.

MSG:cs

Senators Metzen and Sparks introduced--

S.F. No. 1901: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to utilities; allowing recovery of costs of certificate of need proceedings; amending Minnesota Statutes 2004, sections 216B.02, by adding a subdivision; 216B.243, subdivision 6; 216B.62, subdivision 5, by adding a subdivision.

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

Section 1. Minnesota Statutes 2004, section 216B.02, is amended by adding a subdivision to read:

Subd. 10. [TRANSMISSION COMPANY.] "Transmission company" means persons, corporations, or other legal entities and their lessees, trustees, and receivers, now or hereafter engaged in the business of operating, maintaining, or controlling in this state equipment or facilities for furnishing electric transmission service in the state of Minnesota, but does not include public utilities, municipal electric utilities, municipal power agencies, cooperative electric associations, or generation and transmission cooperative power associations.

Sec. 2. Minnesota Statutes 2004, section 216B.243, subdivision 6, is amended to read:

Subd. 6. [APPLICATION FEES; RULES.] Any application for a certificate of need shall be accompanied by the application fee required pursuant to this subdivision. The application fee is to be applied toward the total costs reasonably necessary to complete the evaluation of need for the proposed facility. The maximum application fee shall be $50,000, except for an

application for an electric power generating plant as defined in section 216B.2421, subdivision 2, clause (1), or a high-voltage transmission line as defined in section 216B.2421, subdivision 2, clause (2), for which the maximum application fee shall be $100,000. ~~The commission may require an additional fee to recover the costs of any rehearing. The fee for a rehearing shall not be greater than the actual cost of the rehearing or the maximum fee specified above, whichever is less.~~ Costs exceeding the application fee and reasonably necessary to complete the evaluation of need for the proposed facility shall be recovered from the applicant. If the applicant is a public utility, a cooperative electric association, a generation and transmission cooperative electric association, a municipal power agency, a municipal electric utility, or a transmission company, the recovery shall be done pursuant to section 216B.62. The commission shall establish by rule pursuant to chapter 14 and sections 216C.05 to 216C.30 and this section, a schedule of fees based on the output or capacity of the facility and the difficulty of assessment of need. Money collected in this manner shall be credited to the general fund of the state treasury.

Sec. 3. Minnesota Statutes 2004, section 216B.62, subdivision 5, is amended to read:

Subd. 5. [ASSESSING COOPERATIVES AND MUNICIPALS.] The commission and department may charge cooperative electric associations, generation and transmission cooperative electric associations, municipal power agencies, and municipal electric utilities their proportionate share of the expenses incurred in the review and disposition of resource plans, adjudication of service area disputes, proceedings under section 216B.1691, 216B.2425, or 216B.243, and the costs incurred in the adjudication of complaints over service standards, practices, and rates. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.026, subdivision 4, are also subject to this section. Neither a cooperative electric association nor a municipal

electric utility is liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2. A cooperative electric association, generation and transmission cooperative electric association, municipal power agency, or municipal electric utility may object to and appeal bills of the commission and department as provided in subdivision 4.

The department shall assess cooperatives and municipalities for the costs of alternative energy engineering activities under section 216C.261. Each cooperative and municipality shall be assessed in proportion that its gross operating revenues for the sale of gas and electric service within the state for the last calendar year bears to the total of those revenues for all public utilities, cooperatives, and municipalities.

Sec. 4. Minnesota Statutes 2004, section 216B.62, is amended by adding a subdivision to read:

Subd. 5a. [ASSESSING TRANSMISSION COMPANIES.] The commission and department may charge transmission companies their proportionate share of the expenses incurred in the review and disposition of proceedings under sections 216B.2425, 216B.243, 216B.50, and 216B.79. A transmission company is not liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2. A transmission company may object to and appeal bills of the commission and department as provided in subdivision 4.

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S.F. No. 1902 - Utility Siting and Routing Authority Transfer

Author: Senator James P. Metzen

Prepared by: Matthew S. Grosser, Senate Research (651/296-1890)

Date: April 6, 2005

The bill transfers all authority and responsibility for power plant, transmission route, wind energy conversion system, and pipeline site selection from the Environmental Quality Board to the Public Utilities Commission. The bill directs the Pollution Control Agency to give technical expertise and other assistance to the PUC in carrying out the site selection authority. The PUC shall reimburse the Pollution Control Agency for costs associated with that assistance. The bill modifies the application fees assessed for the site selection process such that they cover the necessary and reasonable commission costs. The bill also transfers all Reliability Administrator responsibilities from the Department of Commerce to the PUC.

MSG:cs

Senator Metzen introduced--

S.F. No. 1902: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to public utilities; transferring power plant siting and routing, wind energy conversion system, and pipeline authority from the Environmental Quality Board to the Public Utilities Commission; amending Minnesota Statutes 2004, sections 116C.52, subdivision 2; 116C.53, subdivision 2; 116C.57, subdivisions 1, 2c, by adding a subdivision; 116C.575, subdivision 5; 116C.577; 116C.58; 116C.69, subdivisions 2, 2a; 216B.243, subdivisions 4, 5; 216C.052.

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

Section 1. Minnesota Statutes 2004, section 116C.52, subdivision 2, is amended to read:

Subd. 2. [BOARD COMMISSION.] "Board Commission" ~~shall mean the Minnesota Environmental Quality Board~~ means the Public Utilities Commission.

Sec. 2. Minnesota Statutes 2004, section 116C.53, subdivision 2, is amended to read:

Subd. 2. [JURISDICTION.] The ~~board~~ commission is hereby given the authority to provide for site and route selection for large electric power facilities. The ~~board~~ commission shall issue permits for large electric power facilities in a timely fashion~~.--When the Public Utilities Commission has determined~~ the and in a manner consistent with the overall determination of need for the project under section 216B.243 or 216B.2425~~,~~. Questions of need, including size, type, and timing; alternative system configurations; and voltage ~~are not within the board's siting and routing authority and~~ must not be included in the

scope of environmental review conducted under sections 116C.51 to 116C.69.

Sec. 3. Minnesota Statutes 2004, section 116C.57, subdivision 1, is amended to read:

Subdivision 1. [SITE PERMIT.] No person may construct a large electric generating plant without a site permit from the ~~board~~ commission. A large electric generating plant may be constructed only on a site approved by the ~~board~~ commission. The ~~board~~ commission must incorporate into one proceeding the route selection for a high voltage transmission line that is directly associated with and necessary to interconnect the large electric generating plant to the transmission system and whose need is certified ~~as part of the generating plant project by the Public Utilities Commission~~ under section 216B.243.

Sec. 4. Minnesota Statutes 2004, section 116C.57, subdivision 2c, is amended to read:

Subd. 2c. [ENVIRONMENTAL REVIEW.] The ~~board~~ commissioner of the Pollution Control Agency shall prepare for the commission an environmental impact statement on each proposed large electric generating plant or high voltage transmission line for which a complete application has been submitted. ~~For any project that has obtained a certificate of need from the Public Utilities Commission, the board~~ The commissioner shall not consider whether or not the project is needed. No other state environmental review documents shall be required. The ~~board~~ commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the ~~board~~ commission deems necessary that was proposed in a manner consistent with rules ~~adopted by the board~~ concerning the form, content, and timeliness of proposals for alternate sites or routes.

Sec. 5. Minnesota Statutes 2004, section 116C.57, is amended by adding a subdivision to read:

Subd. 9. [POLLUTION CONTROL AGENCY TO PROVIDE TECHNICAL EXPERTISE AND OTHER ASSISTANCE.] The commissioner of the Pollution Control Agency shall provide technical expertise and other assistance to the commission for activities and

proceedings under this section, sections 116C.51 to 116C.697, and chapter 116I. The commissioner shall periodically report to the commission concerning the Pollution Control Agency's costs of providing assistance. The report shall conform to the schedule and include the required contents specified by the commission. The commission shall include the costs of the assistance in assessments for activities and proceedings under those sections and reimburse the special revenue fund for those costs.

Sec. 6. Minnesota Statutes 2004, section 116C.575, subdivision 5, is amended to read:

Subd. 5. [ENVIRONMENTAL REVIEW.] For the projects identified in subdivision 2 and following these procedures, the board commissioner of the Pollution Control Agency shall prepare for the commission an environmental assessment. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the board commission and shall address mitigating measures for all of the sites or routes considered. The environmental assessment shall be the only state environmental review document required to be prepared on the project.

Sec. 7. Minnesota Statutes 2004, section 116C.577, is amended to read:

116C.577 [EMERGENCY PERMIT.]

(a) Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line due to a major unforeseen event may apply to the board commission for an emergency permit ~~after-providing~~. The application shall provide notice in writing ~~to-the-Public-Utilities-Commission~~ of the major unforeseen event and the need for immediate construction. The permit must be issued in a timely manner, no later than 195 days after the board's commission's acceptance of the application and upon a finding by the board commission that (1) a demonstrable emergency exists, (2) the emergency requires

immediate construction, and (3) adherence to the procedures and time schedules specified in section 116C.57 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner.

(b) A public hearing to determine if an emergency exists must be held within 90 days of the application. The board commission, after notice and hearing, shall adopt rules specifying the criteria for emergency certification.

Sec. 8. Minnesota Statutes 2004, section 116C.58, is amended to read:

116C.58 [ANNUAL HEARING.]

The board commission shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting of large electric generating power plants and routing of high voltage transmission lines. At the meeting, the board commission shall advise the public of the permits issued by the board commission in the past year. The board commission shall provide at least ten days but no more than 45 days' notice of the annual meeting by mailing notice to those persons who have requested notice and by publication in the EQB Monitor and the commission's weekly calendar.

Sec. 9. Minnesota Statutes 2004, section 116C.69, subdivision 2, is amended to read:

Subd. 2. [SITE APPLICATION FEE.] Every applicant for a site permit shall pay to the board commission a fee ~~in an amount equal to $500 for each $1,000,000 of production plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. The applicant shall pay within 30 days of notification any additional fees reasonably necessary for completion of the site evaluation and designation process by the~~

~~board.--In-no-event-shall-the-total-fees-required-of-the applicant-under-this-subdivision-exceed-an-amount-equal-to-0.001 of-said-production-plant-investment-(~~$1,000-for-each ~~$1,000,000).~~ to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the board commission to pay expenses incurred in processing applications for site permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 10. Minnesota Statutes 2004, section 116C.69, subdivision 2a, is amended to read:

Subd. 2a. [ROUTE APPLICATION FEE.] Every applicant for a transmission line route permit shall pay to the board commission ~~a base-fee-of-$35,000-plus-a-fee-in-an-amount-equal-to-$1,000 per-mile-length-of-the-longest-proposed-route.--The-board-shall specify-the-time-and-manner-of-payment-of-the-fee.--If-any single-payment-requested-by-the-board-is-in-excess-of-25-percent of-the-total-estimated-fee,-the-board-shall-show-that-the-excess is-reasonably-necessary.--In-the-event-the-actual-cost-of processing-an-application-up-to-the-board's-final-decision-to designate-a-route-exceeds-the-above-fee-schedule,-the-board-may assess-the-applicant-any-additional-fees-necessary-to-cover-the actual-costs,-not-to-exceed-an-amount-equal-to-$500-per-mile length-of-the-longest-proposed-route.~~ fee to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the board commission to pay expenses incurred in processing

applications for route permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 11. Minnesota Statutes 2004, section 216B.243, subdivision 4, is amended to read:

Subd. 4. [APPLICATION FOR CERTIFICATE; HEARING.] Any person proposing to construct a large energy facility shall apply for a certificate of need ~~prior-to-applying~~ and for a site or route permit under sections 116C.51 to 116C.69 or construction of the facility. The application shall be on forms and in a manner established by the commission. In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need and, if a joint hearing is held, a site or route permit. The commission shall designate a commission employee whose duty shall be to facilitate citizen participation in the hearing process. ~~If~~ Unless the commission ~~and-the Environmental-Quality-Board-determine~~ determines that a joint hearing on siting and need under this subdivision and section 116C.57, subdivision 2d, is not feasible~~,~~ or more efficient, ~~and may-further~~ or otherwise not in the public interest, a joint hearing under those subdivisions ~~may~~ shall be held.

Sec. 12. Minnesota Statutes 2004, section 216B.243, subdivision 5, is amended to read:

Subd. 5. [APPROVAL, DENIAL, OR MODIFICATION.] Within ~~six~~ 12 months of the submission of an application, the commission shall approve or deny a certificate of need for the facility. Approval or denial of the certificate shall be accompanied by a statement of the reasons for the decision. Issuance of the certificate may be made contingent upon modifications required by the commission.

Sec. 13. Minnesota Statutes 2004, section 216C.052, is amended to read:

216C.052 [RELIABILITY ADMINISTRATOR.]

Subdivision 1. [RESPONSIBILITIES.] (a) There is established the position of reliability administrator in the ~~Department of Commerce~~ Public Utilities Commission. The administrator shall act as a source of independent expertise and a technical advisor to the commissioner, the commission, the public, and the Legislative Electric Energy Task Force on issues related to the reliability of the electric system. In conducting its work, the administrator shall:

(1) model and monitor the use and operation of the energy infrastructure in the state, including generation facilities, transmission lines, natural gas pipelines, and other energy infrastructure;

(2) develop and present to the commission and parties technical analyses of proposed infrastructure projects, and provide technical advice to the commission;

(3) present independent, factual, expert, and technical information on infrastructure proposals and reliability issues at public meetings hosted by the task force, the Environmental Quality Board, the department, or the commission.

(b) Upon request and subject to resource constraints, the administrator shall provide technical assistance regarding matters unrelated to applications for infrastructure improvements to the task force, the department, or the commission.

(c) The administrator may not advocate for any particular outcome in a commission proceeding, but may give technical advice to the commission as to the impact on the reliability of the energy system of a particular project or projects. The administrator must not be considered a party or a participant in any proceeding before the commission.

Subd. 2. [ADMINISTRATIVE ISSUES.] (a) The ~~commissioner~~ commission may select the administrator who shall serve for a four-year term. The administrator may not have been a party or a participant in a commission energy proceeding for at least one year prior to selection by the ~~commissioner~~

commission. The ~~commissioner~~ commission shall oversee and direct the work of the administrator, annually review the expenses of the administrator, and annually approve the budget of the administrator. The administrator may hire staff and may contract for technical expertise in performing duties when existing state resources are required for other state responsibilities or when special expertise is required. The salary of the administrator is governed by section 15A.0815, subdivision 2.

(b) Costs relating to a specific proceeding, analysis, or project are not general administrative costs. For purposes of this section, "energy utility" means public utilities, generation and transmission cooperative electric associations, and municipal power agencies providing natural gas or electric service in the state.

(c) The ~~Department of Commerce~~ commission shall pay:

(1) the general administrative costs of the administrator, not to exceed $1,000,000 in a fiscal year, and shall assess energy utilities for those administrative costs. These costs must be consistent with the budget approved by the ~~commissioner~~ commission under paragraph (a). The ~~department~~ commission shall apportion the costs among all energy utilities in proportion to their respective gross operating revenues from sales of gas or electric service within the state during the last calendar year, and shall then render a bill to each utility on a regular basis; and

(2) costs relating to a specific proceeding analysis or project and shall render a bill to the specific energy utility or utilities participating in the proceeding, analysis, or project directly, either at the conclusion of a particular proceeding, analysis, or project, or from time to time during the course of the proceeding, analysis, or project.

(d) For purposes of administrative efficiency, the ~~department~~ commission shall assess energy utilities and issue bills in accordance with the billing and assessment procedures provided in section 216B.62, to the extent that these procedures

do not conflict with this subdivision. The amount of the bills rendered by the ~~department~~ commission under paragraph (c) must be paid by the energy utility into an account in the special revenue fund in the state treasury within 30 days from the date of billing and is appropriated to the ~~commissioner~~ commission for the purposes provided in this section. The commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover amounts paid by utilities under this section. All amounts assessed under this section are in addition to amounts appropriated to the commission ~~and the department~~ by other law.

Subd. 3. [ASSESSMENT AND APPROPRIATION.] In addition to the amount noted in subdivision 2, the ~~commissioner~~ commission may assess utilities, using the mechanism specified in that subdivision, up to an additional $500,000 annually through June 30, 2006. The amounts assessed under this subdivision are appropriated to the ~~commissioner~~ commission, and some or all of the amounts assessed may be transferred to the commissioner of administration, for the purposes specified in section 16B.325 and Laws 2001, chapter 212, article 1, section 3, as needed to implement those sections.

Subd. 4. [EXPIRATION.] This section expires June 30, ~~2006~~ 2007.

Sec. 14. [TRANSFERRING POWER PLANT SITING RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.51 to 116C.69; wind energy conversion systems under Minnesota Statutes, sections 116C.691 to 116C.697; pipelines under Minnesota Statutes, chapter 116I; and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statutes, section 116C.83, subdivision 6, and Minnesota Rules, parts 4400.1700, 4400.2750, and 4410.7010

to 4410.7070, are transferred to the commissioner of the Pollution Control Agency.

Sec. 15. [TRANSFERRING RELIABILITY ADMINISTRATOR RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes 2004, section 15.039, subdivision 1, held by the Minnesota Department of Commerce relating the reliability administrator under Minnesota Statutes 2004, section 216C.052, are transferred to the Minnesota Public Utilities Commission under Minnesota Statutes 2004, section 15.039.

Sec. 16. [REVISOR'S INSTRUCTION.]

(a) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "Public Utilities Commission," "commission," or "commission's," as appropriate, where they appear in Minnesota Statutes, sections 13.741, subdivision 3, 116C.51 to 116C.697, and chapter 116I. The revisor shall also make those changes in Minnesota Rules, chapters 4400, 4401, and 4415, except as specified in paragraph (b).

(b) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "commissioner of the Pollution Control Agency," "commissioner," or "commissioner's," as appropriate, where they appear in Minnesota Statutes, section 116C.83, subdivision 6; and Minnesota Rules, parts 4400.1700, subparts 1 to 9, 11, and 12; 4400.2750; and 4410.7010 to 4410.7070.

Sec. 17. [EFFECTIVE DATE.]

Sections 1 to 16 are effective July 1, 2005.

Senator ..... moves to amend S.F. No. 1902 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 116C.52, subdivision 2, is amended to read:

Subd. 2. [BOARD COMMISSION.] ~~"Board" shall mean the Minnesota Environmental Quality Board~~ "Commission" means the Public Utilities Commission.

Sec. 2. Minnesota Statutes 2004, section 116C.52, subdivision 4, is amended to read:

Subd. 4. [HIGH VOLTAGE TRANSMISSION LINE.] "High voltage transmission line" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length.

Sec. 3. Minnesota Statutes 2004, section 116C.53, subdivision 2, is amended to read:

Subd. 2. [JURISDICTION.] The ~~board~~ commission is hereby given the authority to provide for site and route selection for large electric power facilities. The ~~board~~ commission shall issue permits for large electric power facilities in a timely fashion~~.---When the Public Utilities Commission has determined the~~ and in a manner consistent with the overall determination of need for the project under section 216B.243 or 216B.2425~~,~~. Questions of need, including size, type, and timing; alternative system configurations; and voltage ~~are not within the board's siting and routing authority and~~ must not be included in the scope of environmental review conducted under sections 116C.51 to 116C.69.

Sec. 4. Minnesota Statutes 2004, section 116C.57, subdivision 1, is amended to read:

Subdivision 1. [SITE PERMIT.] No person may construct a large electric generating plant without a site permit from the ~~board~~ commission. A large electric generating plant may be constructed only on a site approved by the ~~board~~ commission. The ~~board~~ commission must incorporate into one proceeding the route selection for a high voltage transmission line that is

directly associated with and necessary to interconnect the large electric generating plant to the transmission system and whose need is certified ~~as part of the generating plant project by the Public Utilities Commission~~ under section 216B.243.

Sec. 5. Minnesota Statutes 2004, section 116C.57, subdivision 2c, is amended to read:

Subd. 2c. [ENVIRONMENTAL REVIEW.] The ~~board~~ commissioner of the Department of Commerce shall prepare for the commission an environmental impact statement on each proposed large electric generating plant or high voltage transmission line for which a complete application has been submitted. ~~For any project that has obtained a certificate of need from the Public Utilities Commission, the board~~ The commissioner shall not consider whether or not the project is needed. No other state environmental review documents shall be required. The ~~board~~ commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the ~~board~~ commission deems necessary that was proposed in a manner consistent with rules ~~adopted by the board~~ concerning the form, content, and timeliness of proposals for alternate sites or routes.

Sec. 6. Minnesota Statutes 2004, section 116C.57, is amended by adding a subdivision to read:

Subd. 9. [DEPARTMENT OF COMMERCE TO PROVIDE TECHNICAL EXPERTISE AND OTHER ASSISTANCE.] The commissioner of the Department of Commerce shall provide technical expertise and other assistance to the commission for activities and proceedings under this section, sections 116C.51 to 116C.697, and chapter 116I. The commissioner shall periodically report to the commission concerning the Department of Commerce's costs of providing assistance. The report shall conform to the schedule and include the required contents specified by the commission. The commission shall include the costs of the assistance in assessments for activities and proceedings under those sections and reimburse the special revenue fund for those costs.

Sec. 7. Minnesota Statutes 2004, section 116C.575, subdivision 5, is amended to read:

Subd. 5. [ENVIRONMENTAL REVIEW.] For the projects identified in subdivision 2 and following these procedures, the ~~board~~ commissioner of the Department of Commerce shall prepare for the commission an environmental assessment. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the ~~board~~ commission and shall address mitigating measures for all of the sites or routes considered. The environmental assessment shall be the only state environmental review document required to be prepared on the project.

Sec. 8. Minnesota Statutes 2004, section 116C.577, is amended to read:

116C.577 [EMERGENCY PERMIT.]

(a) Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line due to a major unforeseen event may apply to the ~~board~~ commission for an emergency permit ~~after providing~~. The application shall provide notice in writing ~~to the Public Utilities Commission~~ of the major unforeseen event and the need for immediate construction. The permit must be issued in a timely manner, no later than 195 days after the ~~board's~~ commission's acceptance of the application and upon a finding by the ~~board~~ commission that (1) a demonstrable emergency exists, (2) the emergency requires immediate construction, and (3) adherence to the procedures and time schedules specified in section 116C.57 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner.

(b) A public hearing to determine if an emergency exists must be held within 90 days of the application. The ~~board~~ commission, after notice and hearing, shall adopt rules specifying the criteria for emergency certification.

Sec. 9. Minnesota Statutes 2004, section 116C.58, is amended to read:

116C.58 [ANNUAL HEARING.]

The ~~board~~ commission shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting of large electric generating power plants and routing of high voltage transmission lines. At the meeting, the ~~board~~ commission shall advise the public of the permits issued by the ~~board~~ commission in the past year. The ~~board~~ commission shall provide at least ten days but no more than 45 days' notice of the annual meeting by mailing notice to those persons who have requested notice and by publication in the EQB Monitor and the commission's weekly calendar.

Sec. 10. Minnesota Statutes 2004, section 116C.69, subdivision 2, is amended to read:

Subd. 2. [SITE APPLICATION FEE.] Every applicant for a site permit shall pay to the ~~board~~ commission a fee ~~in an amount equal to $500 for each $1,000,000 of production plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. The applicant shall pay within 30 days of notification any additional fees reasonably necessary for completion of the site evaluation and designation process by the board. In no event shall the total fees required of the applicant under this subdivision exceed an amount equal to 0.001 of said production plant investment ($1,000 for each $1,000,000)~~ to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. Section 16A.1283 does not apply to establishment of this fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the ~~board~~ commission to pay expenses incurred in processing

applications for site permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 11. Minnesota Statutes 2004, section 116C.69, subdivision 2a, is amended to read:

Subd. 2a. [ROUTE APPLICATION FEE.] Every applicant for a transmission line route permit shall pay to the ~~board~~ commission a ~~base fee of $35,000 plus a fee in an amount equal to $1,000 per mile length of the longest proposed route. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. In the event the actual cost of processing an application up to the board's final decision to designate a route exceeds the above fee schedule, the board may assess the applicant any additional fees necessary to cover the actual costs, not to exceed an amount equal to $500 per mile length of the longest proposed route~~ fee to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. Section 16A.1283 does not apply to the establishment of this fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the ~~board~~ commission to pay expenses incurred in processing applications for route permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 12. Minnesota Statutes 2004, section 216B.243, subdivision 4, is amended to read:

Subd. 4. [APPLICATION FOR CERTIFICATE; HEARING.] Any person proposing to construct a large energy facility shall apply for a certificate of need ~~prior to applying~~ and for a site or route permit under sections 116C.51 to 116C.69 ~~or~~ prior to construction of the facility. The application shall be on forms

and in a manner established by the commission. In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need and, if a joint hearing is held, a site or route permit. The commission shall designate a commission employee whose duty shall be to facilitate citizen participation in the hearing process. ~~If~~ Unless the commission ~~and the Environmental Quality Board determine~~ determines that a joint hearing on siting and need under this subdivision and section 116C.57, subdivision 2d, is not feasible~~,~~ or more efficient, ~~and may further~~ or otherwise not in the public interest, a joint hearing under those subdivisions ~~may~~ shall be held.

Sec. 13. Minnesota Statutes 2004, section 216B.243, subdivision 5, is amended to read:

Subd. 5. [APPROVAL, DENIAL, OR MODIFICATION.] Within ~~six~~ 12 months of the submission of an application, the commission shall approve or deny a certificate of need for the facility. Approval or denial of the certificate shall be accompanied by a statement of the reasons for the decision. Issuance of the certificate may be made contingent upon modifications required by the commission. If the commission has not issued an order on the application within the 12 months provided, the commission may extent the time period upon receiving the consent of the parties or on its own motion, for good cause, by issuing an order explaining the good cause justification for extension.

Sec. 14. Minnesota Statutes 2004, section 216C.052, is amended to read:

216C.052 [RELIABILITY ADMINISTRATOR.]

Subdivision 1. [RESPONSIBILITIES.] (a) There is established the position of reliability administrator in the ~~Department of Commerce~~ Public Utilities Commission. The administrator shall act as a source of independent expertise and

a technical advisor to ~~the commissioner,~~ the commission, and the public, ~~and the Legislative Electric Energy Task Force~~ on issues related to the reliability of the electric system. In conducting its work, the administrator shall provide assistance to the commission in administering and implementing the commission's duties under sections 116C.51 to 116C.69; sections 116C.691 to 116C.697; 216B.2422; 216B.2425; 216B.243; chapter 116I; and rules associated with those sections. Subject to resource constraints, the reliability administrator may also:

(1) model and monitor the use and operation of the energy infrastructure in the state, including generation facilities, transmission lines, natural gas pipelines, and other energy infrastructure;

(2) develop and present to the commission and parties technical analyses of proposed infrastructure projects, and provide technical advice to the commission;

(3) present independent, factual, expert, and technical information on infrastructure proposals and reliability issues at public meetings hosted by the task force, the Environmental Quality Board, the department, or the commission.

(b) Upon request and subject to resource constraints, the administrator shall provide technical assistance regarding matters unrelated to applications for infrastructure improvements to the task force, the department, or the commission.

(c) The administrator may not advocate for any particular outcome in a commission proceeding, but may give technical advice to the commission as to the impact on the reliability of the energy system of a particular project or projects. ~~The administrator must not be considered a party or a participant in any proceeding before the commission.~~

Subd. 2. [ADMINISTRATIVE ISSUES.] (a) The ~~commissioner~~ commission may select the administrator who shall serve for a four-year term. The administrator may not have been a party or a participant in a commission energy proceeding for at least one year prior to selection by the ~~commissioner~~ commission.

The ~~commissioner~~ commission shall oversee and direct the work of the administrator, annually review the expenses of the administrator, and annually approve the budget of the administrator. Pursuant to commission approval, the administrator may hire staff and may contract for technical expertise in performing duties when existing state resources are required for other state responsibilities or when special expertise is required. The salary of the administrator is governed by section 15A.0815, subdivision 2.

(b) Costs relating to a specific proceeding, analysis, or project are not general administrative costs. For purposes of this section, "energy utility" means public utilities, generation and transmission cooperative electric associations, and municipal power agencies providing natural gas or electric service in the state.

(c) The ~~Department of Commerce~~ commission shall pay:

(1) the general administrative costs of the administrator, not to exceed $1,000,000 in a fiscal year, and shall assess energy utilities for those administrative costs. These costs must be consistent with the budget approved by the ~~commissioner~~ commission under paragraph (a). The ~~department~~ commission shall apportion the costs among all energy utilities in proportion to their respective gross operating revenues from sales of gas or electric service within the state during the last calendar year, and shall then render a bill to each utility on a regular basis; and

(2) costs relating to a specific proceeding analysis or project and shall render a bill to the specific energy utility or utilities participating in the proceeding, analysis, or project directly, either at the conclusion of a particular proceeding, analysis, or project, or from time to time during the course of the proceeding, analysis, or project.

(d) For purposes of administrative efficiency, the ~~department~~ commission shall assess energy utilities and issue bills in accordance with the billing and assessment procedures provided in section 216B.62, to the extent that these procedures

do not conflict with this subdivision. The amount of the bills rendered by the ~~department~~ commission under paragraph (c) must be paid by the energy utility into an account in the special revenue fund in the state treasury within 30 days from the date of billing and is appropriated to the ~~commissioner~~ commission for the purposes provided in this section. The commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover amounts paid by utilities under this section. All amounts assessed under this section are in addition to amounts appropriated to the commission ~~and the department~~ by other law.

Subd. 3. [ASSESSMENT AND APPROPRIATION.] In addition to the amount noted in subdivision 2, the ~~commissioner~~ commission may assess utilities, using the mechanism specified in that subdivision, up to an additional $500,000 annually through June 30, 2006. The amounts assessed under this subdivision are appropriated to the ~~commissioner~~ commission, and some or all of the amounts assessed may be transferred to the commissioner of administration, for the purposes specified in section 16B.325 and Laws 2001, chapter 212, article 1, section 3, as needed to implement those sections.

Subd. 4. [EXPIRATION.] This section expires June 30, ~~2006~~ 2007.

Sec. 15. [TRANSFERRING POWER PLANT SITING RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.51 to 116C.69; wind energy conversion systems under Minnesota Statutes, sections 116C.691 to 116C.697; pipelines under Minnesota Statutes, chapter 116I; and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statutes, section 116C.83, subdivision 6, and Minnesota Rules, parts 4400.1700, 4400.2750, and 4410.7010

to 4410.7070, are transferred to the commissioner of the Department of Commerce. The power plan siting staff of the Environmental Quality Board are transferred to the Department of Commerce. The department's budget shall be adjusted to reflect the transfer.

Sec. 16. [TRANSFERRING RELIABILITY ADMINISTRATOR RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes 2004, section 15.039, subdivision 1, held by the Minnesota Department of Commerce relating to the reliability administrator under Minnesota Statutes, section 216C.052, are transferred to the Minnesota Public Utilities Commission under Minnesota Statutes, section 15.039.

Sec. 17. [REVISOR'S INSTRUCTION.]

(a) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "Public Utilities Commission," "commission," or "commission's," as appropriate, where they appear in Minnesota Statutes, sections 13.741, subdivision 3, 116C.51 to 116C.697, and chapter 116I. The revisor shall also make those changes in Minnesota Rules, chapters 4400, 4401, and 4415, except as specified in paragraph (b).

(b) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "commissioner of the Department of Commerce," "commissioner," or "commissioner's," as appropriate, where they appear in Minnesota Statutes, section 116C.83, subdivision 6; and Minnesota Rules, parts 4400.1700, subparts 1 to 9, 11, and 12; 4400.2750; and 4410.7010 to 4410.7070.

Sec. 18. [EFFECTIVE DATE.]

Sections 1 to 16 are effective July 1, 2005."

Delete the title and insert:

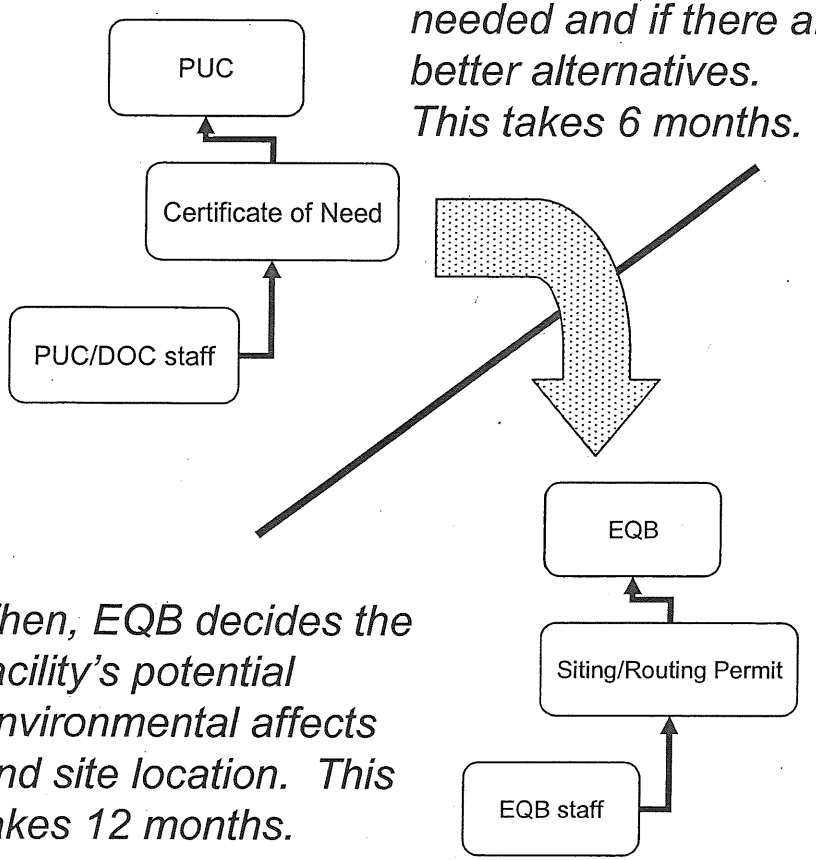
"A bill for an act relating to public utilities; transferring power plant siting and routing, wind energy conversion system, and pipeline authority from the Environmental Quality Board to the Public Utilities Commission; transferring certain environmental review duties to the Department of Commerce; transferring the reliability administrator to the Public Utilities Commission; amending Minnesota Statutes 2004, sections 116C.52, subdivisions 2, 4; 116C.53, subdivision 2; 116C.57, subdivisions 1, 2c, by adding a subdivision; 116C.575, subdivision 5; 116C.577; 116C.58; 116C.69, subdivisions 2, 2a; 216B.243, subdivisions 4, 5; 216C.052."

Uniting Need & Siting Decisions

PUC proposal, as amended by House Reg. Industries Committee

Before change

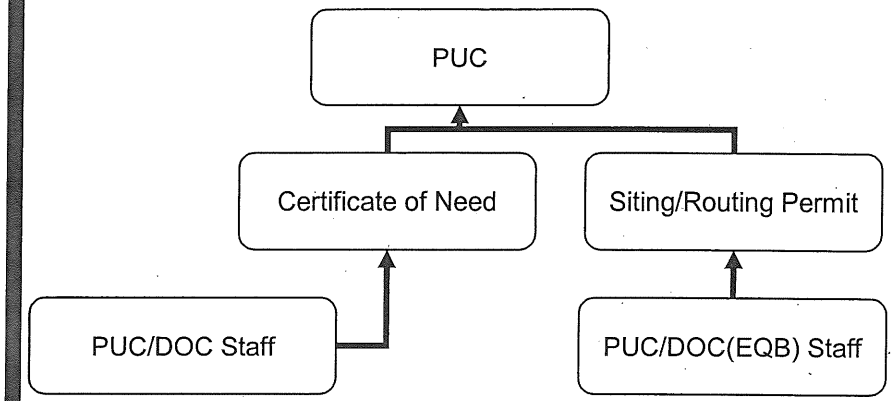
First, PUC decides whether the is facility needed and if there are better alternatives. This takes 6 months.



Then, EQB decides the facility's potential environmental affects and site location. This takes 12 months.

Separate Decisions

After Change



Same decisions; same due process and environmental protections. Only changes:

- PUC makes both decisions
- EQB staff joins DOC
- DOC advises PUC on both Need and Siting decisions

United Decision-Making

Uniting Need & Siting Decisions

PUC initiative, as amended by the House Regulated Industries Committee

Problems with current process:

1. No state decision-maker sees the full picture of full environmental impacts and the complete range of alternatives to a proposed project
   - the PUC undertakes a full review of alternatives to the project, and a limited environmental review
   - the EQB undertakes a full review of environmental impacts of the project, and a limited review of alternatives
   - Commission is most familiar with statewide energy needs, but is shielded from dealing with landowner impacts
2. "You're in the wrong line." Under the current process –
   - A citizen that comes to the EQB to discuss alternatives to a project is told that she has to talk to the PUC; and
   - A citizen that comes to the PUC to talk about specific environmental impacts of a project is told to talk to the EQB
3. "Calm before the storm." Growing need for more energy infrastructure.
   - Between 1970 and 2000, there were only 11 transmission lines 8 large wind facilities and 7 large power plants permitted.
   - Since 2001, there have been 4 large power plants, 6 transmission lines and 5 large wind projects permitted, and with ***many more projects being proposed***.

Summary of proposal:

1. Transfer of responsibility. Transfer power plant & power line siting responsibilities to PUC, with no change in environmental review standards or process for citizen input.
2. Joint hearings on need and siting. Require that joint public hearings for need and siting be the general rule.
3. EQB staff to join Commerce. Transfer current EQB siting staff to Commerce, to provide technical expertise and assistance to PUC.
4. Reliability Administrator transferred to PUC. Transfer the state's Reliability Administrator and staff from Commerce to the PUC to assist the PUC with its new duties.

Benefits of proposal:

1. Decision-maker sees the complete picture
2. Better opportunity for citizen input.
3. Greater accountability
4. More transparency
5. Potential for significant efficiencies.
6. Easier public access

C

COMPARISON OF DECISION MAKERS

PUC	EQB
5 Commissioners	15 Members (10 agency heads, 5 citizens)
Full-time, dedicated to Commission	Part-time duties to Board
Meets each week	Meets once a month
Must comply with open meeting law	Must comply with open meeting law
Not more than 3 commissioners from same political party	No limit on political party affiliation
Six-year, over-lapping terms	Only citizen-members have Board membership terms; agency members change with Administration
Can be removed only "for cause"	Agency members serve "at will"

JOBS, ENERGY AND COMMUNITY DEVELOPMENT SUBCOMMITTEE ON ENERGY
FRIDAY, APRIL 8, 2005
ROOM G-15 CAPITOL
10:30 AM

AGENDA

SF 2091-Day: Property tax exemption for electric generation facility personal property

SF 2163-Pogemiller: Sales and personal property tax exemptions for hydroelectric generating facilities

- Bob Hentges

SF 2166-Anderson: Property tax electric power generation facility efficiency modification and clarification for property tax purposes

SF 2148-Anderson: Energy assistance programs statutory references correction and obsolete energy conservation measures or efficiency standards provisions repeal

SF 1399-Dibble: Public utility innovative energy projects renewable development account grants eligibility elimination

OMNIBUS ENERGY POLICY BILL:
HF1344/SF 1368-Anderson: Public utilities community based energy development tariffs adoption and renewable energy resources and objectives provisions modifications

Senator Day introduced--

S.F. No. 2091: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to taxation; property; providing that certain personal property of an electric generation facility is exempt; amending Minnesota Statutes 2004, section 272.02, by adding a subdivision.

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

Section 1. Minnesota Statutes 2004, section 272.02, is amended by adding a subdivision to read:

Subd. 68. [ELECTRIC GENERATION FACILITY PERSONAL PROPERTY.] (a) Notwithstanding subdivision 9, clause (a), attached machinery and other personal property which is part of either a simple-cycle, combustion-turbine electric generation facility, or a combined-cycle, combustion-turbine electric generation facility that does not exceed 325 megawatts of installed capacity and that meets the requirements of this subdivision is exempt. At the time of construction, the facility must:

(1) utilize either a simple-cycle or a combined-cycle combustion-turbine generator fueled by natural gas;

(2) be connected to an existing 115-kilovolt high-voltage electric transmission line that is within one mile of the facility;

(3) be located on an underground natural gas storage aquifer;

(4) be designed as either a peaking or intermediate load

facility; and

(5) have received, by resolution, the approval from the governing body of the county for the exemption of personal property under this subdivision.

(b) Construction of the facility must be commenced after January 1, 2006, and before January 1, 2008. Property eligible for this exemption does not include electric transmission lines and interconnections or gas pipelines and interconnections appurtenant to the property or the facility.

[EFFECTIVE DATE.] This section is effective for assessment year 2005, taxes payable in 2006, and thereafter.

D

Simon Industries, Inc

Proposed Waterville Power Production Facility

Project Description

Simon Industries, Inc. ("SII") is a Minnesota based, independent generation developer established in 1999 to provide full project solutions to meet generation resource needs throughout the Midwest. SII, together with its partner Black Hills Waterville Station, LLC ("Black Hills"), is proposing to build and operate up to a 325-MW combined-cycle or simple-cycle facility using gas turbine generators fueled by natural gas on a site in Waseca County near Waterville, MN.

Company History

SII has previously developed, licensed and fully permitted a ready-for-construction 46-MW gas fired combined-cycle plant at the Waterville site and has also executed an interconnection and operating agreement with Xcel Energy and the Midwest ISO for that site. The proposed 325 MW gas fired facility is intended to replace the original 46 MW project to better utilize the output capability of this unique site.

Proposed Legislation

In order to make the project financially feasible, SII and its partner Black Hills are seeking an exemption from the personal property tax imposed on the generating equipment in this plant. SII received an exemption in 2002 for a 48-MW combined cycle facility at Waterville, which the proposed larger plant would replace. The previous exemption has expired.

Location

The plant will be located in Blooming Grove Township, in Waseca County. The site is approximately 13 miles north of Waseca off of highway 13 in the northern portion of the county. CenterPoint Energy currently owns the site (and has leased a portion of it to SII for the plant) and operates an underground natural gas storage facility. This site offers unique fuel flexibility, enhanced-scheduling, lower risk, and provides supply savings for fuel management for the proposed facility. A natural gas pipeline will connect the proposed facility to CenterPoint Energy's existing 400 p.s.i.g. natural gas pipeline along the northern boundary of the facility site.

The plant will be electrically connected to Xcel Energy's existing 115 kV transmission line located along the southeast border of Le Sueur County across highway 13. This plant is ideally located on Xcel's transmission system, and will improve the reliability and capacity in the Southern Minnesota region, to meet the forecast deficit predicted by Xcel Energy and other regional utilities.

Community Benefits

- This project will provide a boost to the local economy during construction with some 350 skilled and craft workers on-site for at least 18 months.
- The project and facility will provide permanent employment to the community and help attract industries looking for reliable power as well as looking for a potential source of thermal energy.
- During construction union workers will be hired from the surrounding area.
- Post construction the plant will employ between 17-25 individuals.
- The plant will pay approximately $250,000 in real estate taxes to the local taxing jurisdiction.
- The plant will bring much needed additional electrical power to the grid in the Southern portion of Minnesota.
- Utilizing natural gas as steam makes the design of the plant environmentally friendly and highly efficient.

Senator Pogemiller introduced--

S.F. No. 2163: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to taxation; providing a personal property tax exemption and a sales tax exemption for construction materials used for an electric generating facility; amending Minnesota Statutes 2004, sections 272.02, subdivision 53; 297A.71, by adding a subdivision.

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

Section 1. Minnesota Statutes 2004, section 272.02, subdivision 53, is amended to read:

Subd. 53. [ELECTRIC GENERATION FACILITY; PERSONAL PROPERTY.] Notwithstanding subdivision 9, clause (a), attached machinery and other personal property which is part of a 3.2 megawatt run-of-the-river hydroelectric generation facility and that meets the requirements of this subdivision is exempt. At the time of construction, the facility must:

(1) utilize two turbine generators at a dam site existing on March 31, 1994;

(2) be located on ~~publicly-owned~~ land ~~and~~ within 1,500 feet of a 13.8 kilovolt distribution substation; and

(3) be eligible to receive a renewable energy production incentive payment under section 216C.41.

Construction of the facility must be commenced after ~~January 1, 2002~~ December 31, 2004, and before January 1, ~~2005~~ 2007. Property eligible for this exemption does not include electric transmission lines and interconnections or gas

pipelines and interconnections appurtenant to the property or the facility.

[EFFECTIVE DATE.] This section is effective for sales after June 30, 2005.

Sec. 2. Minnesota Statutes 2004, section 297A.71, is amended by adding a subdivision to read:

Subd. 33. [HYDROELECTRIC GENERATING FACILITY.] Materials and supplies used or consumed in the construction of a hydroelectric generating facility that meets the requirements of this subdivision are exempt. To qualify for the exemption under this subdivision, a hydroelectric generating facility must:

(1) utilize two turbine generators at a dam site existing on March 31, 1994;

(2) be located on land within 2,500 feet of a 13.8 kilovolt distribution circuit; and

(3) be eligible to receive a renewable energy production incentive payment under section 216C.41.

[EFFECTIVE DATE.] This section is effective for sales made after December 31, 2004, and on or before December 31, 2007.

Senate Counsel, Research, and Fiscal Analysis

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Jo Anne Zoff Sellner
Director

Senate

State of Minnesota

S.F. No. 2166 - Electric Generation Efficiency Calculation

Author: Senator Ellen R. Anderson

Prepared by: Matthew S. Grosser, Senate Research (651/296-1890)

Date: April 8, 2005

The bill clarifies the calculation the Commissioner of Commerce must apply in determining the efficiency of an electric generation facility. That calculation is the ratio of useful energy outputs to inputs, expressed as a percentage, based upon the performance of the facility's equipment during a heat rate test conducted in accordance with the American Society of Mechanical Engineers Performance Test Codes.

MSG:cs

Senators Anderson and Belanger introduced--

S.F. No. 2166: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to taxation; property; clarifying the market value exclusion for electric power generation efficiency; amending Minnesota Statutes 2004, section 272.0211, subdivisions 1, 2.

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

Section 1. Minnesota Statutes 2004, section 272.0211, subdivision 1, is amended to read:

Subdivision 1. [EFFICIENCY DETERMINATION AND CERTIFICATION.] An owner or operator of a new or existing electric power generation facility, excluding wind energy conversion systems, may apply to the commissioner of revenue for a market value exclusion on the property as provided for in this section. This exclusion shall apply only to the market value of the equipment of the facility, and shall not apply to the structures and the land upon which the facility is located. The commissioner of revenue shall prescribe the forms and procedures for this application. Upon receiving the application, the commissioner of revenue shall request the commissioner of commerce to make a determination of the efficiency of the applicant's electric power generation facility. ~~In calculating the efficiency of a facility,~~ The commissioner of commerce shall ~~use a definition of~~ calculate efficiency ~~which calculates efficiency as the sum of:~~

~~(1) the useful electrical power output, plus~~

~~(2) the useful thermal energy output; plus~~

~~(3) the fuel energy of the useful chemical products,~~ ~~all divided by the total energy input to the facility, expressed as a percentage~~ as the ratio of useful energy outputs to energy inputs, expressed as a percentage, based on the performance of the facility's equipment during a heat rate test conducted in conformance with the American Society of Mechanical Engineers Performance Test Codes PTC-46-1996: Performance Test Code on Overall Plant Performance. The commissioner must include in this formula the energy used in any on-site preparation of materials necessary to convert the materials into the fuel used to generate electricity, such as a process to gasify petroleum coke. The commissioner shall use the ~~high heating value~~ Higher Heating Value (HHV) for all substances in the commissioner's efficiency calculations, except for wood for fuel in a biomass-eligible project under section 216B.2424; for these instances, the commissioner shall adjust the heating value to allow for energy consumed for evaporation of the moisture in the wood. The applicant shall provide the commissioner of commerce with whatever information the commissioner deems necessary to make the determination. Within 30 days of the receipt of the necessary information, the commissioner of commerce shall certify the findings of the efficiency determination to the commissioner of revenue and to the applicant. ~~The commissioner of commerce shall determine the efficiency of the facility and certify the findings of that determination to the commissioner of revenue every two years thereafter from the date of the original certification.~~

[EFFECTIVE DATE.] This section is effective for assessment year 2005 and thereafter, for taxes payable in 2006 and thereafter.

Sec. 2. Minnesota Statutes 2004, section 272.0211, subdivision 2, is amended to read:

Subd. 2. [SLIDING SCALE EXCLUSION.] Based upon the efficiency determination provided by the commissioner of commerce as described in subdivision 1, the commissioner of

revenue shall subtract ~~five~~ eight percent of the taxable market value of the qualifying property for each percentage point that the efficiency of the specific facility, as determined by the commissioner of commerce, is above ~~35~~ 40 percent. The reduction in taxable market value shall be reflected in the taxable market value of the facility beginning with the assessment year immediately following the determination. For a facility that is assessed by the county in which the facility is located, the commissioner of revenue shall certify to the assessor of that county the percentage of the taxable market value of the facility to be excluded.

[EFFECTIVE DATE.] This section is effective for assessment year 2005 and thereafter, for taxes payable in 2006 and thereafter.

Senators Anderson, Rosen, Ourada, Metzen and Kubly introduced--

S.F. No. 1368: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to utilities; requiring establishment and adoption of community-based energy development tariffs; modifying provisions relating to renewable energy resources and objectives; making clarifying changes; amending Minnesota Statutes 2004, sections 216B.1645, subdivision 1, by adding a subdivision; 216B.2425, subdivision 7; 216B.243, subdivision 8; proposing coding for new law in Minnesota Statutes, chapter 216B.

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

Section 1. [216B.1612] [COMMUNITY-BASED ENERGY DEVELOPMENT; TARIFF.]

Subdivision 1. [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 domiciled in any county in which a proposed wind energy project is to be located;

(2) a limited liability corporation that is organized under the laws of this state and that is made up of members who are Minnesota residents domiciled in counties in which proposed wind energy projects are to be located;

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

(4) a Minnesota cooperative association organized under chapter 308A or 308B, other than a rural electric cooperative

association or generation and transmission cooperative;

(5) a Minnesota political subdivision or local government other than a municipal electric utility or municipal power agency, including, but not limited to, a county, statutory or home rule charter city, town, school district, or any other local or regional governmental organization such as a board, commission, or association; or

(6) a tribal council if the project is located within the boundaries of the reservation.

Subd. 2. [COMMISSION TO DEVELOP TARIFF MODEL.] By January 15, 2006, the commission shall establish, by order, a model C-BED tariff. The intent of the model tariff is to provide a rate structure conducive to the financing of community-based energy projects while balancing ratepayer interests and benefits, by:

(1) providing a higher rate in the initial years of the tariff, which generally corresponds to the initial debt service period of a project, in which the rate paid by the utility is higher during the initial years of the contract and lower in the later years;

(2) providing a lower rate during the later years of the tariff, when the initial debt has been retired;

(3) offering net present value rate that is no higher than the rate that would have been paid by the utility absent the front-end-loaded tariff but no lower than the utility's avoided cost as calculated under section 216B.164; and

(4) ensuring that the qualifying owners using the tariff agree to abide by the terms of the tariff for the full term of the tariff, which must be no less than 20 years, in order to provide ratepayers with the benefit of lower rates in the later years of the tariff in return for paying higher rates during the earlier, debt-servicing years.

Subd. 3. [ELIGIBILITY.] To be eligible for a community-based energy development tariff, a proposed wind project must:

(1) be owned by one or more qualifying owners; and

(2) have 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.

Subd. 4. [JOINT VENTURES.] Any qualifying owner, or any combination of qualifying owners, may develop a joint venture project with a nonqualifying wind 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.

Subd. 5. [ALL UTILITIES TO OFFER TARIFF.] Within 90 days after the commission issues an order under subdivision 2:

(1) each public utility providing electric service at retail shall file for commission approval a community-based energy development tariff consistent with the model tariff established under subdivision 2; and

(2) each municipal utility and cooperative electric association shall adopt a community-based energy development tariff consistent with the model tariff issued under subdivision 2.

Subd. 6. [APPLICATION OF TARIFF.] A C-BED tariff applies to:

(1) projects selected to meet an energy need identified in a resource plan filed under section 216B.2422;

(2) community-based wind energy projects to satisfy an order of the commission;

(3) projects to satisfy a statutory mandate; or

(4) projects to satisfy the renewable energy objective law contained in section 216B.1691.

Subd. 7. [ELECTION BY PROJECT DEVELOPER.] At the discretion of the developer, a community-based project developer and a utility may negotiate a different rate and power purchase agreement with terms different from the tariff established under subdivision 2.

Sec. 2. Minnesota Statutes 2004, 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 Minnesota renewable energy objectives under section 216B.1691, including reasonable investments and expenditures made to transmit the electricity generated from sources developed under those sections that is ultimately used to provide service to the utility's retail customers, or to develop renewable energy sources from the account required in section 116C.779.

Sec. 3. Minnesota Statutes 2004, section 216B.1645, is amended by adding a subdivision to read:

Subd. 5. [TRANSMISSION NEEDED TO SUPPORT RENEWABLE RESOURCES.] In determining whether to approve accelerated recovery of expenditures under this section for construction of transmission facilities to satisfy the renewable energy objective under section 216B.1691, the commission must find that the applicant has met the following factors:

(1) that the transmission facility is needed to allow the delivery of power from renewable sources of energy to retail customers in Minnesota;

(2) that the applicant has signed or will sign power purchase agreements for resources to meet the renewable energy objective that will use or is dependent upon the capacity of the transmission facility to serve retail customers in Minnesota; and

(3) that the installation and commercial operation date of the renewable resources to satisfy the renewable energy objective will match the planned in-service date of the transmission facility.

Sec. 4. Minnesota Statutes 2004, section 216B.2425, subdivision 7, is amended to read:

Subd. 7. [TRANSMISSION NEEDED TO SUPPORT RENEWABLE

RESOURCES.] Each entity subject to this section shall determine necessary transmission upgrades to support development of renewable energy resources required to meet objectives under section 216B.1691 and shall include those upgrades in its report under subdivision 2. Transmission projects determined by the commission to be necessary to support a utility's plan under section 216B.1691 to meet its obligations under that section must be certified as a priority electric transmission project, satisfying the requirements of section 216B.243. In determining that a proposed transmission project is necessary to support a utility's plan under section 216B.1691, the commission must find that the applicant has met the following factors:

(1) that the transmission facility is needed to allow the delivery of power from renewable sources of energy to retail customers in Minnesota;

(2) that the applicant has signed or will sign power purchase agreements for resources to meet the renewable energy objective that will use or is dependent upon the capacity of the transmission facility to serve retail customers in Minnesota; and

(3) that the installation and commercial operation date of the renewable resources to satisfy the renewable energy objective will match the planned in-service date of the transmission facility.

Sec. 5. Minnesota Statutes 2004, section 216B.243, subdivision 8, is amended to read:

Subd. 8. [EXEMPTIONS.] This section does not apply to:

(1) cogeneration or small power production facilities as defined in the Federal Power Act, United States Code, title 16, section 796, paragraph (17), subparagraph (A), and paragraph (18), subparagraph (A), and having a combined capacity at a single site of less than 80,000 kilowatts ~~or to~~; plants or facilities for the production of ethanol or fuel alcohol ~~nor in~~; or any case where the commission ~~shall determine~~ has determined after being advised by the attorney general that its application has been preempted by federal law;

(2) a high-voltage transmission line proposed primarily to distribute electricity to serve the demand of a single customer at a single location, unless the applicant opts to request that the commission determine need under this section or section 216B.2425;

(3) the upgrade to a higher voltage of an existing transmission line that serves the demand of a single customer that primarily uses existing rights-of-way, unless the applicant opts to request that the commission determine need under this section or section 216B.2425;

(4) a high-voltage transmission line of one mile or less required to connect a new or upgraded substation to an existing, new, or upgraded high-voltage transmission line;

(5) conversion of the fuel source of an existing electric generating plant to using natural gas; ~~or~~

(6) the modification of an existing electric generating plant to increase efficiency, as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater; or

(7) a large energy facility that (i) generates electricity from wind energy conversion systems, (ii) will serve retail customers in Minnesota, and (iii) is specifically intended to be used to meet the renewable energy objective under section 216B.1691 or addresses a resource need identified in a current commission-approved or commission-reviewed resource plan under section 216B.2424.

Sec. 6. [EFFECTIVE DATE.]

Sections 1 to 5 are effective the day following final enactment.

House Research Bill Summary

File Number: H.F. 1344
Date: April 4, 2005

Version: As amended by H1344DE1

Status: Regulated Industries Committee

Authors: Westrom and Gunther

Subject: Electric transmission; wind energy tariffs; siting and routing authority over large energy facilities

Analyst: Bob Eleff, 651-296-8961

Section

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 **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 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 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 **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

6 **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.

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

8 **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.

9 **Preventative maintenance.** Extends the commission's authority to order utilities to make infrastructure investments and preventative maintenance expenditures to a transmission company owning or operating transmission lines in Minnesota.

10 **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.

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.

No single qualifying owner may own more than 15 percent of a C-BED project.

(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 owned entirely by qualifying owners, with at least 50 percent of project equity owned by investors residing in a single county or in a contiguous county, and which has a resolution of support adopted by the county board 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 must be less than or equal 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 and 150 days, respectively, 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 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 **Transmission needed to support renewable resources.** Requires the commission 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 **Exemption.** 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 **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.

6 **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.

7 **Expiration.** Section 3 expires January 1, 2010.

ARTICLE 1

TRANSMISSION COMPANIES

Section 1. Minnesota Statutes 2004, section 216B.02, is amended by adding a subdivision to read:

Subd. 10. [TRANSMISSION COMPANY.] "Transmission company" means persons, corporations, or other legal entities and their lessees, trustees, and receivers, now or hereafter engaged in the business of owning, operating, maintaining, or controlling in this state equipment or facilities for furnishing electric transmission service in Minnesota, but does not include public utilities, municipal electric utilities, municipal power agencies, cooperative electric associations, or generation and transmission cooperative power associations.

Sec. 2. Minnesota Statutes 2004, section 216B.16, is amended by adding a subdivision to read:

Subd. 7b. [TRANSMISSION COST ADJUSTMENT.] (a) Notwithstanding any other provision of this chapter, the commission may approve a tariff mechanism for the automatic annual adjustment of charges for the Minnesota jurisdictional costs of new transmission facilities that have been separately filed and reviewed and approved by the commission under sections 216B.2425 and 216B.243 or are deemed to be a priority transmission project under section 216B.2425.

(b) Upon filing by a public utility or utilities providing

transmission service, the commission may approve, reject or modify, after notice and comment, a tariff that:

(1) allows the utility to recover on a timely basis the costs net of revenues of facilities approved under sections 216B.243 and 216B.2425;

(2) 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 consistent with the public interest;

(3) provides a current return on construction work in progress, provided that recovery from Minnesota retail customers for the allowance for funds used during construction is not sought through any other mechanism;

(4) allows for recovery of other expenses if shown to promote a least-cost project option or is otherwise in the public interest;

(5) allocates project costs appropriately between wholesale and retail customers;

(6) provides a mechanism for recovery above cost, if necessary to improve the overall economics of the project or projects or is otherwise in the public interest; and

(7) terminates recovery once costs have been fully recovered or have otherwise been reflected in the utility's general rates.

(c) A public utility may file annual rate adjustments to be applied to customer bills paid under the tariff approved in paragraph (b). In its filing, the public utility shall provide:

(1) a description of and context for the facilities included for recovery;

(2) a schedule for implementation of applicable projects;

(3) the utility's costs for these projects;

(4) a description of the utility's efforts to ensure the lowest costs to ratepayers for the project; and

(5) calculations to establish that the rate adjustment is consistent with the terms of the tariff established in paragraph (b).

(d) Upon receiving a filing for a rate adjustment pursuant

to the tariff established in paragraph (b), the commission shall approve the annual rate adjustments provided that, after notice and comment, the costs included for recovery through the tariff were or are expected to be prudently incurred and achieve transmission system improvements at the lowest feasible and prudent cost to ratepayers.

Sec. 3. Minnesota Statutes 2004, section 216B.16, is amended by adding a subdivision to read:

Subd. 7c. [TRANSMISSION ASSETS TRANSFER.] (a) Owners of transmission facilities may transfer operational control or ownership of those assets to a transmission company subject to Federal Energy Regulatory Commission jurisdiction. For asset transfers by a public utility, the Public Utilities Commission may review the request to transfer in the context of a general rate case under this section or may initiate other proceedings it determines provide adequate review of the effect on retail rates of an asset transfer approved under this section sufficient to protect ratepayers. The commission may only approve a transfer sought after the effective date of this section if it finds that the transfer:

(1) is consistent with the public interest;

(2) facilitates the development of transmission infrastructure necessary to ensure reliability, encourages the development of renewable resources, and accommodates energy transfers within and between states;

(3) protects Minnesota ratepayers against the subsidization of wholesale transactions through retail rates; and

(4) ensures, in the case of operational control of transmission assets, that the state retains jurisdiction over the transferring utility for all aspects of service under chapter 216B.

(b) A transfer of operational control or ownership of assets by a public utility under this subdivision is subject to section 216B.50. The relationship between a public utility transferring operational control of assets to another entity under this subdivision is subject to the provisions of section

216B.48. If a public utility transfers ownership of its transmission assets to a transmission provider subject to the jurisdiction of the Federal Energy Regulatory Commission, the Public Utilities Commission may permit the utility to file a rate schedule providing for the automatic adjustment of charges to recover the cost of transmission services purchased under tariff rates approved by the Federal Energy Regulatory Commission.

Sec. 4. Minnesota Statutes 2004, section 216B.2421, subdivision 2, is amended to read:

Subd. 2. [LARGE ENERGY FACILITY.] "Large energy facility" means:

(1) any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system;

(2) any high-voltage transmission line with a capacity of 200 kilovolts or more and greater than 1,500 feet in length;

(3) any high-voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line;

(4) any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives;

(5) any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;

(6) any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural gas or synthetic gas;

(7) any underground gas storage facility requiring a permit pursuant to section 103I.681;

(8) any nuclear fuel processing or nuclear waste storage or disposal facility; and

(9) any facility intended to convert any material into any other combustible fuel and having the capacity to process in excess of 75 tons of the material per hour.

Sec. 5. Minnesota Statutes 2004, section 216B.243, subdivision 3, is amended to read:

Subd. 3. [SHOWING REQUIRED FOR CONSTRUCTION.] No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need. In assessing need, the commission shall evaluate:

(1) the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based;

(2) the effect of existing or possible energy conservation programs under sections 216C.05 to 216C.30 and this section or other federal or state legislation on long-term energy demand;

(3) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section 216C.18, or, in the case of a high-voltage transmission line, the relationship of the proposed line to regional energy needs, as presented in the transmission plan submitted under section 216B.2425;

(4) promotional activities that may have given rise to the demand for this facility;

(5) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region;

(6) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load-management programs, and distributed generation;

(7) the policies, rules, and regulations of other state and federal agencies and local governments; ~~and~~

(8) any feasible combination of energy conservation improvements, required under section 216B.241, that can (i) replace part or all of the energy to be provided by the proposed facility, and (ii) compete with it economically;

(9) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to improve the robustness of the transmission system or to lower costs to electric consumers;

(10) whether the applicant or applicants are in compliance with applicable sections of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a date certain an application for certificate of need under this section or for certification as a priority electric transmission project under section 216B.2425 for any transmission facilities or upgrades identified under section 216B.2425, subdivision 7;

(11) whether the applicant has made the demonstrations required under subdivision 3a; and

(12) if the applicant is proposing a nonrenewable generating plan, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk.

Sec. 6. Minnesota Statutes 2004, section 216B.2425, subdivision 2, is amended to read:

Subd. 2. [LIST DEVELOPMENT; TRANSMISSION PROJECTS REPORT.] (a) By November 1 of each odd-numbered year, ~~each~~ a transmission projects report must be submitted to the commission by each utility, organization, or company that:

(1) is a public utility, a municipal utility, ~~and~~ a cooperative electric association, ~~or~~ the generation and transmission organization that serves each utility or association, ~~that~~ or a transmission company; and

(2) owns or operates electric transmission lines in Minnesota ~~shall~~.

(b) The report may be submitted jointly or individually ~~submit a transmission projects report~~ to the commission.

(c) The report must:

(1) list specific present and reasonably foreseeable future inadequacies in the transmission system in Minnesota;

(2) identify alternative means of addressing each inadequacy listed;

(3) identify general economic, environmental, and social issues associated with each alternative; and

(4) provide a summary of public input ~~the utilities and associations have gathered~~ related to the list of inadequacies and the role of local government officials and other interested persons in assisting to develop the list and analyze alternatives.

~~(b)~~ (d) To meet the requirements of this subdivision, ~~entities~~ reporting parties may rely on available information and analysis developed by a regional transmission organization or any subgroup of a regional transmission organization and may develop and include additional information as necessary.

Sec. 7. Minnesota Statutes 2004, section 216B.50, subdivision 1, is amended to read:

Subdivision 1. [COMMISSION APPROVAL REQUIRED.] No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission ~~thereto~~, the commission shall investigate, with or without public hearing~~, and in case of~~. The commission shall hold a public hearing, upon such notice as the commission may require~~, and if it shall find~~. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated. ~~The provisions of~~

This section ~~shall~~ does not ~~be construed as applicable~~ apply to the purchase of ~~units of~~ property ~~for replacement or to the addition~~ to replace or add to the plant of the public utility by construction.

Sec. 8. Minnesota Statutes 2004, section 216B.62, is amended by adding a subdivision to read:

Subd. 5a. [ASSESSING TRANSMISSION COMPANIES.] The commission and department may charge transmission companies their proportionate share of the expenses incurred in the review and disposition of proceedings under sections 216B.2425, 216B.243, 216B.48, 216B.50, and 216B.79. A transmission company is not liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2. A transmission company may object to and appeal bills of the commission and department as provided in subdivision 4.

Sec. 9. Minnesota Statutes 2004, section 216B.79, is amended to read:

216B.79 [PREVENTATIVE MAINTENANCE.]

The commission may order public utilities to make adequate infrastructure investments and undertake sufficient preventative maintenance with regard to generation, transmission, and distribution facilities. The commission's authority under this section also applies to any transmission company that owns or operates electric transmission lines in Minnesota.

Sec. 10. [STAKEHOLDER PROCESS AND REPORT.]

Subdivision 1. [MEMBERSHIP.] By June 15, 2005, the Legislative Electric Energy Task Force shall convene a stakeholder group consisting of one representative from each of the following groups: transmission-owning investor-owned utilities, electric cooperatives, municipal power agencies, energy consumer advocates, business energy consumer advocates, residential energy consumer advocates, environmental organizations, the Minnesota Department of Commerce, the Minnesota Environmental Quality Board, and the Minnesota Public Utilities Commission.

Subd. 2. [CHARGE.] (a) The stakeholder group shall explore whether increased efficiencies and effectiveness can be obtained through modifying current state statutes and administrative processes to certify and route high-voltage transmission lines, including modifications to section 216B.243.

(b) In developing its recommendations, the stakeholder group shall consider:

(1) whether the certification process established under section 216B.2425, subdivision 3, can be modified to encourage utilities to apply for certification under that section;

(2) whether alternative certification processes are feasible for different types of transmission facilities; and

(3) whether additional cooperation between state agencies is needed to enhance the efficiency of the certification and routing processes, and whether modifications to those processes are appropriate.

(c) The stakeholder group shall also consider and make recommendations regarding whether and how to provide compensation above traditional eminent domain payments to landowners over whose property a new transmission facility is constructed.

Subd. 3. [REPORT.] By January 15, 2006, the task force shall submit a report to the legislature summarizing the stakeholder group findings and any recommended changes to the certification and routing processes for high-voltage transmission lines.

Senator ..... moves to amend BL0917 as follows:

Page 1, line 7, delete "now or hereafter"

Page 1, line 21, delete "sections" and insert "section"

Page 1, line 22, delete "216B.2425 and" and after "are" insert "certified as a priority project or"

Page 2, line 4, delete "sections" and insert "section"

Page 2, line 5, delete "and" and insert "or certified or deemed to be certified under section"

Page 6, line 10, delete the first "sections" and insert "provisions"

Page 6, line 19, delete "plan" and insert "plant"

ARTICLE 2

C-BED AND RENEWABLE TRANSMISSION

Section 1. [216B.1612] [COMMUNITY-BASED ENERGY DEVELOPMENT; TARIFF.]

Subdivision 1. [TARIFF ESTABLISHMENT.] A tariff shall be established to optimize local, regional, and state benefits from wind energy development, and to facilitate widespread development of community-based wind 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 corporation that is organized under the laws of this state 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, other than a rural electric cooperative association or a generation and transmission cooperative;

(5) a Minnesota political subdivision or local government other than a municipal electric utility or municipal power agency, including, but not limited to, 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.

No single qualifying owner may own more than 15 percent of a C-BED project.

(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 and for which the net present value of all payments made by the utility to the owners of a C-BED project under the tariff over the life of the power purchase agreement is equal to the net present value of all payments that would have been made under a flat rate schedule.

(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) "Community-based energy project" or "C-BED project" means a new wind energy project that:

(1) is owned entirely by one or more qualifying owners, with at least 50 percent of the equity invested in the project from individuals residing in a single county or in a contiguous county, regardless of ownership structure; and

(2) 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) By September 1, 2005, the commission shall establish, by order, a model C-BED tariff.

(b) The tariff must have a rate schedule less than or equal to a 2.7 cents per kilowatt hour 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.

(c) In developing the model tariff, the commission shall consider mechanisms to encourage the aggregation of C-BED projects.

(d) The model C-BED tariff developed by the commission

shall require that qualifying 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.

(e) The model C-BED tariff developed by the commission shall include the utility's cost and reliability requirements to determine tariff applicability.

Subd. 4. [UTILITIES TO OFFER TARIFF.] Within 90 days after the commission issues an order under subdivision 3, each public utility providing electric service at retail shall file for commission approval a community-based energy development tariff consistent with the model tariff established under subdivision 3. Within 150 days of an order under subdivision 2, each municipal power agency and generation and transmission cooperative electric association shall adopt a community-based energy development tariff as consistent as possible with the model tariff issued under 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 under that section should 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.

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 transmitting the energy generated by the C-BED project to market currently exists or is to be constructed and who resides in the county where the C-BED project is located or in an adjacent Minnesota county.

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 wind 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 project that is operating under a rate that is higher in the first ten years of the agreement than in the last ten years. The commission shall provide the utility's ratepayers an opportunity to address the reasonableness of the proposed power purchase agreement.

Sec. 2. Minnesota Statutes 2004, 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 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, ~~or to~~ 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, 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 for the new transmission facilities identified in the studies; or

(2) develop renewable energy sources from the account required in section 116C.779.

Sec. 3. Minnesota Statutes 2004, section 216B.2425, subdivision 7, is amended to read:

Subd. 7. [TRANSMISSION NEEDED TO SUPPORT RENEWABLE RESOURCES.] Each entity subject to this section shall determine necessary transmission upgrades to support development of renewable energy resources required to meet objectives under section 216B.1691 and shall include those upgrades in its report under subdivision 2. Transmission projects determined by the commission to be necessary to support a utility's plan under section 216B.1691 to meet its obligations under that section must be certified as a priority electric transmission project, satisfying the requirements of section 216B.243. In determining that a proposed transmission project is necessary to support a utility's plan under section 216B.1691, the commission must find that the applicant has met the following factors:

(1) that the transmission facility is necessary to allow

the delivery of power from renewable sources of energy to retail customers in Minnesota;

(2) that the applicant has signed or will sign power purchase agreements, subject to commission approval, for resources to meet the renewable energy objective that are dependent upon or will use the capacity of the transmission facility to serve retail customers in Minnesota;

(3) that the installation and commercial operation date of the renewable resources to satisfy the renewable energy objective will match the planned in-service date of the transmission facility; and

(4) that the proposed transmission facility is consistent with a least cost solution to the utility's need for additional electricity.

Sec. 4. Minnesota Statutes 2004, section 216B.243, subdivision 8, is amended to read:

Subd. 8. [EXEMPTIONS.] This section does not apply to:

(1) cogeneration or small power production facilities as defined in the Federal Power Act, United States Code, title 16, section 796, paragraph (17), subparagraph (A), and paragraph (18), subparagraph (A), and having a combined capacity at a single site of less than 80,000 kilowatts ~~or to~~; plants or facilities for the production of ethanol or fuel alcohol ~~nor in~~; or any case where the commission ~~shall determine~~ has determined after being advised by the attorney general that its application has been preempted by federal law;

(2) a high-voltage transmission line proposed primarily to distribute electricity to serve the demand of a single customer at a single location, unless the applicant opts to request that the commission determine need under this section or section 216B.2425;

(3) the upgrade to a higher voltage of an existing transmission line that serves the demand of a single customer that primarily uses existing rights-of-way, unless the applicant opts to request that the commission determine need under this section or section 216B.2425;

(4) a high-voltage transmission line of one mile or less required to connect a new or upgraded substation to an existing, new, or upgraded high-voltage transmission line;

(5) conversion of the fuel source of an existing electric generating plant to using natural gas; ~~or~~

(6) the modification of an existing electric generating plant to increase efficiency, as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater; or

(7) a large energy facility that (i) generates electricity from wind energy conversion systems, (ii) will serve retail customers in Minnesota, (iii) is specifically intended to be used to meet the renewable energy objective under section 216B.1691 or addresses a resource need identified in a current commission-approved or commission-reviewed resource plan under section 216B.2422; and (iv) derives at least 10 percent of the total nameplate capacity of the proposed project from one or more C-BED projects, as defined under section 216B.1612, subdivision 2, paragraph (f).

Sec. 5. [WIND INTEGRATION STUDY.]

The commission shall order all electric utilities, as defined in Minnesota Statutes, section 216B.1691, subdivision 1, paragraph (b), to participate in a statewide wind integration study. Utilities subject to section 216B.1691 shall jointly contract with an independent firm selected by the reliability administrator to conduct an engineering study of the impacts on reliability and costs associated with increasing wind capacity to 20 percent of Minnesota retail electric energy sales by the year 2020, and to identify and develop options for utilities to use to manage the intermittent nature of wind resources. The contracting utilities shall cooperate with the firm conducting the study by providing data requested. The reliability administrator shall manage the study process and shall appoint a group of stakeholders with experience in engineering and expertise in power systems or wind energy to review the study's proposed methods and assumptions and preliminary data. The

study must be completed by November 30, 2006. Using the study results, the contracting utilities shall provide the commissioner of commerce with estimates of the impact on their electric rates of increasing wind capacity to 20 percent, assuming no reduction in reliability. Electric utilities shall incorporate the study's findings into their utility integrated resource plans prepared under Minnesota Statutes, section 216B.2422. The costs of the study are recoverable under Minnesota Statutes, section 216C.052, subdivision 2, paragraph (c), clause (2).

Sec. 6. [216C.053] [RENEWABLE ENERGY DEVELOPMENT.]

The Department of Commerce shall assist utilities, renewable energy developers, regulators, regional transmission grid managers, and the public on issues related to renewable energy development. The department shall work to ensure cost-effective renewable energy development throughout the state.

Sec. 7. [EXPIRATION.]

Section 3 expires on January 1, 2010.

Senator ..... moves to amend BL0923A-1 as follows:

Page 1, delete lines 32 and 33

Page 2, line 1, delete everything after "agreement" and insert a period

Page 2, delete lines 2 to 5

Page 2, delete lines 15 to 22, and insert:

"(1) has no single qualifying owner owning more than 15 percent of a C-BED project that consists of more than two turbines; or

(2) for C-BED projects of one or two turbines, is owned entirely by one or more qualifying owners, with at least 51 percent of the total financial benefits over the life of the project flowing to qualifying owners."

Page 2, line 23, delete everything after "(a)"

Page 2, delete line 24

Page 2, line 25, delete "(b)" and after "tariff" insert "described in subdivision 4" and delete "less than or equal" and insert "that allows for a rate up"

Page 2, line 33, delete "(c) In developing the model tariff," and insert "(b)"

Page 2, line 36, delete "(d) The model C-BED tariff developed by" and insert "(c)"

Page 3, delete lines 5 to 7

Page 3, line 8, delete "Within 90 days after"

Page 3, line 9, delete everything before "each" and insert " By December 1, 2005,"

Page 3, line 12, delete "the model tariff established under"

Page 3, line 13, delete everything after "Within" and insert "90 days of the first commission approval order under this subdivision, each"

Page 3, line 16, delete "the"

Page 3, line 17, delete "model tariff issued under"

Page 4, line 29, before "project" insert "tariffed" and delete "that is operating"

Page 4, delete line 30

Page 4, line 31, delete everything before the period

Page 5, line 17, after "need" insert "or for certification as a priority project under section 216B.2425"

F

THINGS TO WATCH FOR IN TRANSMISSION BILLS

S.F. 1368 – Transmission Omnibus Bill

There are themes in the legislative proposals regarding transmission this session, legislative examples are cited for each, but this changes daily and these themes will reappear in different bills. These themes represent changes that are NOT needed and that are NOT in the public interest. One by one, here are the themes to watch for:

- **Transfer of transmission assets – TRANSLink style entities are not in the public interest**
  Found in bills such as H.F. 1347/S.F. 1332 – TRANSMISSION ASSETS TRANSFER, and it may come up in future incarnations.

QUESTIONS TO ASK:

? Iowa and MN A.G. found this not in the public interest. How would this transfer be in Minnesota's interest (public interest)? What is the Minnesota benefit?
? What is jurisdictional impact of such an asset transfer?
? What is rate impact of such an asset transfer?
? How is this in the ratepayer's interest? What is ratepayer benefit?
? What is the Xcel shareholder benefit in this transfer?

TRANSLink failed at the Minnesota PUC so now we're faced with this legislative attempt to revive an idea that takes away Minnesota's jurisdiction. TRANSLink was rejected by Iowa as not in the public interest. At the PUC, MN's OAG-RUG (Office of Attorney General – Residential Utilities Division) found it to be a really bad idea, many appeared to agree, including TRANSLink which withdrew the application. Here's the PUC staff briefing papers. Pay particular attention to the OAG Comments, summarized below.
http://www.puc.state.mn.us/docs/briefing_papers/b04-0138.pdf

- The purpose of the petition is to escape all State regulatory oversight.
- The Commission's authority to approve the petition without legislative action is questionable – the Commission has not been empowered to allow the transmission grid to be removed from its jurisdiction.
- Approval would result in the surrender of Commission authority under Minn. Stat. §216B.79 giving it authority to order utilities to control sufficient generation, transmission, and distribution assets.
- Transfer of this asset is not required by FERC Order 2000, transfer to an RTO is, and FERC can be satisfied by participating in MISO.
- Approving the Petition would invite FERC preemption as was experienced by New York state.
- Ratemaking authority would be in question.

- Regulation of reliability and protection of native load would be in question.
- Transfer does not meet the public interest requirement of Minn. Stat. §216B.50 due to the loss of jurisdiction over transmission.
- Public interest is not served by side door deregulation on the backs of utility customers.
- Minnesota Power has a substantial interest in ATC, and Deb Amberg, MP in-house counsel, was/is on the ATC Board of Directors.
- Minnesota customers could pay for transmission built to serve wholesale transactions and not needed for native load.
- Company would be biased against non-transmission solutions to constraints.
- ATC has no obligation to work with Commission and public agencies to address reliability concerns.
- The financial viability of ATC has not yet been proven.

There are enough concerns, most focusing on jurisdiction of the Commission, and all unaddressed since this issue was last considered by the Commission, to compel the legislature to refrain from making this drastic change. This is not a step to be taken lightly, and the Legislature has an obligation to preserve the authority and regulatory power of the state.

For a copy of the agreement between TRANSLink and ME3, Izaak Walton League, Minnesota Center for Environmental Advocacy and North American Water Office, email Clodet Jenson, Clodet.Johnson@state.mn.us Dept. of Commerce, and ask for Document 02-2102 in the TRANSLink docket.

• Automatic Rate Adjustment - transmission "for renewables"

Xcel has abused the existing statutory provision by claiming everything from the sagging Wilmarth line and the ticklish Ft. Calhoun Interface in Nebraska are necessary "for wind." This is absurd --don't make it worse! Make Xcel demonstrate its claims.
Found in bills such as S.F. 1368; H.F. 1347/S.F. 1332; H.F. 1517/S.F. 1502; H.F. 1645/S.F.??, and it may come up in future incarnations.

QUESTIONS TO ASK:

? How do we tell if it's "for renewable energy?"
? Where's the funding for a state electrical engineer to evaluate utility claims?
? What technical assistance is the Office of the Reliability Administrator providing?
? What will sufficient technical assistance cost, how can that best be mandated, and how will the cost be covered?
? Costs of transmission are recoverable in the rates. Why should this be handled differently?
? Costs of transmission are recoverable in the rates. Why should Xcel get it immediately and not under the usual scheme?

Call it "Transmission Cost Adjustment," call it "Automatic Adjustment," by any name, this is a bad idea because Xcel makes exaggerated claims and the state cannot determine whether it is "for renewables," as was demonstrated in the SW MN 345kV proceeding. Minn. Stat. §216B.1645 provides for an automatic adjustment for infrastructure necessary for "renewable energy." No more is needed – and that provision should be repealed.

- Xcel has abused the category of improvements for "renewable" and will classify anything and everything as "renewable." This was a blatant problem in the SW MN 345kV case, and Xcel withdrew their request

after challenge. If legislators do not know how to tell if "it's for wind," and they don't, they shouldn't be drafting or voting or promoting legislation to change rate recovery for "renewable" infrastructure.

- The state has no way of knowing or proving whether transmission is "for renewables." **The state does not have an electrical engineer to evaluate these projects.** The Reliability Administrator, who's job it is to provide technical assistance, does not provide technical assistance. The Reliability Administrator must provide technical assistance. Ask Ken Wolf, Reliability Administrator, how much technical assistance his office has provided in these cases. I tried to subpoena him in the SW MN 345kV case because the Intervenors and the state did not have technical resources to evaluate Xcel's claims regarding losses. Same goes for whether a particular transmission improvement is "for wind" or not. No generation or transmission project should be approved without review by a qualified electrical (power/transmission) engineer working on behalf of the state with no conflicts of interest.

• Exemption from Certificate of Need – DON'T DO IT!

Certificate of Need (CoN) through the Public Utilities Commission is the only way to require demonstration that purpose of generation or transmission project is what they claim it is!
Found in bills such as H.F. 1344/S.F. 1368; H.F.1347/S.F. 1332; H.F. 1517/S.F. 1502; H.F. 1645/S.F. ??, and it may come up in future incarnations.

QUESTIONS TO ASK:

? Review for projects included in Integrated Resource Plan (IRP) or that meet Renewable Energy Objective/Standard (REO/RES) is nominal once this criteria has been demonstrated. If it is exempted from CoN, where is the demonstration that it's included?
? For transmission lines exempted under H.F. 1645, how will landowners receive notice?
? If there is no Certificate of Need proceeding, that cuts landowners' participatory rights. Will they be compensated at whatever rate necessary to appease them for taking away their rights? Where is this codified?

Several bills propose exempting wind or renewable projects from Certificate of Need, so while reading through the bill to the spot where this amendment is proposed, look at how narrow the exemption categories are and then you'll see a HUGE exemption for wind. Why?

There is no need to exempt wind projects. The Certificate of Need process is the way that project proponents prove up their projects, that they are what they claim to be and that they are included in the utility's Resource Plan or Renewable Energy Objective/Standard. Once that claim is established, the review is perfunctory, not onerous Certificate of Need review is also the means in which the landowners and those affected by a transmission project get. If all were automatically exempted, where is the necessary opportunity to assure the project really is what they claim it is? How is it demonstrated that this facility best fits the need, that it is planned to best utilize existing infrastructure and does not require or depend on construction of infrastructure? This determination can be met only through a Certificate of Need proceeding.

• "Regional Reliability" as a criteria for "need" is a crock

We will not freeze in the dark in an incubator without a job. There is a glut of electricity (search this blog for "glut" for more information).

Found in bills such as H.F. 1347/S.F. 1332; H.F. 1517/S.F. 1502; H.F. 1645/S.F. ??, and it may come up in future incarnations.

QUESTIONS TO ASK:

? What is impact of project on local load service?
? Does local load service provide any basis for project?
? What ratepayers are paying for this "regional reliability" project?
? Show me the market analysis to support planned market transactions.
? What is target market?
? What new generation is planned within "regional reliability area" of target market? (MAIN, MAPP)

Reliability – The classic utility line that "we need this for reliability" is not true. Utilities use the false threat of impending outages irresponsibly to justify construction of transmission, but these threats are deceptive empty threats that cover up the reasons for utility drive to build transmission – their access to increased unregulated market transactions, and the reason for the outages – system manipulation and overloading to increase unregulated market transactions and unwillingness to cut transfers when necessary, all actions that put the grid at risk. I've entered 4 industry investigations of outages and "incidents" on the records of various transmission proceedings and transmission planning dockets, including those of July 11, 10, 1997, June 25, 1998, July 10-11, 1999 (2), that show industry alarm at the cavalier manner in which the utilities are operating the grid, typified by overloading the system beyond its capacity to reap profit, not taking action when forewarned of trouble, taking the wrong action – avoiding cutting bulk power transfers, and doing too little to late. It is the industry desire for vastly increased "economic transfers" that is at the root of the system reliability problems. Here's an overview with a similar take:

[DOC] Recommendations from Major Power Outages Potentially Applicable to ...
File Format: Microsoft Word 2000 - View as HTML
... the entire northern **MAPP** Region was separated from the Eastern Interconnection,
... in the eventual blackout of the **northwestern Ontario** Hydro system. ...

Look for the phrases and code words that let you know they were overloading the system to sell as much electricity as possible, running the system above operating guides, delayed action rather than cut transfers, actions which put the grid at risk:

- *heavily loaded*
- *reduce scheduled transfers to a safe and prudent level*
- *high demand*
- *high electricity transfers*
- *establish maximum transfer levels*
- *encourage operators to exercise their authority to take immediate action*
- *system must be operated within approved Operating Guide limits*
- *system must be returned to a reliable state within the allowed readjustment period*
- *system operator must take responsibility to restore the system immediately*
- *record peak loads*
- *reactive demand exceeded reactive supply*
- *High transfer levels across the system*

Building more large transmission lines will increase not reliability, they will only increase the number of transmission lines needed to provide a stable system and it feeds on itself in a never ending utility claim of "need." The big transmission and instability and reliability concerns can be avoided through broadly distributed generation carefully placed.

lines to come in just under the length requirement for a Certificate of Need, claiming they're "for wind" or whatever it takes to make a case for approval by the state. What these patterns of industry plans show is the 1970's pattern of utility overbuilding, which is why we have not needed infrastructure for so long.

• Landowners' compensation must be updated

Found in bills such as H.F. 1645 (missing Buy the Farm @ 100kV); S.F. 462, and may come up in future incarnations.

QUESTIONS TO ASK:

? Where purpose of transmission line is market transactions, will landowners receive a share?
? What is basis for payments proposed?
? Is landowner contract to be renegotiated if easement to be used for another purpose, upgraded, fiberoptic, etc?
? Where purpose of transmission line is market transactions, a private purpose, what is utility basis for claim of eminent domain?
? Is "Buy the Farm" available to ALL landowners facing a high voltage (over 100kV) transmission line?
? Does proposed legislation contain a notice provision of landowner options?

Landowners are concerned about two things: Given the changing nature of transmission, am I being fairly compensated for use of my land, and second, has the state PUC and EQB review process been public and fair? Landowner compensation for transmission lines occurs under two statutory scenarios, Minn. Stat. ch. 117 (standard eminent domain) and Minn. Stat. §116C.63, subd. 4, knows as "Buy the Farm." The legislative intent of "Buy the Farm" was to allow landowners to get out from under a transmission line by opting eminent domain for their entire parcel, not just the small easement, so they can move away. Transmission is now going forward for other than the "public purpose" that is necessary for eminent domain, and landowner compensation must reflect this changed market and regulatory structure. Transmission projects have been permitted in a way that landowners could not take the Buy the Farm option because they were exempted from, and not granted, a permit under the Power Plant Siting Act (Minn. Stat. ch. 116C). FYI – there is no provision in the law that landowners be notified of the "Buy the Farm" option if it applies to their situation. On March 4, 2005, in Luverne, MN, Xcel's Pam Rasmussen testified that they had not provided notice, would not provide notice, and would not provide a list of names and addresses of affected landowners to let someone else provide notice. THIS IS A PROBLEM. Landowners are not aware of their rights and are not being notified, either that the provision exists or that if a project is exempted they will not have this option, and that's a notice problem.

Look for provisions that:

- Assure landowners and all levels of local government receive actual notice of projects in their area, including Biennial Transmission Plan certification projects and specific project applications
- Provide for annual payments to landowners, spreading the profit of transmission to those providing land for it (maybe optional one time payment/buy out?)
- Annual payments available in all land acquisitions for infrastructure, whether eminent domain or negotiated easements.
- Right to annual payment follows the land
- Notice is provided to landowners of the Buy the Farm and annual payments options
- Buy the Farm must be available to all those affected by high voltage transmission lines – those over 100kV (was set at 200kV threshold in 2002).

Here's the catch: When someone wants to build transmission for "reliability" or to "get electricity to market," always ask about their market. Where are they selling the power, to whom, how much? Then look at the reserve margins in that area, and think what the power will cost to get there, the cost of generation plus the cost of transmission should make it more expensive than any local generation. Note that reserve margins are at an all time high, double or more what is needed.

NERC – North American Electric Reliability Council – www.nerc.com "voluntary" utility reliability organization that establishes procedures and guidelines for operating the grid. It provides the operational rules but has no real enforcement teeth.

Blackout information: http://www.mapp.org/content/neblkout.shtml

Library - Reliability Assessments http://www.nerc.com/~filez/rasreports.html

2004 Reliability Assessment – read the comments about available generation and transmission capacity, note that it states it is a CONSERVATIVE estimate of resources (the situation is even rosier than this report states), note the comments on ability of distributed generation and hardware updates (FACTS, reconductoring, etc.) to increase system capacity, and most importantly, **note reserve margins for MAPP and MAIN p. 31-32.**

MAIN – Mid-American Interconnected Network www.maininc.org/files/2004.htm and click on MAIN submittal to NERC for the longterm assessment(public info) Again, note the reports of new generation in MAIN, 9.900MW, and that's a conservative estimate. P. 1 - Resource Assessment

• Stakeholder process to "streamline transmission" approval

Found in bills such as H.F. 1347/S.F. 1332; H.F. 1645 Alternative Review, and it may come up in future incarnations.

QUESTIONS TO ASK:

? What is wrong with transmission approval process now? (dig deep, and take the inquiry down a couple levels, if "delay" is a problem, why is that a problem and what is the cause of the delay.)

? What would impact of proposed changes be on landowners and intervenors and interested parties?

? Where improper notice and difficulty of meaningful participation are already landowner and public concerns, how will these concerns be addressed?

? Who are regarded as stakeholders? Who has the time commitment and funding necessary to participate fully (anyone other than "environmental" organizations with big budgets?)?

? Will Intervenors and state agencies charged with approval be funded sufficiently to deal with applications?

Process does NOT need streamlining – what holds up projects is bad applications (Chisago, Arrowhead)
The concept of "streamlining" transmission approvals is nonsense, and speeding it up will not help. The application review system is working, sort of, although the state agencies do not have the technical expertise they require, no engineer and no staff qualified to evaluate industry proposals (THIS IS A SERIOUS PROBLEM). **The reason that utilities are having problems getting proposals approved, such as the Arrowhead and Chisago Transmission Projects is that they are putting forth harebrained ideas without substance that do not stand up under scrutiny.** The utilities claim that lines are "needed" for things "reliability," or "local load service" yet in the transmission permitting proceeding, we find those claims are not supported by industry reports, they are forecasting load increases that do not match with history or current experience. Bottom line, utilities want the transmission lines for "economic transfers" – wholesale bulk power transfers that are not regulated by the state. The applications do not contain the necessary information for approval under state criteria because they are not intended for the purposes the state permits, and instead of using the process honestly, they have circumvented the process by designing the

No Recipient, 01:16 AM 4/6/05, CURE: Communities United for Responsible Energy

To:
From: Book House <bookhous@pro-ns.net>
Subject: CURE: Communities United for Responsible Energy
Cc:
Bcc:
Attached:

CURE supports the Office of the Attorney General and others who recommend that the Senate Energy committee/s:

- NOT include or approve legislative language that facilitates the transfer of authority for transmission assets, functional control and/or planning to a regional transmission operator.
- RTO's should not qualify for filing in Minnesota's State Transmission Planning Report.
- State (PUC) authority must not be risked; state & public interests cannot otherwise be protected.
- Local load service must remain a priority. PUC enforces this, and could lose this power.
- Ratepayers may be improperly charged for transmission "to serve renewable energy"; proper appropriation of costs cannot be made without Commission proceedings on Need and rate recovery.
- Potential impacts include due process, landowner rights, ratepayer impacts; undermining of alternatives development, state energy policy implementation, and environmental protections.
- CURE supports the OAG on all other points.
- Statutory language is not needed for RTO's to form, or utilities to join them. Application can be made to PUC.

Public Interest concerns about independence, jurisdictional concerns (central), state permitting and need procedures relative to landowner rights and exercise of eminent domain, ratepayer impacts, accountability, planning transparency —have all been well developed in the course of the 4 years that the Translink proposals were before the Commission. ATTACHED, please find excerpts from these dockets:

PUC Staff Briefing Papers
June 26, 2003

In the Matter of the Petition of Northern States Power d/b/a/ Xcel Energy
for Approval of the Transfer of Functional Control of Transmission Facilities...
[E002, PT6205/PA-02-2152]
&
Interstate Power and Light Company for Aopproval
of the Transfer of Transmission Facilities to TRANSLink...
[E001, PT6205/PA-02-2219] .

EXCERPTS:

- OAG's comments
- Environmental Organization comments
- PUC staff summary of questions involving transfer of transmission authorities and/or assets to RTO, Translink

Thank you for your careful consideration of this matter.

Kristen Eide-Tollefson for CURE
612-331-1430

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: **June 26, 2003** ..... Agenda Item #__

Companies: Northern States Power Company d/b/a Xcel Energy
Interstate Power and Light Company

Docket Nos. E002, PT6205/PA-02-2152
In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of the Transfer of Functional Control of Transmission Facilities to TRANSLink Transmission Company LLC and for Related Relief

E001, PT6205/PA-02-2219
In the Matter of the Petition of Interstate Power and Light Company for Approval of the Transfer of Transmission Facilities to TRANSLink Transmission Company LLC and for Related Relief

Issue(s): Should the proposal by Xcel to transfer functional control of various transmission facilities and the transfer of ownership of Xcel's EMS software at net book value to TRANSLink be approved?

Should the proposal by Interstate to transfer ownership of various transmission facilities at net book value to TRANSLink be approved?

Staff: Louis Sickmann ..... (651) 296-7105
Clark Kaml ..... (651) 297-4563
Al Bierbaum ..... (651) 282-6444
Janet González ..... (651) 296-1336

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

Relevant Documents

	Xcel Log	Interstate Log	
Xcel Petition	01		December 16, 2002
Interstate Petition		01	December 30, 2002
Dairyland Comments	18	11	March 24, 2003
OAG Comments	19	12	March 24, 2003
NAWO Comments	20		March 24, 2003
Department Comments	21	13	March 24, 2003
Great River Energy Comments	22	14	March 24, 2003
Sierra Club Comments	23	15	March 24, 2003
Municipal Transmission Comments	24	16	March 24, 2003
Environmental Quality Board Comments	25	17	March 24, 2003
Center for Environmental Advocacy Comments	26	18	March 24, 2003
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argued that this proceeding may not be the proper venue to change those trade-offs due to the "brave new world of competitive electric markets" as suggested by NAWO.

Office of Attorney General

In comments filed on March 24, 2003, the Residential and Small Business Utilities Division of the Office of Attorney General (OAG) recommended that the Commission deny the petitions of Interstate and Xcel to divest ownership and control of their Minnesota transmission facilities to TRANSLink. The OAG argued that approval of these petitions would threaten the regulatory structure by stripping the Commission's jurisdiction over transmission policy in Minnesota. This is a backdoor attempt at deregulation which must be rejected.

- At page 6, the OAG argued that claims that TRANSLink would be as reliable as MISO in providing maintenance, upgrades, and new transmission capability are without merit and are designed to mask the true purpose of the petitions, which is for the transmission grid to escape all State regulatory oversight.

- At page 7, the OAG discussed that the Commission did not give up jurisdiction over transmission by transferring functional control to MISO, instead retaining authority to establish the electric rate charged in Minnesota and to order transmission upgrades. However, TRANSLink will permanently exclude the State, and the Commission, from having an effective voice on transmission. The Commission's authority to approve the petitions without legislative action is questionable. There is no mandate requiring the granting of the petitions. Surrendering Commission authority over the grid serves no useful public purpose other than to benefit the shareholders of the grid.
  Energy deregulation has been debated at the legislature, but never authorized. The Commission is a creature of statute, and the Commission has not been empowered to allow the transmission grid to be removed from its jurisdiction. 216B.02 contemplated vertically-integrated utilities. The legislature contemplated that utilities would continue to own transmission assets to meet the needs of transmission needs in Minnesota. The utilities cannot bypass the legislative debate by simply asking the Commission to transfer ownership or control of a big part of the grid. Approving the petitions is an abnegation of the Commission's responsibility to ensure adequate service to ratepayers.

  Approving the petitions would result in the surrender of Commission authority under 216B.79 giving it authority to order utilities to control sufficient generation, transmission, and distribution assets. 216B.2425 mandates the Commission to monitor and regulate the State's electric transmission. If the utilities are no longer in the transmission business, they will not be subject to the filing requirements, and TRANSLink is not a public utility required to file such reports, rendering 216B.2425 meaningless.

- At page 10, the OAG discussed that the formation of and participation in TRANSLink is not required under any federal or state mandate. Companies are not required to divest of transmission. Minnesota legislation does not direct it, nor does it grant the authority to the Commission to approve such activity.

This situation is different than the MISO transfer last year. The Commission was told that FERC Order 2000 directed utilities to transfer control of their transmission facilities to an RTO. Also, Interstate and Xcel were required by FERC to join an RTO as a condition of mergers. Here, MISO is not the only option. FERC can be satisfied by participating in the MISO. The Commission must give serious consideration to the consequences of the proposals before it, so as to not expose retail customers to the risk of unreliable service and high rates.

- At page 10, the OAG explained that the request by Xcel to transfer transmission to TRANSLink as a step in unbundling the vertically integrated industry is not typical of requests to approve leases, purchases, or sales of assets. Approval of this request will permanently divest the Commission of the jurisdiction granted to it by the legislature. New York learned last year that by unbundling leads to the state's loss of jurisdiction due to federal preemption by FERC. This is a warning to the unbundled states. On page 14, the OAG further discussed that the Court has also concluded that FERC's decision not to regulate bundled transmission was a statutorily permissible policy choice.

  Minnesota does not have unbundled retail choice or restructured electric service. Minnesota public utilities remain vertically integrated natural monopolies with service territories and rates of return in exchange for regulation. Approving the divesting of transmission would be a relinquishing of Commission authority over transmission. Jurisdiction may not be recoverable. California is attempting to put Humpty Dumpty back together again.

- At page 17, the OAG explained that if authority over transmission is lost, it is uncertain what the Commission could do in the rate making process to influence rates. By retaining authority, the Commission would view the MISO rate as an actual operating expense for rates, but would be able to adjust this rate based on the company's income from transmission, transmission cost recovery, and expenses associated with transmission assets under its rate authority.

- At page 18, the OAG discussed the Commission's authority to regulate reliability would also be jeopardized with a loss of jurisdiction. State native load is afforded protection from wholesale demands on the system which could be jeopardized if Xcel and Interstate no longer own the transmission. TRANSLink would be prohibited as a FERC jurisdictional entity would be prohibited from favoring native load. The native load exemption in the MISO tariff would not apply to TRANSLink.

- At page 21, the OAG argued that the transfers do not meet the public interest requirements. Xcel's transfer of EMS and Interstate's transfer of transmission assets to TRANSLink are sales under 216B.50, and Xcel's transfer of control over transmission assets is a lease. Thus the transfers must meet the public interest standards of 216B.50, and Xcel's must also meet the affiliated interest agreement statute 216B.48 since the lease is between a utility and an affiliate, Xcel and TRANSLink.

216B.48 and 216B.50 require a determination of being in the public interest. The proposals are not in the public interest due to the loss of state jurisdiction over transmission. Further, the TRANSLink model fails the public interest test due to: (1) potential for market power abuse or manipulation of the market; (2) risk of higher rates for Minnesota retail customers; (3) diminished ability of regulatory agencies other than the Commission to influence policies affecting rates and reliability, and; (4) the risks associated with divesting important transmission assets to a new company with no operating record.

- At page 24, the OAG pointed to the failed California experiment and recent experience in Pennsylvania show clearly that the development of a competitive market is difficult due to the ability of the insiders to exercise market power and manipulate the deregulated system in unforeseen ways. The public interest is not served by side door deregulation on the backs of utility customers. Generators in California withheld power from the market. In Pennsylvania, Pennsylvania Power and Light abused its market power and gamed the PJM RTO market rules in a manner that raised prices for wholesale and retail customers.

- At page 26, the OAG explained that claimed independence of TRANSLink may be only in the eyes of FERC, with the reality of the matter being that Xcel and Interstate are forming TRANSLink and will have substantial ownership interests in TRANSLink. Will TRANSLink Management Corp. ignore the interests of two primary owners? Keep in mind that former Xcel and Interstate executives are currently executives of TRANSLink Management Development Corp. with the possibility of being on the board of TRANSLink Management Corp. when it is formed.

  MISO will have a lower level of oversight over TRANSLink than it does over Xcel and Interstate. This could lead to opportunities to manipulate the system to the detriment of Minnesota customers.

- At page 28, the OAG discussed that TRANSLink participation could lead to higher transmission rates for retail customers, a further consideration when reviewing the public interest of the proposals. It is admitted that transmission costs will not likely be lower to retail customers than if Xcel and Interstate remain direct members of MISO. Xcel and Interstate ignore that bundled retail load is currently exempt from a number of MISO charges (ancillary charges, network transmission charges, etc.) that would apply if the transfers are approved.

  MISO/TRANSLINK charges under Schedules 1 through 6 and Schedule 9 for network ancillary services will apply to Xcel and Interstate native load. These charges are established by FERC, leading to higher costs due to increased rate of return, shorter depreciation periods, true-ups of costs, and increased network transmission costs because of increased transmission being built than would be if the Companies remained direct members of MISO. There is also the concern that Minnesota customers can end up paying for new transmission built to serve wholesale transactions and not needed for native load.

As a for-profit company, TRANSLink will have every incentive to increase transmission revenues by expanding the ability to transfer power in the wholesale market. TRANSLink's rate design will spread the cost of highway facilities to all users, not just those at the end of the highway

- At page 34, the OAG discussed the concern that TRANSLink could lead to unnecessary increases in transmission costs and rates because the for-profit company will be biased against non-transmission solutions to constraints.

  It also appears that Minnesota ratepayers will not get a deferred tax benefit from the transfers of assets to TRANSLink. The transfer will be at net book value, and if deferred taxes are not included in the transfer ratepayers will not receive the benefit of having paid those deferred taxes in any future rate proceeding. On May 14, the OAG supplied copies of information request responses to clarify that Xcel indicated that TRANSLink's books and records will reflect the depreciation and deferred taxes reflected on Xcel Energy's book on the date of the transfer. However, the OAG also included a response by Interstate indicating that TRANSLink is not a tax paying entity and it is not appropriate to transfer accumulated deferred taxes to TRANSLink.

- At page 35, the OAG noted that if Xcel and Interstate transfer ownership and control to TRANSLink, they no longer will be members of MISO transmission owners committee where they were directed to work with the Commission and public agencies to address reliability concerns. TRANSLink will be in their place, removing another avenue currently available. TRANSLink will have no obligation to provide advance notice of tariff filings to the Commission or public agencies impairing an avenue for influencing rate decisions at FERC.

- At page 37, the OAG argued that transferring transmission to a company, TRANSLink, with no operating history is risky business. There is no guarantee of reliable service. There is no assurance of cost-effective transmission service for Minnesota. If there is a problem, the Commission would not have jurisdiction to remedy it. Finally, TRANSLink might not be a viable business model and could experience extreme financial distress. The utilities may need to buy back the assets they are proposing to sell to TRANSLink, or potentially face even more uncertain consequences in a bankruptcy proceeding.

  If TRANSLink is not reliable, the utilities will not be able to provide the service themselves because TRANSLink will have the assets.

OAG Reply Comments

In its reply comments submitted April 14, the OAG maintained that the transfer of any property interest in the transmission facilities of two of Minnesota's largest regulated public utilities to TRANSLink is directly contrary to law and to the public interest. The OAG continued to recommend rejection of the petitions.

The OAG disagreed with commenting parties that a transfer of functional control to TRANSLink could be supported. Also, the OAG agreed with the comments of EQB and Environmental Interveners that Xcel and Interstate have not demonstrated that transmission planning by TRANSLink is compatible with the public interest.

- At page 2 of the reply, the OAG discussed transferring ownership vs. control. Even with the transfer of functional control, the Commission will lose substantial authority over rates and reliability, and customers will still be subjected to the same risks of transferring ownership. TRANSLink could have reliability, safety, and financial problems which must be considered by the Commission, and TRANSLink service might be more expensive.

- At page 4 of the reply, the OAG discussed that if TRANSLink develops problems, it is unlikely FERC would allow Xcel or Interstate to terminate their Private Power Operating Agreements with TRANSLink. This is a 10-year agreement and gives TRANSLink the exclusive right to operate the transmission system of the transferring utility. At the end of the 10-year term, FERC's approval must be obtained in order for the utilities to withdraw.

- At page 5 of the reply, the OAG reminded that the Commission could not directly order TRANSLink to address reliability or cost problems. No accountability to the Commission, no enforcement mechanism to ensure that TRANSLink complies with orders to Xcel or Interstate to address reliability or cost issues arising from TRANSLink.

- At page 5 of the reply, the OAG reiterated its discussion that once functional control is transferred to TRANSLink, the native load exemption from MISO charges is lost and FERC approved rates would appear as an operating expense in a rate case, leading to reduced Commission ability to determine the appropriateness of transmission costs. With Interstate's rate case expected soon (filed May 19), authority over the transmission component of retail rates would likely become relevant sooner rather than later.

- On page 7 of the reply, the OAG argued that, under the PPOA, TRANSLink would have the right to build all expansions, upgrades, replacements, and additions to the transmission system which would then be owned by TRANSLink, even if the original assets were merely transferred for functional control purposes. More jurisdictional uncertainty. Currently, MISO does not own transmission facilities and is not foreseen that it will. TRANSLink is premised on the ultimate ownership of the participant's transmission.

- On page 8 of the reply, the OAG argued that the transfer of ownership of Xcel's EMS is not in the public interest. All assets should remain with the regulated utilities, not TRANSLink. EMS is the brains of Xcel's transmission system, monitoring and controlling the grid in real time to put power where it is needed. Donating the EMS to TRANSLink puts Xcel in the position of not being able to operate its own system, if Xcel were able to escape the vise of the PPOA. Commission approval of even one component

of the transmission system to TRANSLink would have substantial symbolic and precedential value.

- On page 9 of the reply, the OAG agreed that the planning process proposed by TRANSLink has not been shown to serve the public interest. It will not allow adequate input from citizen, environmental, or local government groups. TRANSLink also will likely not have the incentive or information needed to fully and fairly examine issues critical to the planning process. Minnesota law does not contemplate transmission being provided by a company like TRANSLink. A result rendering the state planning statute meaningless would thwart the intent of the legislature.

Xcel Energy Reply

Xcel filed reply comments on April 14 arguing that the proposed transfer of functional control of its transmission facilities in Minnesota under the PPOA and the transfer of the EMS under the ACA (or cash sale) to TRANSLink will serve the public interest.

Exhibit A attached to Xcel's reply lists the reporting requirements and other conditions the Company is willing to agree to if the Commission approves the petition.

- At page 5 of the Reply, Xcel repeated its requests for approval including:
  - Transfer of functional control of all Xcel transmission facilities in Minnesota to TRANSLink.
  - Transfer of ownership of the EMS to TRANSLink at net book value.
  - The PPOA used to execute the transfer of transmission to TRANSLink.
  - The ACA used to execute the contribution of the EMS to TRANSLink.
  - The corporate formation agreements too establish TRANSLink, LLC and TRANSLink Management Corporation. These include the TRANSLink Limited Liability Company Agreement and the Amended and Restated TRANSLink ITC Formation Agreement.
  - The reporting requirements and commitments proposed in Exhibit A to the April 14 reply comments.

- Beginning at page 6 of the reply, Xcel discussed the Department's comments. Points of disagreement include the Department's recommended application of 216B.48 to the ACA, PPOA, and other TRANSLink formation agreements. Xcel disagreed that the statute applies, but did not oppose the Commission's continuing authority and jurisdiction over the ACA and PPOA in a manner similar to the MISO Order.

  The Company continued discussing the many points with which it agreed with the Department's analysis.

- At page 13 of the reply, Xcel responded to the Department's recommendation that the Commission condition approval under 216B.50 to include the "ongoing Commission

CURE lists several questions beginning at page 9 of its filing highlighting concern for TRANSLink's structure and organization and its effect on existing power and interest structures, different companies, profits and non-profits, public interest, and on the potential to benefit some members over others. CURE also listed several questions addressing the large asset managed by TRANSLink and its effect on many members of the public, the degree of accountability, control of grid planning, increased imports of power, and the danger that trust of the non-profits being converted to contradictory purposes through the planning objectives.

CURE argued that the public interest is in maintaining state authority over need, routing, and planning.

Environmental Interveners

The Minnesota Center for Environmental Advocacy, Izaak Walton League of America - Midwest Office, and Minnesotans for an Energy Efficient Economy (Environmental Interveners) filed joint comments in this proceeding.

In its March 24 comments, the Environmental Interveners recommended that the Commission reject Xcel's petition as not in the public interest at this time. In its April 14 reply, the Environmental Interveners concluded that without providing satisfactory mechanisms to ensure formal and meaningful stakeholder participation in TRANSLink transmission planning and to ensure that TRANSLink will satisfy the content requirements for resource planning and certificates of need, Xcel cannot show its petition is consistent with the public interest. (By letter dated March 31, the Environmental Interveners requested that its comments be considered filed in both the Xcel and Interstate dockets.)

- Beginning at page 6 of the March 24 comments, the Environmental Interveners argue that TRANSLink participation may undermine the effectiveness of the certificate of need © of N) statute. TRANSLink will be the applicant for new transmission lines in Xcel's territory, not Xcel. As a FERC regulated entity, TRANSLink may not be required to, or have the ability to meet key provisions of the C of N requirements.

  Minn. Stat. 216B.243, Subd. 3 requires a showing that the demand for electricity cannot be met more cost-effectively through conservation and load management to construct additional facilities. The Commission must evaluate alternatives to transmission; efficiency, load management, and distributed generation. Further, the statute requires a C of N cannot be issued unless the applicant has explored the possibility of generating power by means of renewable sources and that the alternative is less expensive than renewable sources.

  Minn. Rules7849.0260 (B) (1) and (2) also require a C of N applicant to discuss generation alternatives to any proposed transmission line.

  It has not been demonstrated that a for-profit TRANSLink will independently and fairly examine conservation, load management, distributed generation, or other alternatives to additional transmission. TRANSLink has an economic incentive to discount alternatives.

TRANSLink's purpose is to own, operate, construct, and maintain transmission. It may not have the ability to fairly evaluate alternatives that would remove the need for transmission. Further, the Commission's jurisdiction will extend to transmission expansion designed to facilitate bulk wholesale transfers of electricity.

Xcel's responses to information requests acknowledge that the C of N requirements do not match up with TRANSLink to such an extent that TRANSLink may need to request exemptions to the statutes and rules. Approval of the transfer of transmission assets to TRANSLink affords Xcel exemptions for which Xcel would not otherwise qualify.

- Beginning at page 9 of the March 24 comments, the Environmental Interveners argued that participation in TRANSLink may undermine the effectiveness of the state transmission planning statute.

  Minn. Stat. 216B.2425 requires utilities in Minnesota owning or operating transmission lines in the state to submit biennial transmission projects reports to the Commission. The Commission may only certify a project if it complies with the C of N statute. There is concern that exemption requests by Xcel could limit statutory policy choices.

  Divestiture of Xcel's transmission assets in the future could lead to further erosion of commission authority. This could occur within months. If Xcel transfers ownership of the transmission assets to TRANSLink, it is possible that neither Xcel nor TRANSLink would be subject to the transmission certification statute. TRANSLink is not a public utility under Minnesota law, and Xcel would not own transmission assets.

- Beginning at page 11 of the March 24 comments, the Environmental Interveners argued that while TRANSLink proposes an open planning process, such process could be viewed as closed when compared to MISO's process. MISO structure includes advisory and planning committees, while TRANSLink only provides for a commitment to invite stakeholder input with no mention of a formal role for environmental and renewable advocates, and participation may be limited to existing MAPP Sub Regional Planning Groups (SPGs).

  Commenting on decisions already made by TRANSLink is too little, too late.

- Beginning at page 13 of the March 24 comments, the Environmental Interveners disputed Xcel claims that TRANSLink participation will benefit renewables in Minnesota by enhancing the transmission system's ability to accommodate intermittent resources. This claim is not supported. TRANSLink will not dispatch generation, load serving entities will. The windiest control areas, Western and Basin, are not participating in TRANSLink.

  The benefits to renewables from the transfer of the EMS to TRANSLink is also disputed. EMS services tariff language has not been developed. Many of the EMS services are already available to renewable generators by existing control area operators.

There is no mention of plans to offer other transmission services that could benefit renewables, which could include curtailable firm transmission service or wind forecasting.

- At page 1 of its reply comments of April 14, the Environmental Interveners supported the comments of the EQB suggesting that SPGs identified as a forum for stakeholders to have a role in TRANSLink transmission planning have an uncertain future. Detail is lacking as to how TRANSLink can work to ensure the continuation of the SPC mechanism to provide stakeholders the opportunity to participate in the transmission planning activities. Stakeholder involvement in TRANSLink's transmission expansion planning is essential to ensuring that public utilities' participation in an independent transmission company is consistent with the public interest.

  It is unacceptable to leave stakeholder opportunities to endangered MAPP SPGs. Other involvement opportunities suggested by TRANSLink are not sufficiently detailed. The Commission must examine carefully and modify as necessary how transmission planning in Minnesota would take place under TRANSLink and to direct TRANSLink planning if it desires to do so. The Commission should also consider the lack of its own jurisdiction over TRANSLink because TRANSLink is regulated by FERC and TRANSLink is not the petitioner in this proceeding. Even a voluntary commitment between Xcel and/or TRANSLink and Minnesota can't be relied upon if FERC will give TRANSLink a better deal.

- At page 3 of its April 14 reply, the Environmental Interveners express concern about Department recommendations to approve the TRANSLink petitions, but to defer the resolution of concerns to the future or through reporting requirements.

  The Department indicated that it was not clear how effectively Xcel's resource planning and TRANSLink's transmission planning will lead to adequate solutions for meeting the state's needs. To address this concern, the Department suggested Xcel should provide an analysis of how transmission factors impact its resource planning and how effect TRANSLink is in addressing the impacts. This analysis may be too little, too late. If TRANSLink is not meeting Xcel's needs, the harm to Minnesota may already be done. Authority of the Commission to remedy ineffective action by TRANSLink may be limited.

  The Department recognized disconnect between Minnesota statutes and rules when attempting to apply energy policies to independent transmission company. C of N rules were not designed to accommodate applications by an independent transmission company and data exemption requests are a likely result. The Department's remedy to require a pre-C of N filing is insufficient. What action can be taken on such filing.

  The Department recommended that state regulators be allowed to participate as non-voting member or as observers on the Reliability Planning Committee. However, it is not apparent how this requirement placed on Xcel results in TRANSLink's carrying out the

requirement. TRANSLink's proposed process is deficient and the state's authority may be limited to deciding whether a utility joins TRANSLink. Xcel should require amendments to TRANSLink's planning process which permit a formal and meaningful role for stakeholders. If TRANSLink cannot amend the process, Xcel should be barred from participating in TRANSLink.

Concerns about TRANSLink's strategy for assuming responsibility from its members for participating in the SPG transmission planning process should not be pushed aside to a future date. Those concerns should be addressed before recommending approval of the petition.

Minnesota Environmental Quality Board Staff

In its comments filed March 24, the Minnesota Environmental Quality Board Staff (EQB) expressed concern about the TRANSLink planning process as provided to date and recommended additional development of the transmission planning framework for TRANSLink. Additional detail on TRANSLink's planning process and its relationship to other existing planning processes, stakeholders, and state policy objectives is necessary.

In its reply comments filed April14, the EQB recommended that, 1.) the Commission seek briefs from parties on whether the PUC has authority to approve the transfers, 2.) after receipt of the briefs, the Commission should resolve the legal question of authority, and 3.) if the Commission determines it has authority to act on the transfers, a contested case hearing should be held to compile the record on whether to approve the petitions and under what conditions.

- Beginning at page 2 of its comments filed March 24, the EQB discusses its concerns as to how transmission planning for Minnesota would take place under TRANSLink. It is not clear that TRANSLink's open process is open enough. TRANSLink staff bears the primary responsibility for planning. Staff's plans would then be reviewed and approved internally by an asset management committee of TRANSLink officers. TRANSLink staff would rely on SPGs, Reliability Planning Committee, and ad-hoc working groups in planning.

  Historical involvement of stakeholders in SPGs has been minimal. The SPG process is not well defined as it relates to TRANSLink.

  The Reliability Planning Committee is to be chaired by TRANSLink staff, comprised of TRANSLink staff, TRANSLink participants, and representatives of load serving entities in the TRANSLink area. This committee affects numerous stakeholders, but how their voices are heard by this group is not defined.

  Ad-hoc workgroups would be formed for individual project-oriented activities, chaired by TRANSLink staff, comprised of TRANSLink staff and directly affected stakeholders and load serving entities. The record is not clear as to who or what directly affected stakeholders are and who determines eligibility for inclusion. Are citizen groups and local government groups eligible?

Sierra Club

In comments submitted March 24, the Sierra Club recommended that the Commission deny the requests of Xcel and Interstate. The Sierra Club focused on concerns that transferring transmission assets/functional control to TRANSLink would interfere with orderly planning for transmission and undermine established policies set for decades by the legislature to protect health and environment.

- The Sierra Club argued that the transfer would undermine law and policy favoring conservation, distributed generation and renewable energy and analysis of alternatives.

  If the transfers to TRANSLink are approved, the requirement under 216B.243, Subd. 3 that a demonstration that the need cannot be met through conservation and load management may not be effectively prepared. The relevant demand may be outside the jurisdictional utility's native load and the PUC may not have authority over another entity. This could lead to higher costs because cost for conservation is less than new generation.

  If the transfers to TRANSLink are approved, the requirement under 216B.243, Subd. 3 to consider increased efficiency, generation upgrades, load-management and distributed generation in analyzing need for proposed transmission projects may not be met. It would not be possible for any entity to make a showing to the Commission that non-transmission alternatives had been considered, with the Commission losing its authority to deny or modify a request for transmission on the basis that efficiency, generation, load-management, or distributed generation could meet the need.

  216B.243, Subd. 3a does not allow for the provision of transmission for nonrenewable generation if renewable power could meet the need. Approving the transfers would lead to the loss of Commission authority to determine whether the proposal serves renewable or nonrenewable generation.

- Transfer to TRANSLink would reduce regulatory and environmental participation in decisions affecting wind energy. Intermittent energy sources may face numerous barriers. MISO primarily reflects the interests of owners of generation and transmission, which are reluctant to support wind and distributed generation. MISO has a process to involve regulators and environmental groups, but it is unclear what check and balance would be provided to include the interests of regulators and environmental stakeholders under TRANSLink.

- Ratepayers could be overcharged for transmission that serves renewable energy under TRANSLink. Costs of transmission built to serve renewable energy may be recovered by the utility without a rate case. The capacity of the lines authorized for Southwestern Minnesota exceeds the wind capacity. It is questionable whether the Commission will be able to determine the revenues collected for a particular line by TRANSLink, which could lead to an overcharge for the portion supporting renewable energy.

- Transfer to TRANSLink could preclude open participation in transmission planning. The Commission has determined that only electric utilities that own transmission can participate in the planning process under 216B.2425. It is unclear whether TRANSLink will be subject to the planning process and whether there will be a process where citizens can participate to ensure consideration of renewable energy, distributed generation and other environmental considerations.

- Transfer to TRANSLink could lead to the taking of private property without determination of a valid public purpose. The C of N process determines whether a transmission facility serves a public purpose. This is the basis in condemnation cases. But under TRANSLink it is unclear how the public purpose will be established. There is a question whether transferring transmission assets to TRANSLink would create new precedent requiring purchase instead of condemnation of all rights of way, or the condemning of property without proof that condemnation meets public interests.

Great River Energy

In its March 24 comments and April14 reply, Great River Energy (GRE) supported the petitions of Xcel and Interstate and recommended Commission approval.

- GRE has transmission services agreements and transmission is highly integrated with Xcel and Interstate. GRE obtains financing from the Rural Utilities Service and is not subject to FERC jurisdiction. GRE applied for conditional membership with MISO, all conditions have not yet been met. GRE is actively participating in the formation of TRANSLink, but has not finalized an agreement governing its participation in TRANSLink.

- GRE sees benefits in TRANSLink's flexible legal structure. TRANSLink facilitates full RTO participation by Co-ops and public power entities. Due to the integrated nature of transmission assets in Minnesota, the increased participation possible by Co-ops and public power benefits all Minnesota ratepayers by avoiding multiple managers and rule sets.

  Highway-zonal rate design serves as a model for alternate RTO pricing, leading toward a common rate design over broad range of participants.

  TRANSLink's strong local voice will maintain focus on the transmission needs of Minnesota. New construction costs will be allocated fairly and integrated joint planning will allow TRANSLink to address the needs of ratepayers at a level above service territory boundaries. Links of cost-causation to cost recovery and a commitment to customer service will keep costs down.

  Lower administrative costs are expected. TRANSLink's footprint encompasses the highly integrated transmission system shared by many of the Minnesota participants which will further joint planning and operating practices.

OAG

Deny all petitions
Threatens regulatory structure, strips PUC jurisdiction
TRANSLink is not mandated
No public interest to surrender PUC authority on grid
PUC not empowered to give up jurisdiction
Utilities remain vertically integrated monopolies
Utilities enjoy assigned service areas
California is trying to restore authority
TRANSLink fails market power tests
Risk of higher retail prices in Minnesota
Pennsylvania learn that insiders manipulate PJM
Xcel + Interstate have large ownership in TRANSLink
Can TRANSLink ignore demands of the owners?
MISO will have less oversight than over utilities
Incentive to expand ability to transfer power
Possible bias against non-transmission solutions
Concern for loss of deferred taxes
Xcel, Interstate won't be on MISO trans owner group
TRANSLink is risky business
PUC cannot directly order TRANSLink to be reliable
Will lose native load exemption
TRANSLink is premised on ownership of assets
Planning process won't serve public interest

PUC Staff Summary

As discussed by the parties, there are several appealing elements to the TRANSLink proposal. There is the claim of lower administrative cost. There is a claim of improved service. There is the claim that the nature of TRANSLink provides a forum to include the many public and cooperative transmission owner/operators in Minnesota. There are the claims that TRANSLink has a smaller footprint than MISO and will allow more local influence. (A year ago, when MISO was before the Commission, we heard how we had to look to larger markets and think beyond state lines.) There are suggestions that TRANSLink will specialize in transmission and therefore will do better at it. There are claims that the consolidation of control areas will improve service and reliability. Several parties agreed that TRANSLink's rate design may be superior when compared to that used by MISO.

However, the Commission must consider what is given up to gain those potential benefits. There are several issues raised by the parties in this proceeding which should be given serious consideration. The Commission should keep in mind that once the step before it is taken, it may not be possible to go back.

Independence

It is noted by the parties that FERC approved TRANSLink's proposed structure, indicating that it met FERC's criteria for independence. However, the Commission may wish to address whether the proposed structure meets its own expectations for independence.

The proposed structure suggests that TRANSLink Transmission Company, LLC will be the operating entity of TRANSLink. The direction and decision making authority is retained by TRANSLink Management Corporation, under a board made up of independent directors. However, as is noted by the OAG, the utilities will likely have substantial financial interests in TRANSLink. Further, key executives at TRANSLink are former executives from Interstate and Xcel.

Already, before TRANSLink has formed and approval has not yet been gained, it is interesting to note the defensive position taken by Xcel when the Department suggested that TRANSLink start-up costs not include costs for employees currently included in Xcel rates. Does this suggest that TRANSLink is exercising influence over the rate actions of Xcel and vice versa? Is there really any significant degree of independence?

Certificate of Need

Many parties expressed concern about the C of N process in a TRANSLink world. That concern was primarily described as recognizing that TRANSLink will need to seek a C of N for construction, but that as a transmission only company, TRANSLink will not have access to information that would support the non-transmission alternatives. Further, it is alleged that TRANSLink will not have the incentive to seek information on non-transmission alternatives since the larger rate of returns are awarded for transmission, not distributed renewable generation.

A solution suggested would be that TRANSLink would require its participating members to provide support to TRANSLink in meeting its responsibilities under the C of N rules. However, should the utilities be sharing details of their systems with the transmission provider? Will the utilities with a financial interest in transmission returns provide TRANSLink with information that would potentially compete with transmission? Can the Commission declare TRANSLink independent after encouraging TRANSLink and the utilities to depend on each other?

Also, TRANSLink is under FERC jurisdiction. However, staff understands that FERC does not have routing or need authority in Minnesota, and will need to depend upon the Minnesota process. Staff suggests that this is an area where the Commission should steadfastly maintain and improve upon a process to permit input by stakeholders in Minnesota. Such a process should maintain meaningful opportunities for input into the planning and need requirements of Minnesota.

Transmission Planning and Reporting

These issues also were raised by several parties. It was suggested that TRANSLink is not a utility for purposes of reporting under the transmission statute. As a solution, it was suggested that the Commission approve the petitions, direct TRANSLink to seek legislation to get itself included under the statute, and in the meantime, direct the utilities to file the required reports, etc.

First, staff has serious concerns with first giving approval, then telling TRANSLink to seek legislation. Perhaps TRANSLink and the utilities should have been at the legislature in the

session just ended seeking this change, since several recognized the need for such change in comments prepared in March.

Staff believes that all conditions should be met before granting approval. Granting approval first removes the incentive for TRANSLink and other participants to put forth good faith efforts in achieving satisfactory results.

Second, telling the utilities to file transmission reports when they are no longer in the transmission business is problematic. Where is the independence in that? Are parties really saying that the vertically integrated system is best for Minnesota, and is supported by the current legislative framework?

TRANSLink is FERC Regulated

It is suggested that TRANSLink will be a monopoly transmission provider, and will be a regulated monopoly under FERC. As discussed elsewhere, TRANSLink is not expected to be considered a regulated utility under Minnesota statutes, since it does not provide utility service at retail.

Is there comfort in TRANSLink being FERC regulated? Various parties raise concerns in this proceeding suggesting that FERC gives extra high rates of return, FERC threatens preemption of state's rights, and FERC entertains suggestions by the Transmission owners to find ways to cause full recovery of costs at state levels. Should the Commission be concerned with the prospect of potentially giving more control and authority to the FERC? Is this in the public interest of Minnesota?

Some parties argue that once the Commission authorizes a transfer of control of the transmission assets to an independent transmission company such as TRANSLink, the rules have changed. Some allege that states like Minnesota are enjoying special FERC exemptions for bundled native load, etc. Once a transfer to TRANSLink is complete, the parties allege those exemptions may be gone, forever.

On the other side, the Companies argue that nothing will change. FERC already has authority through MISO. Also, unwinding provisions of the agreements with TRANSLink were held out as alternative. However, as described, they are not that easy to execute by a single utility. Note potential FERC involvement.

While it may be true that FERC may already have encroached far into this Commission's jurisdiction, the fact remains, Interstate and Xcel are seeking approval from the Minnesota Commission to transfer control of transmission assets to TRANSLink. Note that they are not asking FERC.

If the Commission finds that transmission costs charged to the Minnesota jurisdiction are unreasonable, will the Commission have the authority to cause Xcel or Interstate to bear those costs without recovery? Or will the Commission then be confronted with the issue of federal preemption? Note by the comments from the Department and others that transmission owners

have already been quick to seek FERC's forcing cost recovery at state levels. Would TRANSLink seek FERC directive to allow a second recovery of employee costs already included in utility rates?

However, Xcel was quick to note it wouldn't act in a way that would be contrary to the terms of its merger rate freeze that is currently in effect. However, what does the future hold for when those merger terms expire?

Staff would feel much more comfortable if the issue of whether or not Minnesota would be giving something up to FERC or not would be fully explored, possibly complete with a FERC opinion, prior to the Minnesota Commission's taking action on these petitions.

Cost/Benefit Studies, Alternatives

As indicated by more than one party to the proceeding, the formation of TRANSLink and the transfer of control or ownership of transmission assets to TRANSLink have not been mandated. The proposal before the Commission is brought by the petitioners on a voluntary basis. There should be no dispute that the burden of proof for this proposal resides with the petitioners. Should not the record contain studies upon which the Commission could lean as support for a decision approving the requests? Staff is not aware of authoritative studies detailing the problems that currently exist that we can expect TRANSLink to solve, and at what cost/benefit relationship. There also appears to be a lack of authoritative studies concluding why TRANSLink is the best option, or even comparing proposals from the Wisconsin ATC as to how it could resolve the alleged problems that Minnesota faces.

Staff is not aware of a formal cost/benefit analysis quantifying what costs Minnesota ratepayers are incurring today that will be reduced or eliminated by TRANSLink. The only financial benefit that has been often repeated by the proponents is that a few pennies will be saved on the MISO administrative charge. It is difficult to comprehend that costs to Minnesota ratepayers will be less knowing that there will now be both a MISO office with executives and staff, and a TRANSLink office with executives and staff to support. This issue becomes more of a blur when it is commented that many of the employees at the local utilities will continue performing the same transmission duties that they have always done before either existed. Then, as identified by the Department, Xcel suggested that employees already included in Xcel's rates may have performed duties for TRANSLink and ratepayers should pay for those employees again in transmission rates.

Regarding the savings on the MISO administrative charge, staff suspects that the primary reason that Xcel can reference a $4 million savings is because TRANSLink will be bringing in more companies that would not otherwise be in the MISO relationship. If the cooperatives and municipal transmission companies become involved, costs will be allocated over a greater base. Is there really a savings, or is there a savings to Xcel which will be picked up by other Minnesota load resulting in Minnesota ratepayers realizing no savings over the direct MISO relationship?

Also, there is no assurance described that any discounted rates from MISO will continue into the distant future. We need to keep in mind that what we are currently experiencing under MISO is

subject to a six-year phase-in period. What will the ground rules be after the phase-in period expires?

Again, staff would feel much more comfortable considering the proposals if adequate cost/benefit analysis was present. Further, the proponents should be directed to detail the development of any change in costs, and express those in the form of costs or savings to Minnesota ratepayers.

Cost of Equity

FERC awards generous rates of return for transmission. There is discussion that TRANSLink participants may earn in the neighborhood of 13% return on equity; this at a time when interest rates are at near record lows.

There is no analysis as to how such federally established returns on equity will provide benefits for Minnesota ratepayers. The claim is made that a higher return will help attract financing to get more transmission built. Staff is not aware of a study in the record that indicates that projects have been stalled in Minnesota due to the lack of financing.

The Commission may question how a higher return on equity will get more transmission built, when the major obstacles facing projects appear to be process in nature. If it is that a bigger transmission company, with more money and federal preemption courtesy of FERC, will be able to build more transmission, perhaps the Commission should give serious consideration to first developing the regulatory structure in Minnesota which will preserve the rights of the citizens of Minnesota before approving the petitions before it.

It is interesting to note that transmission owing utilities appear to be the staunchest advocates of the TRANSLink model. Is it a coincidence that those standing to earn otherwise unheard of rates of return are such strong supporters? Are they really motivated with concerns for the interests of the ratepayers? Notice the chilling responses when someone might suggest that a state find the FERC rate of return is imprudent and that returns on transmission property charged to ratepayers be limited to returns established in state rate proceedings.

Again, staff would feel more comfortable with studies depicting what lines are going unbuilt due to the inability to attract capital.

TRANSLink Rate Design

There is much discussion how the TRANSLink rate design may be superior to the rate design currently employed by MISO.

However, Xcel noted in its reply comments that MISO participants recognize the faults of the MISO rate design methods. It was explained that the current method was adopted by MISO as a way to get the system started. Also, it was suggested that after the MISO phase-in period is completed, new rate methods might be developed.

Staff questions whether enhancements to MISO rate design might be accomplished if the proper pressure is exerted. If the MISO rate design is improved, is TRANSLink needed?

Reliability

There is much assurance made about the fact that Xcel and Interstate will still be regulated by the Commission, which should give the Commission some authority over transmission reliability. The Commission may wish to seek a full legal analysis of the value of that assurance. If control is transferred to TRANSLink and satisfactory performance is not realized from TRANSLink to improve reliability, what can the Commission force the utilities to do? Again, consider this in the perspective that transmission service quality and reliability are up to standards of FERC and MISO, but not up to the higher Minnesota standards. What response can be expected and what pressure can the utility exert on TRANSLink when the utility will no longer control transmission and will not have an alternative transmission provider to choose from?

These filings have numerous issues that could impact the Commission's regulatory authority, operation of utilities in the state, rates, and service quality. Due to the wide range of potential implications of the Commission's decisions in these cases, the Commission may want to consider some of the following questions:

Legal

What statutes apply to the proposed transfers?

Are the proposed transfers consistent with the Commission's statutory directives?

Are the proposed transfers consistent with the statutory directives for public utilities to provide safe, adequate, efficient and reasonable service?

Is additional legislation or modification to existing statutes necessary? If so, should the statutory changes be done prior to the proposed transfers?

Commission Authority

What regulatory authority will the Commission have over TRANSLink if the proposed transfers are not approved?

What regulatory authority will the Commission have over TRANSLink if the proposed transfers are approved?

What impact will the proposed transfers have on future regulatory authority of the Commission?

Record Evidence

What evidence in the record supports the companies' claims that the transfers will produce benefits to the public?

Is there any evidence in the record indicating that utilities are currently unable to obtain financing for transmission upgrades or construction?

Is there any evidence in the record to indicate that TRANSLink will be able to obtain financing under better terms than the utilities currently operating in the state?

Is there any evidence in the record proving that the proposed transfer will achieve a more efficient, open access to transmission operations while maintaining service reliability than currently exists?

Is there any evidence in the record that demonstrates that TRANSLink's size will create significant control area benefits?

Has a cost/benefit analysis been conducted or reviewed by an independent party?

Rates and Service

Can the alleged benefits be obtained without the proposed transfers?

Will TRANSLink be independent of its members?

How will the transmission costs in the state (including the impact on cooperatives and municipalities) change as a result of the proposed transfer?

How will future rate setting proceedings be altered by the proposed transfers?

What long range impacts will the proposed transfers have on customers in Minnesota?

Policy

Does the Commission want to take "the next step toward 'unbundling' the historically vertically integrated electrical utility industry ..."?

What impact will the proposed transfer have on integrated least cost planning?

This is not intended to be an exhaustive list of the questions associated with the proposed transactions but demonstrate the wide range of issues, including legal and policy issues, that are contained within the requests by Interstate and Xcel.

Alternatives

A threshold issue for the Commission is whether approval of the proposals would be counter to the Commission's statutory directives.

A. Find that the approval of the proposals would not be consistent with existing statutes directing Commission oversight of transmission facilities including:

FOR INCLUSION IN S.F. NO. 1368

Section 1. Minnesota Statutes 2004, section 216B.241, subdivision 1b, is amended to read:

Subd. 1b. [CONSERVATION IMPROVEMENT BY COOPERATIVE ASSOCIATION OR MUNICIPALITY.] (a) This subdivision applies to:

(1) a cooperative electric association that provides retail service to its members;

(2) a municipality that provides electric service to retail customers; and

(3) a municipality with gross operating revenues in excess of $5,000,000 from sales of natural gas to retail customers.

(b) Each cooperative electric association and municipality subject to this subdivision shall spend and invest for energy conservation improvements under this subdivision the following amounts:

(1) for a municipality, 0.5 percent of its gross operating revenues from the sale of gas and 1.5 percent of its gross operating revenues from the sale of electricity, excluding gross operating revenues from electric and gas service provided in the state to large electric customer facilities; and

(2) for a cooperative electric association, 1.5 percent of its gross operating revenues from service provided in the state, excluding gross operating revenues from service provided in the state to large electric customer facilities indirectly through a distribution cooperative electric association.

(c) Each municipality and cooperative electric association subject to this subdivision shall identify and implement energy conservation improvement spending and investments that are appropriate for the municipality or association, except that a municipality or association may not spend or invest for energy conservation improvements that directly benefit a large electric customer facility for which the commissioner has issued an exemption under subdivision 1a, paragraph (b).

(d) Each municipality and cooperative electric association subject to this subdivision may spend and invest annually up to ten percent of the total amount required to be spent and

invested on energy conservation improvements under this subdivision on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the municipality or cooperative electric association.

(e) Load-management activities that do not reduce energy use but that increase the efficiency of the electric system may be used to meet ~~the following percentage~~ 50 percent of the conservation investment and spending requirements of this subdivision~~:~~

~~(1) 2002 90 percent;~~

~~(2) 2003 80 percent;~~

~~(3) 2004 65 percent; and~~

~~(4) 2005 and thereafter 50 percent.~~

(f) A generation and transmission cooperative electric association that provides energy services to cooperative electric associations that provide electric service at retail to consumers may invest in energy conservation improvements on behalf of the associations it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis. A municipal power agency or other not-for-profit entity that provides energy service to municipal utilities that provide electric service at retail may invest in energy conservation improvements on behalf of the municipal utilities it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis, under an agreement between the municipal power agency or not-for-profit entity and each municipal utility for funding the investments.

(g) At least every ~~two~~ four years, on a schedule determined by the commissioner, each municipality or cooperative shall file an overview of its conservation improvement plan with the commissioner. With this overview, the municipality or cooperative shall also provide an evaluation to the commissioner detailing its energy conservation improvement spending and investments for the previous period. The evaluation must

briefly describe each conservation program and must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility or association that is the result of the spending and investments. The evaluation must analyze the cost-effectiveness of the utility's or association's conservation programs, using a list of baseline energy and capacity savings assumptions developed in consultation with the department. The commissioner shall review each evaluation and make recommendations, where appropriate, to the municipality or association to increase the effectiveness of conservation improvement activities. Up to three percent of a utility's conservation spending obligation under this section may be used for program pre-evaluation, testing, and monitoring and program evaluation. The overview and evaluation filed by a municipality with less than 60,000,000 kilowatt hours in annual retail sales of electric service may consist of a letter from the governing board of the municipal utility to the department providing the amount of annual conservation spending required of that municipality and certifying that the required amount has been spent on conservation programs pursuant to this subdivision.

(h) The commissioner shall also review each evaluation for whether a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons unless an insufficient number of appropriate programs are available. For the purposes of this subdivision and subdivision 2, "low-income" means an income at or below 50 percent of the state median income.

(i) As part of its spending for conservation improvement, a municipality or association may contribute to the energy and conservation account. A municipality or association may propose to the commissioner to designate that all or a portion of funds contributed to the account be used for research and development projects that can best be implemented on a statewide basis. Any amount contributed must be remitted to the commissioner by February 1 of each year.

(j) A municipality may spend up to 50 percent of its required spending under this section to refurbish an existing district heating or cooling system. This paragraph expires July 1, 2007.

Sec. 2. Minnesota Statutes 2004, section 216B.241, subdivision 2, is amended to read:

Subd. 2. [PROGRAMS.] (a) The commissioner may require public utilities to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements must be offered to the customers. The required programs must cover no more than a ~~two-year~~ four-year period. Public utilities shall file conservation improvement plans by June 1, on a schedule determined by order of the commissioner, but at least every four years. Plans received by a public utility by June 1 must be approved or approved as modified by the commissioner by December 1 of that same year. The commissioner shall give special consideration and encouragement to programs that bring about significant net savings through the use of energy-efficient lighting. The commissioner shall evaluate the program on the basis of cost-effectiveness and the reliability of technologies employed. The commissioner's order must provide to the extent practicable for a free choice, by consumers participating in the program, of the device, method, material, or project constituting the energy conservation improvement and for a free choice of the seller, installer, or contractor of the energy conservation improvement, provided that the device, method, material, or project seller, installer, or contractor is duly licensed, certified, approved, or qualified, including under the residential conservation services program, where applicable.

(b) The commissioner may require a utility to make an energy conservation improvement investment or expenditure whenever the commissioner finds that the improvement will result in energy savings at a total cost to the utility less than the cost to the utility to produce or purchase an equivalent amount of new supply of energy. The commissioner shall nevertheless

ensure that every public utility operate one or more programs under periodic review by the department.

(c) Each public utility subject to subdivision 1a may spend and invest annually up to ten percent of the total amount required to be spent and invested on energy conservation improvements under this section by the utility on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the public utility.

(d) A public utility may not spend for or invest in energy conservation improvements that directly benefit a large electric customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b). The commissioner shall consider and may require a utility to undertake a program suggested by an outside source, including a political subdivision or a nonprofit or community organization.

(e) The commissioner may, by order, establish a list of programs that may be offered as energy conservation improvements by a public utility, municipal utility, cooperative electric association, or other entity providing conservation services pursuant to this section. The list of programs may include rebates for high-efficiency appliances, rebates or subsidies for high-efficiency lamps, small business energy audits, and building recommissioning. The commissioner may, by order, change this list to add or subtract programs as the commissioner determines is necessary to promote efficient and effective conservation programs.

(f) The commissioner shall ensure that a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons~~, in proportion to the amount the utility has historically spent on such programs based on the most recent three-year average relative to the utility's total conservation spending under this section~~. The utility shall make a good faith effort to ensure that its conservation spending for the needs of renters and low-income persons increases and decreases in

approximately the same proportion as the total increase or decrease in the utility's overall conservation spending, unless an insufficient number of appropriate programs are available.

(g) A utility, a political subdivision, or a nonprofit or community organization that has suggested a program, the attorney general acting on behalf of consumers and small business interests, or a utility customer that has suggested a program and is not represented by the attorney general under section 8.33 may petition the commission to modify or revoke a department decision under this section, and the commission may do so if it determines that the program is not cost-effective, does not adequately address the residential conservation improvement needs of low-income persons, has a long-range negative effect on one or more classes of customers, or is otherwise not in the public interest. The commission shall reject a petition that, on its face, fails to make a reasonable argument that a program is not in the public interest.

(h) The commissioner may order a public utility to include, with the filing of the utility's proposed conservation improvement plan under paragraph (a), the results of an independent audit of the utility's conservation improvement programs and expenditures performed by the department or an auditor with experience in the provision of energy conservation and energy efficiency services approved by the commissioner and chosen by the utility. The audit must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility that is the result of the spending and investments. The audit must evaluate the cost-effectiveness of the utility's conservation programs.

(i) Up to three percent of a utility's conservation spending obligation under this section may be used for program pre-evaluation, testing, and monitoring and program audit and evaluation.

Senators Kelley, Senjem, Rosen and Anderson introduced--

S.F. No. 2041: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to energy; granting authority to the Public Utilities Commission to assess utilities for revenues to develop an electronic filing and retrieval system.

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

Section 1. [LEGISLATIVE FINDINGS.]

The legislature finds that broad participation by the public and other interested and affected parties in proceedings of the Minnesota Public Utilities Commission serves the public interest. The utilization of the Internet by the commission and the Minnesota Department of Commerce, which maintains the commission's records, to allow electronic access to commission documents has expanded access to the commission's proceedings. E-filing, which will enable individuals to electronically file documents in ongoing proceedings via the Internet and permit the electronic retrieval of all documents filed, is an effective way to lower the costs and increase the ease and efficiency of participation.

Sec. 2. [ESTABLISHMENT OF FUND.]

The Public Utilities Commission's e-filing account is established. The commission shall make a onetime assessment to regulated utilities of $315,000, which must be deposited in the account. Each public utility, municipal utility, electric cooperative association, and telecommunications carrier must be assessed in proportion to its respective gross operating

revenues for retail sales of gas, electric, or telecommunications service in the state in the last calendar year. Revenue in the account is appropriated to the commission for the costs associated with establishing an e-filing system that allows documents to be filed and retrieved via the Internet. Revenue in the account remains available until expended.

Sec. 3. [COMPLETION DATE.]

The e-filing system must be operational by September 30, 2005.

Sec. 4. [EFFECTIVE DATE.]

Sections 1 to 3 are effective the day following final enactment.

Senator ..... moves to amend S.F. No. 2041 as follows:

Page 1, line 20, delete "Public Utilities Commission's" and insert "Department of Commerce's"

Page 1, line 22, delete "$315,000" and insert "$515,000"

Page 1, line 24, after the comma, insert "generation and transmission cooperative electric association, municipal power agency, telephone company,"

Page 2, lines 9 and 10, delete "September 30, 2005" and insert "July 1, 2006"

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S.F. No. 2148 - Statutory Reference Corrections and Repeal of Outdated Provisions

Author: Senator Ellen R. Anderson

Prepared by: Matthew S. Grosser, Senate Research (651/296-1890) MG

Date: April 8, 2005

Section 1 recodifies the treatment of data on individuals applying for services under energy programs.

Section 2 deletes language that excluded the energy assistance and energy conservation programs from the consolidated funding account for local consolidation.

Section 3 deletes language prohibiting the Commissioner of Commerce from disbursing money from the oil overcharge fund.

Section 4 deletes language that exempted a public housing authority from the rules promulgated under the energy conservation program.

Section 5 removes a requirement that the Commissioner of Commerce administer the energy audit program in accordance with federal code.

Section 6 and 7 make conforming changes to the recodification in section 9.

Section 8 eliminates a requirement that rental property be maintained in compliance with energy conservation standards.

Section 9 recodifies certain statutes dealing with energy assistance programs.

Section 10 repeals statutes and rules related to the recodification in section 9.

MSG:cs

Senator Anderson introduced--

S.F. No. 2148: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to energy assistance; correcting statutory authority for energy assistance programs previously transferred between agencies; repealing obsolete energy assistance programs; removing obsolete oil overcharge language; amending Minnesota Statutes 2004, sections 13.681, by adding a subdivision; 119A.15, subdivision 5a; 216C.09; 216C.30, subdivision 4; 216C.31; 462A.05, subdivisions 21, 23; 504B.161, subdivision 1; repealing Minnesota Statutes 2004, sections 13.319, subdivision 4; 119A.42, subdivision 4; 216B.165, subdivision 2; 216C.27, subdivisions 1, 2, 3, 4, 5, 6, 7; 216C.30, subdivision 5; Minnesota Rules, parts 7635.0100; 7635.0110; 7635.0120; 7635.0130; 7635.0140; 7635.0150; 7635.0160; 7635.0170; 7635.0180; 7635.0200; 7635.0210; 7635.0220; 7635.0230; 7635.0240; 7635.0250; 7635.0260; 7635.0300; 7635.0310; 7635.0320; 7635.0330; 7635.0340; 7635.0400; 7635.0410; 7635.0420; 7635.0500; 7635.0510; 7635.0520; 7635.0530; 7635.0600; 7635.0610; 7635.0620; 7635.0630; 7635.0640; 7635.1000; 7635.1010; 7635.1020; 7635.1030; 7655.0100; 7655.0120; 7655.0200; 7655.0210; 7655.0220; 7655.0230; 7655.0240; 7655.0250; 7655.0260; 7655.0270; 7655.0280; 7655.0290; 7655.0300; 7655.0310; 7655.0320; 7655.0330; 7655.0400; 7655.0410; 7655.0420.

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

Section 1. Minnesota Statutes 2004, section 13.681, is amended by adding a subdivision to read:

Subd. 5. [ENERGY PROGRAMS.] Treatment of data on individuals applying for benefits or services under energy programs is governed by section 216C.266.

Sec. 2. Minnesota Statutes 2004, section 119A.15, subdivision 5a, is amended to read:

Subd. 5a. [EXCLUDED PROGRAMS.] Programs transferred to the Department of Education from the Department of Employment and

Economic Development may not be included in the consolidated funding account and are ineligible for local consolidation. The commissioner may not apply for federal waivers to include these programs in funding consolidation initiatives. The programs include the following:

(1) programs for the homeless under sections 116L.365 and 119A.43;

(2) ~~emergency-energy-assistance-and-energy-conservation programs-under-sections-119A.40-and-119A.42;~~

~~(3) weatherization-programs-under-section-119A.41;~~

~~(4)~~ foodshelf programs under section 119A.44 and the emergency food assistance program; and

~~(5)~~ (3) lead abatement programs under section 119A.45.

Sec. 3. Minnesota Statutes 2004, section 216C.09, is amended to read:

216C.09 [COMMISSIONER DUTIES.]

(a) The commissioner shall:

(1) manage the department as the central repository within the state government for the collection of data on energy;

(2) prepare and adopt an emergency allocation plan specifying actions to be taken in the event of an impending serious shortage of energy, or a threat to public health, safety, or welfare;

(3) undertake a continuing assessment of trends in the consumption of all forms of energy and analyze the social, economic, and environmental consequences of these trends;

(4) carry out energy conservation measures as specified by the legislature and recommend to the governor and the legislature additional energy policies and conservation measures as required to meet the objectives of sections 216C.05 to 216C.30;

(5) collect and analyze data relating to present and future demands and resources for all sources of energy;

(6) evaluate policies governing the establishment of rates and prices for energy as related to energy conservation, and other goals and policies of sections 216C.05 to 216C.30, and

make recommendations for changes in energy pricing policies and rate schedules;

(7) study the impact and relationship of the state energy policies to international, national, and regional energy policies;

(8) design and implement a state program for the conservation of energy; this program shall include but not be limited to, general commercial, industrial, and residential, and transportation areas; such program shall also provide for the evaluation of energy systems as they relate to lighting, heating, refrigeration, air conditioning, building design and operation, and appliance manufacturing and operation;

(9) inform and educate the public about the sources and uses of energy and the ways in which persons can conserve energy;

(10) dispense funds made available for the purpose of research studies and projects of professional and civic orientation, which are related to either energy conservation, resource recovery, or the development of alternative energy technologies which conserve nonrenewable energy resources while creating minimum environmental impact;

(11) charge other governmental departments and agencies involved in energy-related activities with specific information gathering goals and require that those goals be met;

(12) design a comprehensive program for the development of indigenous energy resources. The program shall include, but not be limited to, providing technical, informational, educational, and financial services and materials to persons, businesses, municipalities, and organizations involved in the development of solar, wind, hydropower, peat, fiber fuels, biomass, and other alternative energy resources. The program shall be evaluated by the alternative energy technical activity; and

(13) dispense loans, grants, or other financial aid from money received from litigation or settlement of alleged violations of federal petroleum-pricing regulations made available to the department for that purpose. The commissioner

shall adopt rules under chapter 14 for this purpose. ~~Money dispersed under this clause must not include money received as a result of the settlement of the parties and order of the United States District Court for the District of Kansas in the case of In Re Department of Energy Stripper Well Exemption Litigation, 578 F. Supp. 586 (D. Kan. 1983) and all money received after August 1, 1988, by the governor, the commissioner of finance, or any other state agency resulting from overcharges by oil companies in violation of federal law.~~

(b) Further, the commissioner may participate fully in hearings before the Public Utilities Commission on matters pertaining to rate design, cost allocation, efficient resource utilization, utility conservation investments, small power production, cogeneration, and other rate issues. The commissioner shall support the policies stated in section 216C.05 and shall prepare and defend testimony proposed to encourage energy conservation improvements as defined in section 216B.241.

Sec. 4. Minnesota Statutes 2004, section 216C.30, subdivision 4, is amended to read:

Subd. 4. [HOUSING AUTHORITY EXEMPT.] With respect to low-rent housing, the provisions of subdivisions 1 and 3 shall not apply to a violation by a housing and redevelopment authority described in chapter 462 or a public housing authority, or an employee of either, ~~of section 216C.27 or any rule promulgated thereunder.~~

Sec. 5. Minnesota Statutes 2004, section 216C.31, is amended to read:

216C.31 [ENERGY AUDIT PROGRAMS.]

The commissioner ~~shall~~ may develop and administer state programs of energy audits of residential and commercial buildings ~~including those required by United States Code, title 42, sections 8211 to 8222 and sections 8281 to 8284. The commissioner shall continue to administer the residential energy audit program as originally established under the provisions of United States Code, title 42, sections 8211 to 8222, through~~

~~July 1, 1986 irrespective of any prior expiration date provided in United States Code, title 42, section 8216. The commissioner may approve temporary programs if they are likely to result in the installation of as many conservation measures as would have been installed had the utility met the requirements of United States Code, title 42, sections 8211 to 8222. The Consumer Services Division and the attorney general may release information on consumer comments about the operation of the program to the commissioner.~~

Sec. 6. Minnesota Statutes 2004, section 462A.05, subdivision 21, is amended to read:

Subd. 21. [RENTAL PROPERTY LOANS.] The agency may make or purchase loans to owners of rental property that is occupied or intended for occupancy primarily by low- and moderate-income tenants and which does not comply with the standards established in section ~~2160.27~~ 16B.61, subdivision ~~3~~ 1, for the purpose of energy improvements necessary to bring the property into full or partial compliance with these standards. For property which meets the other requirements of this subdivision, a loan may also be used for moderate rehabilitation of the property. The authority granted in this subdivision is in addition to and not in limitation of any other authority granted to the agency in this chapter. The limitations on eligible mortgagors contained in section 462A.03, subdivision 13, do not apply to loans under this subdivision. Loans for the improvement of rental property pursuant to this subdivision may contain provisions that repayment is not required in whole or in part subject to terms and conditions determined by the agency to be necessary and desirable to encourage owners to maximize rehabilitation of properties.

Sec. 7. Minnesota Statutes 2004, section 462A.05, subdivision 23, is amended to read:

Subd. 23. [INSURING FINANCIAL INSTITUTION LOANS.] The agency may participate in loans or establish a fund to insure loans, or portions of loans, that are made by any banking institution, savings association, or other lender approved by

the agency, organized under the laws of this or any other state or of the United States having an office in this state, to owners of renter occupied homes or apartments that do not comply with standards set forth in section ~~216C.27~~ 16B.61, subdivision ~~3~~ 1, without limitations relating to the maximum incomes of the owners or tenants. The proceeds of the insured portion of the loan must be used to pay the costs of improvements, including all related structural and other improvements, that will reduce energy consumption.

Sec. 8. Minnesota Statutes 2004, section 504B.161, subdivision 1, is amended to read:

Subdivision 1. [REQUIREMENTS.] In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee; and

(3) to maintain the premises in compliance with the applicable health and safety laws of the state~~,~~ ~~including the weatherstripping, caulking, storm window, and storm door energy efficiency standards for renter occupied residences prescribed by section 216C.27, subdivisions 1 and 3,~~ and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Sec. 9. [RECODIFICATION.]

Minnesota Statutes 2004, sections 119A.40; 119A.41; 119A.42; 119A.425; and 216C.27, subdivision 8, are recodified as sections 216C.263; 216C.264; 216C.265; 216C.266; and 16B.61,

subdivision 8, respectively.

Sec. 10. [REPEALER.]

Minnesota Statutes 2004, sections 13.319, subdivision 4; 119A.42, subdivision 4; 216B.165, subdivision 2; 216C.27, subdivisions 1, 2, 3, 4, 5, 6, and 7; and 216C.30, subdivision 5; and Minnesota Rules, parts 7635.0100; 7635.0110; 7635.0120; 7635.0130; 7635.0140; 7635.0150; 7635.0160; 7635.0170; 7635.0180; 7635.0200; 7635.0210; 7635.0220; 7635.0230; 7635.0240; 7635.0250; 7635.0260; 7635.0300; 7635.0310; 7635.0320; 7635.0330; 7635.0340; 7635.0400; 7635.0410; 7635.0420; 7635.0500; 7635.0510; 7635.0520; 7635.0530; 7635.0600; 7635.0610; 7635.0620; 7635.0630; 7635.0640; 7635.1000; 7635.1010; 7635.1020; 7635.1030; 7655.0100; 7655.0120; 7655.0200; 7655.0210; 7655.0220; 7655.0230; 7655.0240; 7655.0250; 7655.0260; 7655.0270; 7655.0280; 7655.0290; 7655.0300; 7655.0310; 7655.0320; 7655.0330; 7655.0400; 7655.0410; and 7655.0420, are repealed.

APPENDIX
Repealed Minnesota Statutes for 05-0321

13.319 EDUCATION DATA CODED ELSEWHERE.

Subd. 4. **Energy programs.** Treatment of data on individuals applying for benefits or services under energy programs is governed by section 119A.425.

119A.42 EMERGENCY ENERGY ASSISTANCE; FUEL FUNDS.

Subd. 4. **Emergency Energy Assistance Advisory Council.** The commissioner must appoint an advisory council to advise the commissioner on implementation of this section. At least one-third of the advisory council must be composed of persons from households that are eligible for emergency energy assistance under the federal Low-Income Home Energy Assistance Program. The remaining two-thirds of the advisory council must be composed of persons representing energy providers, customers, local energy assistance providers, existing fuel fund delivery agencies, and community action agencies. Members of the advisory council may receive expenses, but no other compensation, as provided in section 15.059, subdivision 3. Appointment and removal of members is governed by section 15.059.

216B.165 ENERGY AUDIT.

Subd. 2. **Rental property; energy standards.** All audits performed pursuant to United States Code, title 42, section 8211 et seq. of residences which are required by section 216C.27, subdivision 3, to comply with energy efficiency standards shall include a separate list of those improvements to the residence which are required to bring the residence into compliance with section 216C.27, subdivision 3, and a statement describing remedies available to tenants for violations.

216C.27 ENERGY CONSERVATION IN EXISTING RESIDENCE.

Subdivision 1. **Rules.** The commissioner shall adopt rules containing minimum energy efficiency standards for existing residences. The standards shall be appropriate for evaluation of the energy efficiency of each major type of residential housing including, but not limited to, one- to four-family dwellings, apartment buildings, manufactured homes, condominium buildings, and type of ownership. The standards shall be economically feasible in that the resultant savings in energy procurement costs, based on current and projected average residential energy costs in Minnesota as certified by the commissioner in the State Register, will exceed the cost of the energy conserving requirements amortized over the ten-year period subsequent to the incurring of the cost. The costs computed under this section shall include reasonable inflation and interest factors. Subject to the provisions of subdivision 4, with respect to low-rent housing which is owned by a public housing authority or a housing and redevelopment authority as described in chapter 462, compliance with the standards established by the commissioner shall be determined based upon audits conducted by or on behalf of the housing and redevelopment authority or the public housing authority in conformance with the requirements of Code of Federal Regulations, title 24, sections 965.301 to 965.310. Audits which are conducted by individuals other than employees of the housing and redevelopment authority or the public housing authority shall be conducted by evaluators who are certified pursuant to subdivision 6 or section 216C.31. The determination of the economic feasibility of implementation of the standards in low-rent housing shall be made in accordance with the procedures established by the United States Department of Housing and Urban Development to implement Code of Federal

Regulations, title 24, sections 965.301 to 965.310.

Subd. 2. **Definitions.** For the purposes of subdivisions 3 to 7, the following terms shall have the meanings given them.

(a) "Residence" means any dwelling for habitation either seasonally, meaning all or a portion of the months of November through April, or permanently by one or more persons. A residence may be part of a multidwelling or multipurpose building, but shall not include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools and other buildings used for educational purposes, or correctional institutions. A manufactured home as defined in section 168.011, subdivision 8, shall be a residence for purposes of this section.

(b) "Applicable energy efficiency standards" means those standards established under subdivision 1 which are not shown to be economically infeasible for the building in question.

Subd. 3. **Energy conservation for rental property.** Effective January 1, 1980, all residences constructed prior to January 1, 1976, which are renter-occupied during all or a portion of the months of November through April shall be in compliance with standards pursuant to subdivision 1 pertaining to caulking and weatherstripping of exterior joints and sealing of other openings in the building envelope. Effective July 1, 1983, all residences which are renter-occupied during all or a portion of the months of November through April shall be in compliance with all applicable energy efficiency standards.

Subd. 4. **Inspection.** The commissioner shall conduct inspections on a random basis for compliance with the provisions of subdivision 3. The commissioner may authorize a municipality, with its consent, to conduct the inspections within the municipality's jurisdiction, or to otherwise enforce the provisions of subdivision 3. Any municipality which conducts an inspection or other enforcement program shall have authority under all subdivisions of section 216C.30 to enforce the provisions of subdivision 3; provided that 100 percent of the penalties for violation of subdivision 3 shall be paid to the municipality. With respect to low-rent housing owned by a public housing authority or a housing and redevelopment authority described in sections 469.001 to 469.047, the commissioner or the municipality which conducts the inspection shall submit the results of the inspection to the housing and redevelopment authority or the public housing authority for review. If the housing and redevelopment authority or the public housing authority does not concur in the findings of the commissioner or the municipality, then the housing and redevelopment authority or the public housing authority and the commissioner or the municipality shall select a mutually acceptable independent third party or panel of experts knowledgeable in the area of energy conservation. The results of the inspection, the conclusions of the commissioner or the municipality as to compliance with the standards established pursuant to subdivision 1, and the basis for such conclusions, and the position of the housing and redevelopment authority or the public housing authority and the basis for such position shall be submitted to the independent third party or panel for a determination of the specific energy conservation measures which must be completed for compliance with the standards established pursuant to subdivision 1. The costs of the independent third

party or panel shall be paid equally by the housing and redevelopment authority or the public housing authority and the commissioner or the municipality.

Subd. 5. **Enforcement after inspection.** If the commissioner determines, after an inspection conducted by or on behalf of the department, that a renter-occupied residence is not in compliance with the standards prescribed pursuant to subdivision 1, the commissioner may issue to the owner of the renter-occupied residence or the owner's agent a determination of noncompliance and may commence a contested case proceeding under sections 14.57 to 14.62. The determination shall (1) specify the reasons for the determination, (2) include a copy of the inspection report, (3) state the actions that must be taken to bring the residence into compliance with the standards, (4) state that if the residence is not brought into compliance with the standards within 90 days following the date of the determination, a contested case proceeding will be commenced, and (5) specify a fine that will be assessed upon the conclusion of the contested case proceeding in the absence of a showing of good cause in that proceeding. The contested case proceeding hearing shall be held in the county in which the renter-occupied residence is located. Notwithstanding the provisions of sections 14.50 and 14.61, the administrative law judge in the contested case proceeding shall make findings of fact and conclusions of law and issue a decision, and if the administrative law judge decides that the residence is not in compliance with the standards, the administrative law judge shall enter an order directing the owner to take such affirmative action as in the judgment of the administrative law judge will effectuate the purposes of this section.

Subd. 6. **Fines for noncompliance; exception.** If the administrative law judge issues a decision, following a contested case proceeding commenced pursuant to subdivision 4a, that a renter-occupied residence is not in compliance with the standards prescribed pursuant to subdivision 1 and that the owner of the renter-occupied residence has not proven a good cause, as defined by rule adopted by the commissioner, for failure to comply with the standards prescribed pursuant to subdivision 1, the administrative law judge shall assess a fine against the owner in accordance with a schedule of fines adopted by the commissioner by rule. This subdivision shall not apply in the case of low-rent housing owned by a public housing authority or a housing and redevelopment authority as defined in section 469.002.

Subd. 7. **Building evaluator.** The commissioner shall certify evaluators in each county of the state who are qualified to determine the compliance of a residence with applicable energy efficiency standards. The commissioner shall, by rule pursuant to chapter 14, adopt standards for the certification and performance of evaluators and set a fee for the certification of evaluators which is sufficient to cover the ongoing costs of the program once it is established. The commissioner shall encourage the certification of existing groups of trained municipal personnel and qualified individuals from community-based organizations and public service organizations. Each certified evaluator shall, on request of the owner, inspect any residence and report the degree to which it complies with applicable energy efficiency standards established pursuant to subdivision 1. The inspections shall be

made within 30 days of the request. The commissioner shall enter into an agreement with the Board of Trustees of the Minnesota State Colleges and Universities for the provision of evaluator training at institutions that offer the technical training. The commissioner may contract with the board to reduce the training costs to the students. The commissioner may eliminate the examination fee for persons seeking upgraded certificates. The commissioner may also establish requirements for continuing education, periodic recertification, and revocation of certification for evaluators.

216C.30 ENFORCEMENT; PENALTIES, REMEDIES.

Subd. 5. **Remedies additional for health or safety violation.** For purposes of sections 504B.161 and 504B.185 and 504B.381 to 504B.471, the weatherstripping, caulking, storm window, and storm door energy efficiency standards for renter-occupied residences prescribed by section 216C.27, subdivisions 1 and 3, are health and safety standards and the penalties and remedies provided in this section are in addition to and do not limit remedies otherwise available to tenants of renter-occupied residences.

SF 2148

..... moves to amend H. F. No. ~~1530~~, as follows:

Page 2, line 8, reinstate the stricken language

Page 2, line 9, reinstate "programs under sections" and insert "216C.263 and 216C.265"

Page 2, line 10, reinstate "weatherization programs under section" and insert "216C.264"

Page 2, line 11, reinstate the stricken language

Page 2, line 13, reinstate the stricken language and delete the new language

Page 4, delete sections 4 and 5

Page 6, delete section 8

Page 7, delete section 10

Senator ..... moves to amend S.F. No. 940 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 216B.2424, subdivision 1, is amended to read:

Subdivision 1. [FARM-GROWN CLOSED-LOOP BIOMASS.] (a) For the purposes of this section, "farm-grown closed-loop biomass" means biomass, as defined in section 216C.051, subdivision 7, that:

(1) is intentionally cultivated, harvested, and prepared for use, in whole or in part, as a fuel for the generation of electricity;

(2) when combusted, releases an amount of carbon dioxide that is less than or approximately equal to the carbon dioxide absorbed by the biomass fuel during its growing cycle; and

(3) is fired in a new or substantially retrofitted electric generating facility that is:

(i) located within 400 miles of the site of the biomass production; and

(ii) designed to use biomass to meet at least 75 percent of its fuel requirements.

(b) The legislature finds that the negative environmental impacts within 400 miles of the facility resulting from transporting and combusting the biomass are offset in that region by the environmental benefits to air, soil, and water of the biomass production.

(c) Among the biomass fuel sources that meet the requirements of paragraph (a), ~~clause~~ clauses (1) and (2) are poplar, aspen, willow, switch grass, sorghum, alfalfa, ~~and~~ cultivated prairie grass and sustainably managed woody biomass.

(d) For the purpose of this section, "sustainably managed woody biomass" means:

(1) brush, trees, and other biomass harvested from within designated utility, railroad, and road rights-of-way;

(2) upland and lowland brush harvested from lands incorporated into brushland habitat management activities of the Minnesota Department of Natural Resources;

(b) To the extent not inconsistent with this subdivision, the provisions of subdivisions 2, 3, 4, and 5 apply to proposals subject to this subdivision.

(c) A public utility must submit proposals to the commission to complete the biomass mandate. The commission shall require a public utility subject to this section to issue a request for competitive proposals for projects for electric generation utilizing biomass as defined in paragraph (f) of this subdivision to provide the remaining megawatts of the mandate. The commission shall set an expedited schedule for submission of proposals to the utility, selection by the utility of proposals or projects, negotiation of contracts, and review by the commission of the contracts or projects submitted by the utility to the commission.

(d) Notwithstanding the provisions of subdivisions 1 to 5 but subject to the provisions of subdivisions 7 and 8, a new or existing facility proposed under this subdivision that is fueled either by biomass or by co-firing biomass with nonbiomass may satisfy the mandate in this section. Such a facility need not use biomass that complies with the definition in subdivision 1 if it uses biomass as defined in paragraph (f) of this subdivision. Generating capacity produced by co-firing of biomass that is operational as of April 25, 2000, does not meet the requirements of the mandate, except that additional co-firing capacity added at an existing facility after April 25, 2000, may be used to satisfy this mandate. Only the number of megawatts of capacity at a facility which co-fires biomass that are directly attributable to the biomass and that become operational after April 25, 2000, count toward meeting the biomass mandate in this section.

(e) Nothing in this subdivision precludes a facility proposed and approved under this subdivision from using fuel sources that are not biomass in compliance with subdivision 3.

(f) Notwithstanding the provisions of subdivision 1, for proposals subject to this subdivision, "biomass" includes farm-grown closed-loop biomass; agricultural wastes, including

animal, poultry, and plant wastes; and waste wood, including chipped wood, bark, brush, residue wood, and sawdust.

(g) Nothing in this subdivision affects in any way contracts entered into as of April 25, 2000, to satisfy the mandate in subdivision 5.

(h) Nothing in this subdivision requires a public utility to retrofit its own power plants for the purpose of co-firing biomass fuel, nor is a utility prohibited from retrofitting its own power plants for the purpose of co-firing biomass fuel to meet the requirements of this subdivision.

Sec. 6. Minnesota Statutes 2004, section 216B.2424, subdivision 8, is amended to read:

Subd. 8. [AGRICULTURAL BIOMASS REQUIREMENT.] Of the 125 megawatts mandated in subdivision 5, or 110 megawatts mandated in subdivision 5a, at least 75 megawatts of the generating capacity must be generated by facilities that use agricultural biomass as the principal fuel source. For purposes of this subdivision, agricultural biomass includes only farm-grown closed-loop biomass and agricultural waste, including animal, poultry, and plant wastes. For purposes of this subdivision, "principal fuel source" means a fuel source that satisfies at least 75 percent of the fuel requirements of an electric power generating facility. Nothing in this subdivision is intended to expand the fuel source requirements of subdivision 5."

Delete the title and insert:

"A bill for an act relating to energy; expanding definition of farm-grown closed-loop biomass; amending Minnesota Statutes 2004, sections 216B.2424, subdivisions 1, 2, 5a, 6, 8, by adding a subdivision."

Senators Anderson, Rosen, Ourada, Metzen and Kubly introduced--

S.F. No. 1369: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to utilities; requiring consideration of installation opportunities for distributed generation; authorizing establishment of local power quality zones; proposing coding for new law in Minnesota Statutes, chapter 216B.

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

Section 1. [216B.2426] [OPPORTUNITIES FOR DISTRIBUTED GENERATION.]

The commission shall ensure that opportunities for the installation of distributed generation, as that term is defined in section 216B.169, subdivision 1, paragraph (c), are considered in any proceeding under section 216B.2422, 216B.2425, or 216B.243.

Sec. 2. [216B.82] [LOCAL POWER QUALITY ZONES.]

(a) Upon petition of a public utility or a ratepayer located within the utility's service territory, the commission may establish a local power quality zone. The commission may authorize the utility to collect the direct costs of providing higher quality power through one of the following options, or any appropriate combination of the two:

(1) from customers within a zone, through tariffs and surcharges for service in a zone that appropriately reflect the cost of service to those customers; or

(2) from all of the utility's ratepayers, through an automatic adjustment of charges, if the commission determines

that is in the public interest to do so.

(b) For the purposes of this section:

(i) "local power quality zone" means a geographic location within a utility's service territory where the utility commits to providing customers within the zone higher quality power than is generally available outside the zone; and

(ii) "higher quality power" means a significantly lower number of service interruptions and voltage fluctuations resulting from the construction of structural redundancies and enhancements.

Senator ..... moves to amend S.F. No. 1369 as follows:

Pages 1 and 2, delete section 2, and insert:

"Sec. 2. [216B.82] [LOCAL POWER QUALITY ZONES.]

(a) Upon joint petition of a public utility as defined in section 216B.02, subdivision 4, and any customer located within the utility's service territory, the commission may establish a zone within that utility's service territory where the utility will install additional, redundant or upgraded components of the electric distribution infrastructure that are designed to decrease the risk of power outages, provided the utility and all of its customers located within the proposed zone have approved the installation of the components and the financial recovery plan prior to the creation of the zone, and the proposed zone contains at least two utility customers.

(b) The commission shall authorize the utility to collect all costs of the installation of any components under this section, including initial investment, operation and maintenance costs and taxes from all customers within the zone, through tariffs and surcharges for service in a zone that appropriately reflect the cost of service to those customers, provided the customers agree to pay all costs for a predetermined period, including costs of component removal, if appropriate."

Amend the title accordingly

Senators Nienow and Wergin introduced--

S.F. No. 1492: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to energy; expanding definition of qualified on-farm biogas recovery facility; amending Minnesota Statutes 2004, section 216C.41, subdivision 1.

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

Section 1. Minnesota Statutes 2004, section 216C.41, subdivision 1, is amended to read:

Subdivision 1. [DEFINITIONS.] (a) The definitions in this subdivision apply to this section.

(b) "Qualified hydroelectric facility" means a hydroelectric generating facility in this state that:

(1) is located at the site of a dam, if the dam was in existence as of March 31, 1994; and

(2) begins generating electricity after July 1, 1994, or generates electricity after substantial refurbishing of a facility that begins after July 1, 2001.

(c) "Qualified wind energy conversion facility" means a wind energy conversion system in this state that:

(1) produces two megawatts or less of electricity as measured by nameplate rating and begins generating electricity after December 31, 1996, and before July 1, 1999;

(2) begins generating electricity after June 30, 1999, produces two megawatts or less of electricity as measured by nameplate rating, and is:

(i) owned by a resident of Minnesota or an entity that is

organized under the laws of this state, is not prohibited from owning agricultural land under section 500.24, and owns the land where the facility is sited;

(ii) owned by a Minnesota small business as defined in section 645.445;

(iii) owned by a Minnesota nonprofit organization;

(iv) owned by a tribal council if the facility is located within the boundaries of the reservation;

(v) owned by a Minnesota municipal utility or a Minnesota cooperative electric association; or

(vi) owned by a Minnesota political subdivision or local government, including, but not limited to, a county, statutory or home rule charter city, town, school district, or any other local or regional governmental organization such as a board, commission, or association; or

(3) begins generating electricity after June 30, 1999, produces seven megawatts or less of electricity as measured by nameplate rating, and:

(i) is owned by a cooperative organized under chapter 308A other than a Minnesota cooperative electric association; and

(ii) all shares and membership in the cooperative are held by an entity that is not prohibited from owning agricultural land under section 500.24.

(d) "Qualified on-farm biogas recovery facility" means an anaerobic digester system that:

(1) is located at the site of an agricultural operation; and

(2) is owned by an entity that is not prohibited from owning agricultural land under section 500.24 and that owns or rents the land where the facility is located~~;-and~~

~~(3)-begins-generating-electricity-after-July-1,-2001~~.

(e) "Anaerobic digester system" means a system of components that processes animal waste based on the absence of oxygen and produces gas used to generate electricity.

A bill for an act

relating to natural gas rates; allowing for recovery of certain infrastructure replacement costs separately from a general rate case; proposing coding for new law in Minnesota Statutes, chapter 216B.

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

Section 1. [216B.1635] [RECOVERY OF ELIGIBLE INFRASTRUCTURE REPLACEMENT COSTS BY GAS UTILITIES.]

Subdivision 1. [DEFINITIONS.] (a) "Gas utility" means a public utility as defined in section 216B.02, subdivision 4, that furnishes natural gas service to retail customers.

(b) "Gas utility infrastructure costs" or "GUIC" means gas utility projects that:

(1) do not serve to increase revenues by directly connecting the infrastructure replacement to new customers;

(2) are in service but were not included in the gas utility's rate base in its most recent general rate case;

(3) replace or modify existing infrastructure; and

(4) the replacement or modification of infrastructure was required by the federal government, the state, a political subdivision of the state, or other governmental entity.

(c) "Gas utility projects" means relocation and replacement of natural gas facilities located in the public right-of-way required by the construction or improvement of a highway, road, street, public building, or other public work by or on behalf of the United States, the State of Minnesota, or a political subdivision.

Subd. 2. [FILING.] (a) The commission may approve a gas utility's petition for a rate schedule to recover GUIC under this section. A gas utility may petition the commission to recover a rate of return, income taxes on the rate of return, incremental property taxes, plus incremental depreciation expense associated with GUIC.

(b) The filing is subject to the following:

(1) a gas utility may submit a filing under this section no more than once per year;

(2) a gas utility must file sufficient information to

satisfy the commission regarding the proposed GUIC or be subject to denial by the commission. The information includes, but is not limited to:

(i) the government entity ordering the gas utility project and the purpose for which the project is undertaken;

(ii) the location, description, and costs associated with the project;

(iii) a description of the costs, and salvage value, if any, associated with the existing infrastructure replaced or modified as a result of the project;

(iv) the proposed rate design and an explanation of why the proposed rate design is in the public interest;

(v) the magnitude and timing of any known future gas utility projects that the utility may seek to recover under this section;

(vi) the magnitude of GUIC in relation to the gas utility's base revenue as approved by the commission in the gas utility's most recent general rate case, exclusive of gas purchase costs and transportation charges;

(vii) the magnitude of GUIC in relation to the gas utility's capital expenditures since its most recent general rate case;

(viii) the amount of time since the utility last filed a general rate case and the utility's reasons for seeking recovery outside of a general rate case; and

(ix) documentation supporting the calculation of the GUIC.

Subd. 3. [COMMISSION AUTHORITY.] The commission may issue orders and adopt rules necessary to implement and administer this section.

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

Sec. 2. [REPORT TO LEGISLATURE.]

The Department of Commerce shall review the operation and impact of the GUIC recovery mechanism established under Minnesota Statutes, section 216B.1635, on ratepayers and the utility and submit a report of its findings and recommendations

to the legislature four years after the effective date of this section.

Sec. 3. [SUNSET.]

Sections 1 and 2 shall expire on June 30, 2015.

Senator ..... moves to amend the committee engrossment (SF1575CE1) of S.F. No. 1575 as follows:

Page 1, line 17, after the semicolon, insert "and"

Page 1, line 18, delete everything after "infrastructure" and insert "if the replacement or modification does not constitute a betterment, unless the betterment is required by a political subdivision, as evidenced by specific documentation from the government entity requiring the replacement or modification of infrastructure."

Page 1, delete lines 19 to 21

Senator Metzen introduced--

S.F. No. 1902: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to public utilities; transferring power plant siting and routing, wind energy conversion system, and pipeline authority from the Environmental Quality Board to the Public Utilities Commission; amending Minnesota Statutes 2004, sections 116C.52, subdivision 2; 116C.53, subdivision 2; 116C.57, subdivisions 1, 2c, by adding a subdivision; 116C.575, subdivision 5; 116C.577; 116C.58; 116C.69, subdivisions 2, 2a; 216B.243, subdivisions 4, 5; 216C.052.

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

Section 1. Minnesota Statutes 2004, section 116C.52, subdivision 2, is amended to read:

Subd. 2. [~~BOARD~~ COMMISSION.] "~~Board~~ Commission" ~~shall mean the Minnesota Environmental Quality Board~~ means the Public Utilities Commission.

Sec. 2. Minnesota Statutes 2004, section 116C.53, subdivision 2, is amended to read:

Subd. 2. [JURISDICTION.] The ~~board~~ commission is hereby given the authority to provide for site and route selection for large electric power facilities. The ~~board~~ commission shall issue permits for large electric power facilities in a timely fashion~~. When the Public Utilities Commission has determined~~ the and in a manner consistent with the overall determination of need for the project under section 216B.243 or 216B.2425. Questions of need, including size, type, and timing; alternative system configurations; and voltage ~~are not within the board's siting and routing authority and~~ must not be included in the

scope of environmental review conducted under sections 116C.51 to 116C.69.

Sec. 3. Minnesota Statutes 2004, section 116C.57, subdivision 1, is amended to read:

Subdivision 1. [SITE PERMIT.] No person may construct a large electric generating plant without a site permit from the ~~board~~ commission. A large electric generating plant may be constructed only on a site approved by the ~~board~~ commission. The ~~board~~ commission must incorporate into one proceeding the route selection for a high voltage transmission line that is directly associated with and necessary to interconnect the large electric generating plant to the transmission system and whose need is certified ~~as part of the generating plant project by the Public Utilities Commission~~ under section 216B.243.

Sec. 4. Minnesota Statutes 2004, section 116C.57, subdivision 2c, is amended to read:

Subd. 2c. [ENVIRONMENTAL REVIEW.] The ~~board~~ commissioner of the Pollution Control Agency shall prepare for the commission an environmental impact statement on each proposed large electric generating plant or high voltage transmission line for which a complete application has been submitted. ~~For any project that has obtained a certificate of need from the Public Utilities Commission, the board~~ The commissioner shall not consider whether or not the project is needed. No other state environmental review documents shall be required. The ~~board~~ commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the ~~board~~ commission deems necessary that was proposed in a manner consistent with rules ~~adopted by the board~~ concerning the form, content, and timeliness of proposals for alternate sites or routes.

Sec. 5. Minnesota Statutes 2004, section 116C.57, is amended by adding a subdivision to read:

Subd. 9. [POLLUTION CONTROL AGENCY TO PROVIDE TECHNICAL EXPERTISE AND OTHER ASSISTANCE.] The commissioner of the Pollution Control Agency shall provide technical expertise and other assistance to the commission for activities and

proceedings under this section, sections 116C.51 to 116C.697, and chapter 116I. The commissioner shall periodically report to the commission concerning the Pollution Control Agency's costs of providing assistance. The report shall conform to the schedule and include the required contents specified by the commission. The commission shall include the costs of the assistance in assessments for activities and proceedings under those sections and reimburse the special revenue fund for those costs.

Sec. 6. Minnesota Statutes 2004, section 116C.575, subdivision 5, is amended to read:

Subd. 5. [ENVIRONMENTAL REVIEW.] For the projects identified in subdivision 2 and following these procedures, the ~~board~~ commissioner of the Pollution Control Agency shall prepare for the commission an environmental assessment. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the ~~board~~ commission and shall address mitigating measures for all of the sites or routes considered. The environmental assessment shall be the only state environmental review document required to be prepared on the project.

Sec. 7. Minnesota Statutes 2004, section 116C.577, is amended to read:

116C.577 [EMERGENCY PERMIT.]

(a) Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line due to a major unforeseen event may apply to the ~~board~~ commission for an emergency permit ~~after providing~~. The application shall provide notice in writing ~~to the Public Utilities Commission~~ of the major unforeseen event and the need for immediate construction. The permit must be issued in a timely manner, no later than 195 days after the ~~board's~~ commission's acceptance of the application and upon a finding by the ~~board~~ commission that (1) a demonstrable emergency exists, (2) the emergency requires

immediate construction, and (3) adherence to the procedures and time schedules specified in section 116C.57 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner.

(b) A public hearing to determine if an emergency exists must be held within 90 days of the application. The ~~board~~ commission, after notice and hearing, shall adopt rules specifying the criteria for emergency certification.

Sec. 8. Minnesota Statutes 2004, section 116C.58, is amended to read:

116C.58 [ANNUAL HEARING.]

The ~~board~~ commission shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting of large electric generating power plants and routing of high voltage transmission lines. At the meeting, the ~~board~~ commission shall advise the public of the permits issued by the ~~board~~ commission in the past year. The ~~board~~ commission shall provide at least ten days but no more than 45 days' notice of the annual meeting by mailing notice to those persons who have requested notice and by publication in the EQB Monitor and the commission's weekly calendar.

Sec. 9. Minnesota Statutes 2004, section 116C.69, subdivision 2, is amended to read:

Subd. 2. [SITE APPLICATION FEE.] Every applicant for a site permit shall pay to the ~~board~~ commission a fee ~~in an amount equal to $500 for each $1,000,000 of production plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. The applicant shall pay within 30 days of notification any additional fees reasonably necessary for completion of the site evaluation and designation process by the~~

~~board.--In-no-event-shall-the-total-fees-required-of-the applicant-under-this-subdivision-exceed-an-amount-equal-to-0.001 of-said-production-plant-investment-($1,000-for-each $1,000,000).~~ to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the ~~board~~ commission to pay expenses incurred in processing applications for site permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 10. Minnesota Statutes 2004, section 116C.69, subdivision 2a, is amended to read:

Subd. 2a. [ROUTE APPLICATION FEE.] Every applicant for a transmission line route permit shall pay to the ~~board~~ commission ~~a base-fee-of-$35,000-plus-a-fee-in-an-amount-equal-to-$1,000 per-mile-length-of-the-longest-proposed-route.--The-board-shall specify-the-time-and-manner-of-payment-of-the-fee.--If-any single-payment-requested-by-the-board-is-in-excess-of-25-percent of-the-total-estimated-fee,-the-board-shall-show-that-the-excess is-reasonably-necessary.--In-the-event-the-actual-cost-of processing-an-application-up-to-the-board's-final-decision-to designate-a-route-exceeds-the-above-fee-schedule,-the-board-may assess-the-applicant-any-additional-fees-necessary-to-cover-the actual-costs,-not-to-exceed-an-amount-equal-to-$500-per-mile length-of-the-longest-proposed-route.~~ fee to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the board commission to pay expenses incurred in processing

applications for route permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 11. Minnesota Statutes 2004, section 216B.243, subdivision 4, is amended to read:

Subd. 4. [APPLICATION FOR CERTIFICATE; HEARING.] Any person proposing to construct a large energy facility shall apply for a certificate of need ~~prior-to-applying~~ and for a site or route permit under sections 116C.51 to 116C.69 or construction of the facility. The application shall be on forms and in a manner established by the commission. In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need and, if a joint hearing is held, a site or route permit. The commission shall designate a commission employee whose duty shall be to facilitate citizen participation in the hearing process. ~~If~~ Unless the commission ~~and-the Environmental-Quality-Board-determine~~ determines that a joint hearing on siting and need under this subdivision and section 116C.57, subdivision 2d, is not feasible~~,~~ or more efficient, ~~and may-further~~ or otherwise not in the public interest, a joint hearing under those subdivisions ~~may~~ shall be held.

Sec. 12. Minnesota Statutes 2004, section 216B.243, subdivision 5, is amended to read:

Subd. 5. [APPROVAL, DENIAL, OR MODIFICATION.] Within ~~six~~ 12 months of the submission of an application, the commission shall approve or deny a certificate of need for the facility. Approval or denial of the certificate shall be accompanied by a statement of the reasons for the decision. Issuance of the certificate may be made contingent upon modifications required by the commission.

Sec. 13. Minnesota Statutes 2004, section 216C.052, is amended to read:

216C.052 [RELIABILITY ADMINISTRATOR.]

Subdivision 1. [RESPONSIBILITIES.] (a) There is established the position of reliability administrator in the ~~Department of Commerce~~ Public Utilities Commission. The administrator shall act as a source of independent expertise and a technical advisor to the commissioner, the commission, the public, and the Legislative Electric Energy Task Force on issues related to the reliability of the electric system. In conducting its work, the administrator shall:

(1) model and monitor the use and operation of the energy infrastructure in the state, including generation facilities, transmission lines, natural gas pipelines, and other energy infrastructure;

(2) develop and present to the commission and parties technical analyses of proposed infrastructure projects, and provide technical advice to the commission;

(3) present independent, factual, expert, and technical information on infrastructure proposals and reliability issues at public meetings hosted by the task force, the Environmental Quality Board, the department, or the commission.

(b) Upon request and subject to resource constraints, the administrator shall provide technical assistance regarding matters unrelated to applications for infrastructure improvements to the task force, the department, or the commission.

(c) The administrator may not advocate for any particular outcome in a commission proceeding, but may give technical advice to the commission as to the impact on the reliability of the energy system of a particular project or projects. The administrator must not be considered a party or a participant in any proceeding before the commission.

Subd. 2. [ADMINISTRATIVE ISSUES.] (a) The ~~commissioner~~ commission may select the administrator who shall serve for a four-year term. The administrator may not have been a party or a participant in a commission energy proceeding for at least one year prior to selection by the ~~commissioner~~

commission. The ~~commissioner~~ commission shall oversee and direct the work of the administrator, annually review the expenses of the administrator, and annually approve the budget of the administrator. The administrator may hire staff and may contract for technical expertise in performing duties when existing state resources are required for other state responsibilities or when special expertise is required. The salary of the administrator is governed by section 15A.0815, subdivision 2.

(b) Costs relating to a specific proceeding, analysis, or project are not general administrative costs. For purposes of this section, "energy utility" means public utilities, generation and transmission cooperative electric associations, and municipal power agencies providing natural gas or electric service in the state.

(c) The ~~Department of Commerce~~ commission shall pay:

(1) the general administrative costs of the administrator, not to exceed $1,000,000 in a fiscal year, and shall assess energy utilities for those administrative costs. These costs must be consistent with the budget approved by the ~~commissioner~~ commission under paragraph (a). The ~~department~~ commission shall apportion the costs among all energy utilities in proportion to their respective gross operating revenues from sales of gas or electric service within the state during the last calendar year, and shall then render a bill to each utility on a regular basis; and

(2) costs relating to a specific proceeding analysis or project and shall render a bill to the specific energy utility or utilities participating in the proceeding, analysis, or project directly, either at the conclusion of a particular proceeding, analysis, or project, or from time to time during the course of the proceeding, analysis, or project.

(d) For purposes of administrative efficiency, the ~~department~~ commission shall assess energy utilities and issue bills in accordance with the billing and assessment procedures provided in section 216B.62, to the extent that these procedures

do not conflict with this subdivision. The amount of the bills rendered by the ~~department~~ commission under paragraph (c) must be paid by the energy utility into an account in the special revenue fund in the state treasury within 30 days from the date of billing and is appropriated to the ~~commissioner~~ commission for the purposes provided in this section. The commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover amounts paid by utilities under this section. All amounts assessed under this section are in addition to amounts appropriated to the commission ~~and the department~~ by other law.

Subd. 3. [ASSESSMENT AND APPROPRIATION.] In addition to the amount noted in subdivision 2, the ~~commissioner~~ commission may assess utilities, using the mechanism specified in that subdivision, up to an additional $500,000 annually through June 30, 2006. The amounts assessed under this subdivision are appropriated to the ~~commissioner~~ commission, and some or all of the amounts assessed may be transferred to the commissioner of administration, for the purposes specified in section 16B.325 and Laws 2001, chapter 212, article 1, section 3, as needed to implement those sections.

Subd. 4. [EXPIRATION.] This section expires June 30, ~~2006~~ 2007.

Sec. 14. [TRANSFERRING POWER PLANT SITING RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.51 to 116C.69; wind energy conversion systems under Minnesota Statutes, sections 116C.691 to 116C.697; pipelines under Minnesota Statutes, chapter 116I; and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statutes, section 116C.83, subdivision 6, and Minnesota Rules, parts 4400.1700, 4400.2750, and 4410.7010

to 4410.7070, are transferred to the commissioner of the Pollution Control Agency.

Sec. 15. [TRANSFERRING RELIABILITY ADMINISTRATOR RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes 2004, section 15.039, subdivision 1, held by the Minnesota Department of Commerce relating the reliability administrator under Minnesota Statutes 2004, section 216C.052, are transferred to the Minnesota Public Utilities Commission under Minnesota Statutes 2004, section 15.039.

Sec. 16. [REVISOR'S INSTRUCTION.]

(a) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "Public Utilities Commission," "commission," or "commission's," as appropriate, where they appear in Minnesota Statutes, sections 13.741, subdivision 3, 116C.51 to 116C.697, and chapter 116I. The revisor shall also make those changes in Minnesota Rules, chapters 4400, 4401, and 4415, except as specified in paragraph (b).

(b) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "commissioner of the Pollution Control Agency," "commissioner," or "commissioner's," as appropriate, where they appear in Minnesota Statutes, section 116C.83, subdivision 6; and Minnesota Rules, parts 4400.1700, subparts 1 to 9, 11, and 12; 4400.2750; and 4410.7010 to 4410.7070.

Sec. 17. [EFFECTIVE DATE.]

Sections 1 to 16 are effective July 1, 2005.

Senator ..... moves to amend S.F. No. 1902 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 116C.52, subdivision 2, is amended to read:

Subd. 2. [~~BOARD~~ COMMISSION.] ~~"Board"-shall-mean-the Minnesota-Environmental-Quality-Board~~ "Commission" means the Public Utilities Commission.

Sec. 2. Minnesota Statutes 2004, section 116C.52, subdivision 4, is amended to read:

Subd. 4. [HIGH VOLTAGE TRANSMISSION LINE.] "High voltage transmission line" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length.

Sec. 3. Minnesota Statutes 2004, section 116C.53, subdivision 2, is amended to read:

Subd. 2. [JURISDICTION.] The ~~board~~ commission is hereby given the authority to provide for site and route selection for large electric power facilities. The ~~board~~ commission shall issue permits for large electric power facilities in a timely fashion~~.---When-the-Public-Utilities-Commission-has-determined the~~ and in a manner consistent with the overall determination of need for the project under section 216B.243 or 216B.2425~~,~~. Questions of need, including size, type, and timing; alternative system configurations; and voltage ~~are-not-within-the-board's siting-and-routing-authority-and~~ must not be included in the scope of environmental review conducted under sections 116C.51 to 116C.69.

Sec. 4. Minnesota Statutes 2004, section 116C.57, subdivision 1, is amended to read:

Subdivision 1. [SITE PERMIT.] No person may construct a large electric generating plant without a site permit from the ~~board~~ commission. A large electric generating plant may be constructed only on a site approved by the ~~board~~ commission. The ~~board~~ commission must incorporate into one proceeding the route selection for a high voltage transmission line that is

directly associated with and necessary to interconnect the large electric generating plant to the transmission system and whose need is certified ~~as part of the generating plant project by the Public Utilities Commission~~ under section 216B.243.

Sec. 5. Minnesota Statutes 2004, section 116C.57, subdivision 2c, is amended to read:

Subd. 2c. [ENVIRONMENTAL REVIEW.] The ~~board~~ commissioner of the Department of Commerce shall prepare for the commission an environmental impact statement on each proposed large electric generating plant or high voltage transmission line for which a complete application has been submitted. ~~For any project that has obtained a certificate of need from the Public Utilities Commission, the board~~ The commissioner shall not consider whether or not the project is needed. No other state environmental review documents shall be required. The ~~board~~ commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the ~~board~~ commission deems necessary that was proposed in a manner consistent with rules ~~adopted by the board~~ concerning the form, content, and timeliness of proposals for alternate sites or routes.

Sec. 6. Minnesota Statutes 2004, section 116C.57, is amended by adding a subdivision to read:

Subd. 9. [DEPARTMENT OF COMMERCE TO PROVIDE TECHNICAL EXPERTISE AND OTHER ASSISTANCE.] The commissioner of the Department of Commerce shall provide technical expertise and other assistance to the commission for activities and proceedings under this section, sections 116C.51 to 116C.697, and chapter 116I. The commissioner shall periodically report to the commission concerning the Department of Commerce's costs of providing assistance. The report shall conform to the schedule and include the required contents specified by the commission. The commission shall include the costs of the assistance in assessments for activities and proceedings under those sections and reimburse the special revenue fund for those costs.

Sec. 7. Minnesota Statutes 2004, section 116C.575, subdivision 5, is amended to read:

Subd. 5. [ENVIRONMENTAL REVIEW.] For the projects identified in subdivision 2 and following these procedures, the ~~board~~ commissioner of the Department of Commerce shall prepare for the commission an environmental assessment. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the ~~board~~ commission and shall address mitigating measures for all of the sites or routes considered. The environmental assessment shall be the only state environmental review document required to be prepared on the project.

Sec. 8. Minnesota Statutes 2004, section 116C.577, is amended to read:

116C.577 [EMERGENCY PERMIT.]

(a) Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line due to a major unforeseen event may apply to the ~~board~~ commission for an emergency permit ~~after providing~~. The application shall provide notice in writing ~~to the Public Utilities Commission~~ of the major unforeseen event and the need for immediate construction. The permit must be issued in a timely manner, no later than 195 days after the ~~board's~~ commission's acceptance of the application and upon a finding by the ~~board~~ commission that (1) a demonstrable emergency exists, (2) the emergency requires immediate construction, and (3) adherence to the procedures and time schedules specified in section 116C.57 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner.

(b) A public hearing to determine if an emergency exists must be held within 90 days of the application. The ~~board~~ commission, after notice and hearing, shall adopt rules specifying the criteria for emergency certification.

Sec. 9. Minnesota Statutes 2004, section 116C.58, is amended to read:

116C.58 [ANNUAL HEARING.]

The ~~board~~ commission shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting of large electric generating power plants and routing of high voltage transmission lines. At the meeting, the ~~board~~ commission shall advise the public of the permits issued by the ~~board~~ commission in the past year. The ~~board~~ commission shall provide at least ten days but no more than 45 days' notice of the annual meeting by mailing notice to those persons who have requested notice and by publication in the EQB Monitor and the commission's weekly calendar.

Sec. 10. Minnesota Statutes 2004, section 116C.69, subdivision 2, is amended to read:

Subd. 2. [SITE APPLICATION FEE.] Every applicant for a site permit shall pay to the ~~board~~ commission a fee ~~in an amount equal to $500 for each $1,000,000 of production plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. The applicant shall pay within 30 days of notification any additional fees reasonably necessary for completion of the site evaluation and designation process by the board. In no event shall the total fees required of the applicant under this subdivision exceed an amount equal to 0.001 of said production plant investment ($1,000 for each $1,000,000)~~ to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. Section 16A.1283 does not apply to establishment of this fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the ~~board~~ commission to pay expenses incurred in processing

applications for site permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 11. Minnesota Statutes 2004, section 116C.69, subdivision 2a, is amended to read:

Subd. 2a. [ROUTE APPLICATION FEE.] Every applicant for a transmission line route permit shall pay to the ~~board~~ commission a ~~base fee of $35,000 plus a fee in an amount equal to $1,000 per mile length of the longest proposed route. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. In the event the actual cost of processing an application up to the board's final decision to designate a route exceeds the above fee schedule, the board may assess the applicant any additional fees necessary to cover the actual costs, not to exceed an amount equal to $500 per mile length of the longest proposed route~~ fee to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of sections 116C.51 to 116C.69. The commission may adopt rules providing for the payment of the fee. Section 16A.1283 does not apply to the establishment of this fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the ~~board~~ commission to pay expenses incurred in processing applications for route permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Sec. 12. Minnesota Statutes 2004, section 216B.243, subdivision 4, is amended to read:

Subd. 4. [APPLICATION FOR CERTIFICATE; HEARING.] Any person proposing to construct a large energy facility shall apply for a certificate of need ~~prior to applying~~ and for a site or route permit under sections 116C.51 to 116C.69 ~~or~~ prior to construction of the facility. The application shall be on forms

and in a manner established by the commission. In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need and, if a joint hearing is held, a site or route permit. The commission shall designate a commission employee whose duty shall be to facilitate citizen participation in the hearing process. ~~If~~ Unless the commission ~~and the Environmental Quality Board determine~~ determines that a joint hearing on siting and need under this subdivision and section 116C.57, subdivision 2d, is not feasible~~,~~ or more efficient, ~~and may further~~ or otherwise not in the public interest, a joint hearing under those subdivisions ~~may~~ shall be held.

Sec. 13. Minnesota Statutes 2004, section 216B.243, subdivision 5, is amended to read:

Subd. 5. [APPROVAL, DENIAL, OR MODIFICATION.] Within ~~six~~ 12 months of the submission of an application, the commission shall approve or deny a certificate of need for the facility. Approval or denial of the certificate shall be accompanied by a statement of the reasons for the decision. Issuance of the certificate may be made contingent upon modifications required by the commission. If the commission has not issued an order on the application within the 12 months provided, the commission may extent the time period upon receiving the consent of the parties or on its own motion, for good cause, by issuing an order explaining the good cause justification for extension.

Sec. 14. Minnesota Statutes 2004, section 216C.052, is amended to read:

216C.052 [RELIABILITY ADMINISTRATOR.]

Subdivision 1. [RESPONSIBILITIES.] (a) There is established the position of reliability administrator in the ~~Department of Commerce~~ Public Utilities Commission. The administrator shall act as a source of independent expertise and

a technical advisor to ~~the commissioner,~~ the commission, and the public, ~~and the Legislative Electric Energy Task Force~~ on issues related to the reliability of the electric system. In conducting its work, the administrator shall provide assistance to the commission in administering and implementing the commission's duties under sections 116C.51 to 116C.69; sections 116C.691 to 116C.697; 216B.2422; 216B.2425; 216B.243; chapter 116I; and rules associated with those sections. Subject to resource constraints, the reliability administrator may also:

(1) model and monitor the use and operation of the energy infrastructure in the state, including generation facilities, transmission lines, natural gas pipelines, and other energy infrastructure;

(2) develop and present to the commission and parties technical analyses of proposed infrastructure projects, and provide technical advice to the commission;

(3) present independent, factual, expert, and technical information on infrastructure proposals and reliability issues at public meetings hosted by the task force, the Environmental Quality Board, the department, or the commission.

(b) Upon request and subject to resource constraints, the administrator shall provide technical assistance regarding matters unrelated to applications for infrastructure improvements to the task force, the department, or the commission.

(c) The administrator may not advocate for any particular outcome in a commission proceeding, but may give technical advice to the commission as to the impact on the reliability of the energy system of a particular project or projects. ~~The administrator must not be considered a party or a participant in any proceeding before the commission.~~

Subd. 2. [ADMINISTRATIVE ISSUES.] (a) The ~~commissioner~~ commission may select the administrator who shall serve for a four-year term. The administrator may not have been a party or a participant in a commission energy proceeding for at least one year prior to selection by the ~~commissioner~~ commission.

The ~~commissioner~~ commission shall oversee and direct the work of the administrator, annually review the expenses of the administrator, and annually approve the budget of the administrator. Pursuant to commission approval, the administrator may hire staff and may contract for technical expertise in performing duties when existing state resources are required for other state responsibilities or when special expertise is required. The salary of the administrator is governed by section 15A.0815, subdivision 2.

(b) Costs relating to a specific proceeding, analysis, or project are not general administrative costs. For purposes of this section, "energy utility" means public utilities, generation and transmission cooperative electric associations, and municipal power agencies providing natural gas or electric service in the state.

(c) The ~~Department of Commerce~~ commission shall pay:

(1) the general administrative costs of the administrator, not to exceed $1,000,000 in a fiscal year, and shall assess energy utilities for those administrative costs. These costs must be consistent with the budget approved by the ~~commissioner~~ commission under paragraph (a). The ~~department~~ commission shall apportion the costs among all energy utilities in proportion to their respective gross operating revenues from sales of gas or electric service within the state during the last calendar year, and shall then render a bill to each utility on a regular basis; and

(2) costs relating to a specific proceeding analysis or project and shall render a bill to the specific energy utility or utilities participating in the proceeding, analysis, or project directly, either at the conclusion of a particular proceeding, analysis, or project, or from time to time during the course of the proceeding, analysis, or project.

(d) For purposes of administrative efficiency, the ~~department~~ commission shall assess energy utilities and issue bills in accordance with the billing and assessment procedures provided in section 216B.62, to the extent that these procedures

do not conflict with this subdivision. The amount of the bills rendered by the ~~department~~ commission under paragraph (c) must be paid by the energy utility into an account in the special revenue fund in the state treasury within 30 days from the date of billing and is appropriated to the ~~commissioner~~ commission for the purposes provided in this section. The commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover amounts paid by utilities under this section. All amounts assessed under this section are in addition to amounts appropriated to the commission ~~and the department~~ by other law.

Subd. 3. [ASSESSMENT AND APPROPRIATION.] In addition to the amount noted in subdivision 2, the ~~commissioner~~ commission may assess utilities, using the mechanism specified in that subdivision, up to an additional $500,000 annually through June 30, 2006. The amounts assessed under this subdivision are appropriated to the ~~commissioner~~ commission, and some or all of the amounts assessed may be transferred to the commissioner of administration, for the purposes specified in section 16B.325 and Laws 2001, chapter 212, article 1, section 3, as needed to implement those sections.

Subd. 4. [EXPIRATION.] This section expires June 30, ~~2006~~ 2007.

Sec. 15. [TRANSFERRING POWER PLANT SITING RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.51 to 116C.69; wind energy conversion systems under Minnesota Statutes, sections 116C.691 to 116C.697; pipelines under Minnesota Statutes, chapter 116I; and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statutes, section 116C.83, subdivision 6, and Minnesota Rules, parts 4400.1700, 4400.2750, and 4410.7010

to 4410.7070, are transferred to the commissioner of the Department of Commerce. The power plan siting staff of the Environmental Quality Board are transferred to the Department of Commerce. The department's budget shall be adjusted to reflect the transfer.

Sec. 16. [TRANSFERRING RELIABILITY ADMINISTRATOR RESPONSIBILITIES.]

All responsibilities, as defined in Minnesota Statutes 2004, section 15.039, subdivision 1, held by the Minnesota Department of Commerce relating to the reliability administrator under Minnesota Statutes, section 216C.052, are transferred to the Minnesota Public Utilities Commission under Minnesota Statutes, section 15.039.

Sec. 17. [REVISOR'S INSTRUCTION.]

(a) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "Public Utilities Commission," "commission," or "commission's," as appropriate, where they appear in Minnesota Statutes, sections 13.741, subdivision 3, 116C.51 to 116C.697, and chapter 116I. The revisor shall also make those changes in Minnesota Rules, chapters 4400, 4401, and 4415, except as specified in paragraph (b).

(b) The revisor of statutes shall change the words "Environmental Quality Board," "board," "chair of the board," "chair," "board's," and similar terms, when they refer to the Environmental Quality Board or chair of the Environmental Quality Board, to the term "commissioner of the Department of Commerce," "commissioner," or "commissioner's," as appropriate, where they appear in Minnesota Statutes, section 116C.83, subdivision 6; and Minnesota Rules, parts 4400.1700, subparts 1 to 9, 11, and 12; 4400.2750; and 4410.7010 to 4410.7070.

Sec. 18. [EFFECTIVE DATE.]

Sections 1 to 16 are effective July 1, 2005."

Delete the title and insert:

"A bill for an act relating to public utilities; transferring power plant siting and routing, wind energy conversion system, and pipeline authority from the Environmental Quality Board to the Public Utilities Commission; transferring certain environmental review duties to the Department of Commerce; transferring the reliability administrator to the Public Utilities Commission; amending Minnesota Statutes 2004, sections 116C.52, subdivisions 2, 4; 116C.53, subdivision 2; 116C.57, subdivisions 1, 2c, by adding a subdivision; 116C.575, subdivision 5; 116C.577; 116C.58; 116C.69, subdivisions 2, 2a; 216B.243, subdivisions 4, 5; 216C.052."

Senator Anderson introduced--

S.F. No. 1924: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to energy; promoting the use of hydrogen as an energy resource; appropriating money; amending Minnesota Statutes 2004, section 297A.67, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 216B.

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

Section 1. [216B.811] [DEFINITIONS.]

Subdivision 1. [SCOPE.] For purposes of sections 216B.811 to 216B.815, the terms defined in this section have the meanings given them.

Subd. 2. [CARBON-NEUTRAL.] "Carbon-neutral" means no net carbon dioxide emissions; or, if there are those emissions, that they are captured and permanently stored underground, or by some other scientifically proven method.

Subd. 3. [FUEL CELL.] "Fuel cell" means an electrochemical device that produces useful electricity, heat, and water vapor, and operates as long as it is provided fuel.

Subd. 4. [HYDROGEN.] "Hydrogen" means hydrogen produced using native energy sources and methods that are renewable or carbon-neutral, or that could be made so in the future.

Subd. 5. [RELATED TECHNOLOGIES.] "Related technologies" means balance of plant components necessary to make hydrogen and fuel cell systems function; turbines, reciprocating, and other combustion engines capable of operating on hydrogen; and electrolyzers, reformers, and other equipment and processes

necessary to produce, purify, store, distribute, and use hydrogen for energy.

Sec. 2. [216B.812] [FOSTERING THE TRANSITION TOWARD ENERGY SECURITY.]

Subdivision 1. [EARLY PURCHASE AND DEPLOYMENT OF HYDROGEN, FUEL CELLS, AND RELATED TECHNOLOGIES BY THE STATE.] The Department of Administration shall identify opportunities for demonstrating the use of hydrogen fuel cells within state-owned facilities, vehicle fleets, and operations.

The department shall purchase and demonstrate hydrogen, fuel cells, and related technologies in ways that strategically contribute to realizing Minnesota's hydrogen economy goal as set forth in section 216B.013, and which contribute to the following nonexclusive list of objectives:

(1) provide needed performance data to the marketplace;

(2) identify code and regulatory issues to be resolved;

(3) advance or validate a critical area of research;

(4) foster economic development and job creation in the state;

(5) raise public awareness of hydrogen, fuel cells, and related technologies; or

(6) reduce emissions of carbon dioxide and other pollutants.

Subd. 2. [SUPPORT FOR STRATEGIC DEMONSTRATION PROJECTS THAT ACCELERATE THE COMMERCIALIZATION OF HYDROGEN, FUEL CELLS, AND RELATED TECHNOLOGIES.] (a) In consultation with appropriate representatives from state agencies, local governments, universities, businesses, and other interested parties, the Department of Commerce shall report back to the legislature by November 1, 2005, and every two years thereafter, with a slate of proposed pilot projects that contribute to realizing Minnesota's hydrogen economy goal as set forth in section 216B.013. The Department of Commerce must consider the following nonexclusive list of priorities in developing the proposed slate of pilot projects:

(1) demonstrate "bridge" technologies such as hybrid-electric, off-road, and fleet vehicles running on

hydrogen or fuels blended with hydrogen;

(2) develop cost-competitive, on-site hydrogen production technologies;

(3) demonstrate nonvehicle applications for hydrogen;

(4) improve the cost and efficiency of hydrogen from renewable energy sources; and

(5) improve the cost and efficiency of hydrogen production using direct solar energy without electricity generation as an intermediate step.

(b) For all demonstrations, individual system components of the technology must meet commercial performance standards and systems modeling must be completed to predict commercial performance, risk, and synergies. In addition, the proposed pilots should meet as many of the following criteria as possible:

(1) advance energy security;

(2) capitalize on the state's native resources;

(3) result in economically competitive infrastructure being put in place;

(4) be located where it will link well with existing and related projects and be accessible to the public, now or in the future;

(5) demonstrate multiple, integrated aspects of hydrogen infrastructure;

(6) include an explicit public education and awareness component;

(7) be scalable to respond to changing circumstances and market demands;

(8) draw on firms and expertise within the state where possible;

(9) include an assessment of its economic, environmental, and social impact; and

(10) serve other needs beyond hydrogen development.

Subd. 3. [ESTABLISHING INITIAL, MULTIFUEL TRANSITION INFRASTRUCTURE FOR HYDROGEN VEHICLES.] The commissioner of commerce may accept federal funds, expend funds, and participate in projects to design, site, and construct multifuel hydrogen

fueling stations that eventually link urban centers along key trade corridors across the jurisdictions of Manitoba, the Dakotas, Minnesota, Iowa, and Wisconsin.

These energy stations must serve the priorities listed in subdivision 2 and, as transition infrastructure, should accommodate a wide variety of vehicle technologies and fueling platforms, including hybrid, flexible-fuel, and fuel cell vehicles. They may offer, but not be limited to, gasoline, diesel, ethanol (E-85), biodiesel, and hydrogen, and may simultaneously test the integration of on-site combined heat and power technologies with the existing energy infrastructure.

The hydrogen portion of the stations may initially serve local, dedicated on or off-road vehicles, but should eventually support long-haul transport.

Sec. 3. [216B.813] [HYDROGEN PRODUCTION INCENTIVE AND APPROPRIATION.]

Subdivision 1. [APPLICATION.] The incentive provided by this section applies to qualified hydrogen generation facilities beginning operation after July 1, 2005. Payment may only be made upon receipt by the commissioner of finance of an incentive payment application that establishes that the applicant is eligible to receive an incentive payment. The application must be in a form and submitted at a time the commissioner establishes.

Subd. 2. [APPROPRIATION.] There is annually appropriated from the general fund to the commissioner of commerce sums sufficient to make the payments required under this section.

Subd. 3. [ELIGIBILITY WINDOW.] Payments may be made under this section only for hydrogen generated from a qualified hydrogen generation facility that is operational and producing hydrogen before December 31, 2010.

Subd. 4. [PAYMENT PERIOD.] A facility may receive payments under this section for a ten-year period. No payment under this section may be made for hydrogen generated by a qualified hydrogen generation facility after December 31, 2020. The payment period begins and runs consecutively from the date the

facility begins generating hydrogen.

Subd. 5. [AMOUNT OF PAYMENT; HYDROGEN FACILITIES LIMIT.] The production incentive is 48 cents per gallon of gasoline equivalent used for transportation fuel, electricity, heating, cooling, fertilizer production, or other new commercially productive use.

Subd. 6. [ELIGIBILITY PROCESS.] A qualifying project is eligible for the incentive on the date the commissioner of commerce receives:

(1) an application for payment of the incentive;

(2) a copy of the purchase order for equipment to construct the project with a delivery date and a copy of a signed receipt for a nonrefundable deposit; and

(3) any other information the commissioner deems necessary to determine whether the proposed project qualifies for the incentive under this section.

The commissioner of commerce shall determine whether a project qualifies for the incentive, and respond in writing to the applicant approving or denying the application within 15 working days of receipt of the information required.

A project that is not operational within 18 months of receipt of a letter of approval is no longer approved for the incentive. The commissioner shall notify an applicant of potential loss of approval not less than 60 days prior to the end of the 18-month period.

Eligibility for a project that loses approval may be reestablished as of the date the commissioner receives a new completed application.

Sec. 4. [216B.814] [ENERGY INFRASTRUCTURE TRANSITION ACCOUNT.]

Subdivision 1. [ACCOUNT CREATED.] There is established in the state treasury an energy infrastructure transition account in the special revenue fund. All repayments of financial assistance granted under subdivision 2, including principal and interest, must be deposited into the energy infrastructure transition account.

Subd. 2. [ENERGY INFRASTRUCTURE TRANSITION LOAN PROGRAM.] The Department of Commerce may establish, adopt rules for, and implement a loan program to provide capital for the construction of vehicle refueling facilities that deploy any combination of renewable and carbon-neutral technologies that provide transportation fuel, electricity, heating, or cooling. The program may provide for secured or unsecured loans, loan participations, and loan guarantees with respect to real or personal property comprising all or part of the facilities and the payment of costs incurred by the commissioner to establish and administer the loan program. Fees collected for administration of the program must be deposited in the energy infrastructure transition account.

Sec. 5. [216B.815] [AUTHORIZE AND ENCOURAGE THE STATE'S PUBLIC RESEARCH INSTITUTIONS TO COORDINATE AND LEVERAGE THEIR STRENGTHS THROUGH A REGIONAL ENERGY RESEARCH AND EDUCATION PARTNERSHIP.]

The state's public research and higher education institutions must work with one another and with similar institutions in the region to establish Minnesota and the Upper Midwest as a center of research, education, outreach, and technology transfer for the production of renewable and carbon-neutral energy and products, including hydrogen, fuel cells, and related technologies. The partnership must be designed to create a critical mass of research and education capability that can compete effectively for federal and private investment in these areas.

The partnership must include an advisory committee comprised of government, industry, academic, and nonprofit representatives to help focus its research and education efforts on the most critical issues. Initiatives undertaken by the partnership may include:

(1) collaborative and interdisciplinary research, demonstration projects, and commercialization of market-ready technologies;

(2) creation of undergraduate and graduate course offerings

and eventually degreed and vocational programs with reciprocity;

(3) establishment of fellows programs at the region's institutes of higher learning that provide financial incentives for relevant study, research, and exchange; and

(4) development and field-testing of relevant curricula, teacher kits for all educational levels, and widespread teacher training, in collaboration with state energy offices, teachers, nonprofits, businesses, the United States Department of Energy, and other interested parties.

Sec. 6. Minnesota Statutes 2004, section 297A.67, is amended by adding a subdivision to read:

Subd. 32. [HYDROGEN.] Hydrogen, as defined in section 216B.811, subdivision 4, is exempt if the hydrogen is used for transportation fuel, electricity generation, heating, cooling, fertilizer production, or other new commercially productive use.

[EFFECTIVE DATE.] This section is effective for sales after June 30, 2005, and before January 1, 2015.

Sec. 7. [APPROPRIATIONS.]

$300,000 is appropriated in fiscal year 2006 and $300,000 is appropriated in fiscal year 2007 from the general fund to the commissioner of commerce for the purpose of matching federal and private investments in three multifuel hydrogen refueling stations in Moorhead, Alexandria, and the Twin Cities respectively. The unencumbered balance in the first year does not cancel but is available for the second year. Availability of the appropriation is contingent upon securing the balance of the total project costs from nonstate sources.

Senator ..... moves to amend S.F. No. 1924 as follows:

Page 1, delete lines 12 to 15

Page 1, line 16, delete "3" and insert "2"

Page 1, line 19, delete "4" and insert "3"

Page 1, line 20, delete everything after "sources"

Page 1, line 21, delete everything before the period

Page 1, line 22, delete "5" and insert "4"

Page 6, line 4, after "deploy" insert "hydrogen, biofuels,"

Page 6, delete line 5, and insert "and related technologies as those facilities meet a demand for"

Page 6, line 6, delete "provide"

Page 6, line 19, delete "must" and insert "should"

Page 6, lines 22 and 23, delete "and carbon-neutral"

Page 6, line 24, delete "must" and insert "should"

Senate Counsel, Research, and Fiscal Analysis

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Jo Anne Zoff Sellner
Director

Senate

State of Minnesota

S.F. No. 1399 - Innovative Energy Projects

Author: Senator D. Scott Dibble

Prepared by: Matthew S. Grosser, Senate Research (651/296-1890) MG

Date: April 8, 2005

The bill deletes a provision that granted eligibility to an innovative energy project for a grant of $2 million from the renewable energy account. This provision is retroactive to May 30, 2003, and revokes and cancels any grant approved under the deleted provision.

MSG:cs

Senators Anderson; Johnson, D.E.; Kubly; Frederickson and Marko introduced--
S.F. No. 1399: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to energy; regulating eligibility for grants from the renewable development fund; amending Minnesota Statutes 2004, section 216B.1694, subdivision 2.

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

Section 1. Minnesota Statutes 2004, section 216B.1694, subdivision 2, is amended to read:

Subd. 2. [REGULATORY INCENTIVES.] (a) An innovative energy project:

(1) is exempted from the requirements for a certificate of need under section 216B.243, for the generation facilities, and transmission infrastructure associated with the generation facilities, but is subject to all applicable environmental review and permitting procedures of sections 116C.51 to 116C.69;

(2) once permitted and constructed, is eligible to increase the capacity of the associated transmission facilities without additional state review upon filing notice with the commission;

(3) has the power of eminent domain, which shall be limited to the sites and routes approved by the Environmental Quality Board for the project facilities. The project shall be considered a utility as defined in section 116C.52, subdivision 10, for the limited purpose of section 116C.63. The project shall report any intent to exercise eminent domain authority to the board;

(4) shall qualify as a "clean energy technology" as defined in section 216B.1693;

(5) shall, prior to the approval by the commission of any arrangement to build or expand a fossil-fuel-fired generation facility, or to enter into an agreement to purchase capacity or energy from such a facility for a term exceeding five years, be considered as a supply option for the generation facility, and the commission shall ensure such consideration and take any action with respect to such supply proposal that it deems to be in the best interest of ratepayers;

(6) shall make a good faith effort to secure funding from the United States Department of Energy and the United States Department of Agriculture to conduct a demonstration project at the facility for either geologic or terrestrial carbon sequestration projects to achieve reductions in facility emissions or carbon dioxide; and

(7) shall be entitled to enter into a contract with a public utility that owns a nuclear generation facility in the state to provide 450 megawatts of baseload capacity and energy under a long-term contract, subject to the approval of the terms and conditions of the contract by the commission. The commission may approve, disapprove, amend, or modify the contract in making its public interest determination, taking into consideration the project's economic development benefits to the state; the use of abundant domestic fuel sources; the stability of the price of the output from the project; the project's potential to contribute to a transition to hydrogen as a fuel resource; and the emission reductions achieved compared to other solid fuel baseload technologies; and

~~(8) shall be eligible for a grant from the renewable development account, subject to the approval of the entity administering that account, of $2,000,000 a year for five years for development and engineering costs, including those costs related to mercury removal technology; thermal efficiency optimization and emission minimization; environmental impact statement preparation and licensing; development of hydrogen~~

~~production-capabilities;-and-fuel-cell-development-and utilization.~~

(b) This subdivision does not apply to nor affect a proposal to add utility-owned resources that is pending on May 29, 2003, before the Public Utilities Commission or to competitive bid solicitations to provide capacity or energy that is scheduled to be on line by December 31, 2006.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment and is retroactive to May 30, 2003. Any grant approved by the Public Utilities Commission under authority of Minnesota Statutes 2004, section 216B.1694, subdivision 2, clause (8), is revoked and cancelled and no funds may be disbursed from the account for the grant.

H

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of Selected Projects for the Second Funding Cycle of the Renewable Development Fund

ISSUE DATE: February 23, 2005

DOCKET NO. E-002/M-03-1883

ORDER APPROVING AND DIRECTING FUND EXPENDITURES, GIVING GUIDANCE ON THE TREATMENT OF INNOVATIVE ENERGY PROJECT, REQUIRING CONSULTATIVE PROCESS, AND REQUIRING COMPLIANCE FILINGS

PROCEDURAL HISTORY

On August 31, 2004, Northern States Power Company d/b/a Xcel Energy filed a petition under Minn. Stat. § 216C.779, subd. 1 (b) for Commission approval of some $22,700,000 in proposed expenditures from the Renewable Development Fund, established under that statute. The proposed expenditures were in the form of grants to 25 renewable energy projects:[1] seven power production projects and 18 research and development projects.

The petition attached and incorporated the report of the Renewable Development Fund Board, established by Commission Order in 2001,[2] which had directed the grant competition and selected the renewable energy projects proposed for funding. The report explained the Board's decision-making process, requested approval to fund the projects the Board had selected, and requested guidance on the Board's future treatment of a rejected project that the Legislature had specifically made eligible for a five-year, $10,000,000 grant as an "innovative energy project" under Minn. Stat. § 216B.1694, subd. 2 (a) (8).

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[1] The pool of projects recommended for funding was later expanded by three, to provide funding for projects that would have been funded initially but for scoring errors. Total proposed expenditures then totaled some $26,500,000.

[2] *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Adopting Proposal for Oversight and Operation of Renewable Development Fund (April 20, 2001).

The 60/40 funding ratio between power-production projects and research-development projects adopted in the July 2003 Order was adopted with the understanding that it might require revision. That is why the Order termed the ratio "target allocations" and provided that "the Board may deviate from these target allocations if warranted, and if supported."[10]

The Board/Xcel explained that it felt compelled to deviate from the 60/40 target because meeting the target would have required it to do one of two things: (1) fund several high-scoring, wind-energy-production projects that duplicated either already-funded projects or projects already in the marketplace; or (2) fund several energy-production projects that were not duplicative but that scored significantly lower and offered fewer social benefits than several projects in the research and development category.

The Board chose instead to deviate from the target allocations and fund the higher-scoring, more promising, research and development projects. The Commission concurs that this situation warranted and supported deviating from the target allocations.

Further, the Commission does not doubt that Technology Matrix and Koda submitted worthy projects, as did essentially all 200 of the grant applicants. The Commission cannot and will not, however, second-guess the professional judgment of the Board in evaluating individual renewable projects and determining which mix of those projects is most likely to move Minnesota forward. Evaluating individual projects and determining the best mix of projects and technologies requires careful, time-consuming study; detailed, collegial discussion; and thoughtful, collective decision-making.

The Board was established to perform these functions. It is made up of people qualified to perform them, and all evidence points to the conclusion that they performed them conscientiously. There is no evidence of process or integrity failure, and the Commission will therefore not substitute its judgment for the Board's on these fact-intensive issues.

As discussed in detail below, however, the Commission will set aside the Board/Xcel's decision not to fund the innovative energy project during this funding cycle. Unlike the decisions discussed above, that decision was grounded in legal and policy analysis, with the Board itself uncertain which direction to take. The Board requested policy guidance from the Commission for the next funding cycle; the Commission will instead provide that guidance now and add the innovative energy project to the list of those to be funded in this cycle.

Finally, the Commission will require the Board and Xcel to meet with Technology Matrix, Koda, and any other project applicant who wishes to discuss the project selection criteria applied during this funding cycle in greater detail.

V. The Innovative Energy Project Must Be Funded

As discussed above, the Commission is convinced of the fundamental reasonableness, professionalism, and integrity of the project selection process used by the Board and Xcel. The

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[10] *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Renewable Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Revising Operational Guidelines and Oversight Procedures and Requiring Further Filings (July 29, 2003) at 7.

Commission is equally convinced, however, that the Board and Xcel have misread the meaning and purpose of Minn. Stat. § 216B.1694 and that the Commission would be remiss to approve a final Renewable Development Fund project portfolio that did not include the innovative energy project being developed by Excelsior.

The statutory language regarding Excelsior's grant eligibility reads as follows:

> Subd. 2. **Regulatory incentives.** (a) An innovative energy project:
>
> . . . . . .
>
> (8) shall be eligible for a grant from the renewable development account, subject to the approval of the entity administering that account, of $2,000,000 a year for five years for development and engineering costs, including those costs related to mercury-removal technology; thermal efficiency optimization and emission minimization; environmental impact statement preparation and licensing; development of hydrogen production capabilities; and fuel cell development and utilization.

The Board/Xcel read the words "shall be eligible" to mean "may compete on the same terms as other grant applicants." Excelsior reads the words "shall be eligible" to mean "shall be entitled to."

The word "eligible" carries both meanings, both in everyday speech and statutory usage. The *American Heritage College Dictionary*, 3rd edition, defines the word as meaning "qualified or entitled to be chosen," (emphasis added). *Black's Law Dictionary* defines the word without the connotation of entitlement,[11] but Minnesota statutes sometimes use the word to mean entitled, as when they establish eligibility requirements for unemployment benefits or Medical Assistance.[12]

The Minnesota Constitution, however, appears to draw a distinction between entitlement and eligibility in its use of the word: "Every person who by the provisions of this article is *entitled* to vote at any election and is 21 years of age is *eligible* for any office elective by the people . . . ."[13] (italics added).

In short, the words "shall be eligible for" are ambiguous. The parties' persistent focus on their precise definition is off the mark, however, because, when the statute is read as a whole, there is nothing ambiguous about its support for the innovative energy project or about its intention to marshal regulatory incentives and other public resources to ensure that the project goes forward. See the list of project incentives on pages 4 and 5, which range from the power of eminent domain to exemption from certificate of need requirements to preferential consideration in future purchased power transactions.

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[11] "Fit an proper to be chosen; qualified to be elected. Capable of serving, legally qualified to serve. Capable of being chosen, as a candidate for office. Also, qualified and capable of holding office." *Black's Law Dictionary,* 6th edition.

[12] Minn. Stat. § 268.085; Minn. Stat. § 256B.057.

[13] Minnesota Constitution, Article VII, Section 6.

The Legislature was obviously deeply serious about funding the innovative energy project through the Renewable Development Fund. It did not simply state that the innovative energy project could compete for a grant from the Fund. Instead, it made the project eligible for a grant, specified the precise amount of the grant, set a timetable for distribution of the grant, and listed highly specific purposes – such as mercury removal technology, Environmental Impact Statement preparation, and fuel cell development – for which the grant could be used. The statute cannot reasonably be read as merely permitting the innovative energy project to compete for a grant on the same terms as traditional renewable energy grant applicants.

The real issue for the Board and Xcel, then, was not how Excelsior's grant proposal fared against traditional renewable energy project proposals, using traditional renewable energy performance measures; it was whether unforeseen, intervening events had made it necessary to countermand the Legislature's provisional finding that the project should be funded.

And the real issue for the Commission is whether, consistent with its duty to protect the public interest and advance the purposes of the Public Utilities Act, it can approve a portfolio of Renewable Development Fund projects that does not include the innovative energy project. The Commission concludes that it cannot.

It seems reasonably clear that the Mesaba Project has the potential to contribute to Minnesota's ongoing efforts to develop cleaner and more efficient energy supplies, to move toward increased use of hydrogen for both energy and transportation needs,[14] and to promote energy sources that benefit local communities and economies. It is clear that state and federal policymakers have concluded that this potential is present, have made nurturing it a public policy priority, and have invested public resources to that end.

And, at least in this developmental stage in the life of the project, it is clear that this conclusion is not without factual basis. The independent evaluator retained to evaluate grant applicants gave the Mesaba project the highest possible scores in critical categories, including Quality of Work Approach, Appropriate Budget Level, Financing Plan, Job Creation, and Tax or Other Fiscal or Economic Benefits.[15] And the relatively low total score that prevented the project's selection presents no reasonable cause for concern, for three reasons.

First, the low score was due entirely to Excelsior's submission of sparse technical data, which resulted from its understandable reluctance to share sensitive, technical information with competitor Xcel. It was not due to identified technical defects in the technology Excelsior plans to deploy.

Second, the project's selection for funding by a panel of technical experts at the United States Department of Energy allays any concern that the project might suffer from some fundamental technical defect or might face challenges beyond those normally faced by demonstration projects employing emerging technologies.

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[14] Minn. Stat. § 216B.013.

[15] See Department of Commerce Comments of December 7, 2004 and Renewable Development Board's Comments of October 21, 2004.

And third, the explicit purpose of the grant authorized by Minn. Stat. § 216B.1694, subd. 2 (a) (8) is to assist with development and engineering costs. This indicates that the Legislature did not *expect* the technical details of the project to be resolved at the time the grant was made, but that the purpose of the grant was to facilitate their resolution.

In short, the Commission is convinced that the Legislature expected this grant to be made, subject to final verification that the Mesaba Project remained viable, promising, and in compliance with the statutory criteria. These conditions appear to be met.

For all these reasons, the Commission cannot approve a proposed slate of Renewable Development Fund grantees that does not include Excelsior's innovative energy project. The Commission will therefore direct Xcel to make the grant contemplated by the innovative energy statute, after final verification of compliance with the statutory criteria by an Excelsior compliance filing.

VI. Future Directions Set

Developing criteria and procedures to select and fund projects that represent an annual ratepayer investment of $16,000,000 is a complex and iterative process. The Commission and all stakeholders, including Xcel and the Board, are committed to examining the events and results of each funding cycle and applying the knowledge gained to improving performance in the next funding cycle.

The Institute for Local Self-Reliance is an organization with recognized expertise in energy issues and in the economic impact on local economies of different energy policies and energy resources. The Institute urges the Commission to adopt performance measures for the Fund, to make the grant-making process more transparent, to work to concentrate the Fund's economic benefits within the state, and to make the data coming out of funded projects more widely and readily available.

The Commission shares these goals and will direct Xcel and the Board to work with the Institute, the Department, and Commission staff to develop options for discussion and dialogue.

The Commission will so order.

ORDER

1. Xcel Energy shall include in the grants awarded during this funding cycle, a grant in the amount of $10,000,000, payable in the amount of $2,000,000 each year for five years, to Excelsior Energy under Minn. Stat. § 216B.1694, subd. 2 (a) (8), subject to the following conditions:

    (a) Commission receipt of evidence that Excelsior Energy is an operating entity;
    (b) Commission receipt of evidence that Excelsior Energy has specified a technology intended for the innovative energy project;
    (c) Commission receipt of evidence that Excelsior Energy has obtained grant/loan approval from the United States Department of Energy, including copies of all technical review documents relating to that grant/loan approval; and

(d) Commission receipt of evidence that Excelsior Energy continues to meet the criteria set forth in Minn. Stat. § 216B.1694, subd. 1.

2. The filing by Excelsior required in paragraph 1 shall be deemed approved unless the Executive Secretary notifies Excelsior to the contrary within 30 days of the date the filing is complete.

3. Within 30 days of the date of this Order, Xcel Energy shall file, as a compliance filing, a grant contract with Excelsior Energy for the innovative energy project, which shall include terms such as a work statement, task deliverables, schedules, budget, project payment milestones, and other terms reflecting the statutory requirement that payments be made for development and engineering costs, as those terms are defined in an illustrative manner in Minn. Stat. § 216B.1694, subd. 2 (a) (8).

4. Grant payments to the innovative energy project shall be made only upon presentation of invoices for engineering and design work completed for the project.

5. With the addition of the Excelsior project, the final selection of projects for the second cycle of Renewable Development Fund funding as recommended by the Board in the supplemental report filed November 18, 2004, and the associated RDF payments, are hereby approved.

6. Xcel Energy and the Renewable Development Fund Board shall work with the Institute for Local Self-Reliance, the Department of Commerce, and Commission staff to develop options for discussion and dialogue on the need for Fund performance measures and public access to Renewable Development Fund study results, as described by the Institute for Local Self-Reliance in its comments.

7. Within 30 days of the date of this Order, Xcel Energy and the Renewable Development Fund Board shall host a post-bid meeting for interested bidders to discuss the Second Funding Cycle evaluation criteria. Any information provided by the Board at these meetings should be at no cost to the bidder.

8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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XCEL ENERGY RENEWABLE DEVELOPMENT FUND PROJECT SELECTION AND FUNDING REPORT SECOND FUNDING CYCLE

PREPARED BY THE RENEWABLE DEVELOPMENT FUND BOARD

DOCKET NO. E002/M-03-1883
AUGUST 31, 2004

INTRODUCTION

The Renewable Development Fund Board ("RDF Board") is pleased to submit to the Minnesota Public Utilities Commission ("Commission") this Project Selection and Funding Report for the second funding cycle of Xcel Energy's Renewable Development Fund.

The Report will summarize the background on the Xcel Energy Renewable Development Fund ("RDF") and its statutory framework, the timeframe and proposal selection process for the second funding cycle and, finally, describe the projects selected by the RDF Board to receive funding.

SUMMARY

As indicated below, the projects have been divided into two categories: 1) Energy Production and 2) Research and Development. 25 new projects have been selected from 204 proposals received in response to the Request for Proposals. Proposals selected for funding in this cycle are:

Selected Energy Production Proposals

Overall Rank	Label	Project Name	Technology Type	Technology Rank	Project Score	Funding Granted	Project Size (kW)
2	EP-44	Biomass Cogeneration Demonstration Plant at Central MN Ethanol Cooperative	Biomass	B-1	278	$2,000,000	959
3	EP-25	U of M Southeast Power Plant	Biomass	B-2	274	$2,000,000	3,500
5	EP-29	Ripley Dairy	Biomass	B-4	262	$399,371	400
7	EP-34	Lower St. Anthony Falls Hydroelectric Project	Hydroelectric	H-2	252	$2,000,000	8,980
9	EP-51	Diamond K and Greden's Ponderosa Dairy Digester	Biomass	B-6	248	$936,530	261
11	EP-39	St. Olaf College - Wind Self-generation	Wind	W-1	230	$1,500,000	1,650
12	EP-24	Wayzata Public School Wind Generation Project	Wind	W-2	229	$1,100,000	1,650
Total of Selected Energy Production Projects						**$9,935,901**	**17,400**

Selected Research & Development Proposals

Overall Rank	Label	Company	Technology Type	Technology Rank	Project Score	Funding Granted	Minnesota Preference
1	RD-27	Rural Advantage/ Blue Earth River Basin Initiative	Biomass	B-1	328	$318,800	Yes
2	RD-38	Gas Technology Institute	Biomass	B-2	318	$861,860	Yes
3	RD-93	National Renewable Energy Laboratory (NREL)	Solar PV	PV-1	315	$1,000,000	Yes
4	RD-78	InterPhases Research	Solar PV	PV-2	311	$1,000,000	No
5	RD-29	University of Minnesota	Biofuel	BF-1	307	$299,284	Yes
6	RD-94	Center for Energy & Environment	Biomass	B-3	307	$397,500	Yes
7	RD-110	Center for Sustainable Environmental Technologies (CSET), Iowa State U.	Biofuel	BF-2	306	$405,000	No
8	RD-56	University of Minnesota	Biomass	B-4	302	$858,363	Yes
9	RD-72	Production Specialties, Inc.	Biomass	B-5	301	$228,735	No
12	RD-87	Global Energy Concepts, LLC	Wind	W-1	296	$370,000	Yes
13	RD-34	University of Florida*	Biomass	B-8	295	$999,995	Yes

14	RD-26	Coaltec Energy USA, Inc.	Biomass	B-9	295	$450,000	No
16	RD-22	Energy Conversion Devices, Inc.	Biofuel	BF-3	292	$900,000	No
17	RD-107	National Renewable Energy Lab	Solar PV	PV-3	291	$1,000,000	Yes
19	RD-50	Energy Performance Systems, Inc.	Biomass	B-12	284	$957,929	Yes
23	RD-57	WindLogics, Inc.	Wind	W-2	268	$997,000	Yes
28	RD-37	Clipper Windpower, Inc.	Wind	W-5	263	$1,000,000	Yes
41	RD-69	Agricultural Utilization Research Institute	Hybrid	O-1	218	$760,000	Yes
Total of Selected Research & Development Projects						**$12,804,466**	

*proposal sponsored by the Prairie Island Indian Community

An overview of the allocation amounts for the selected proposals is as follows:

Energy Production Project Selections	RDF funding amounts
Hydroelectric	$2,000,000
Biomass	$5,335,901
Wind	$2,600,000
Subtotal	$9,935,901
Research and Development Project Selections	
Biomass	$5,073,182
Solar	$3,000,000
Biofuels	$1,604,284
Wind	$2,367,000
Hybrids	$ 760,000
Subtotal	$12,804,466
Total RDF Project Funding	$22,740,367

Xcel Energy submitted two proposals for consideration by the Board (one energy production proposal and one research and development proposal). The energy production proposal was a hydroelectric refurbishment proposal at an Xcel Energy facility in Wisconsin. This proposal scored highly in the evaluation process, as Princeton Energy Resources International LLC ("PERI") found that this project would employ proven technology and had a relatively low amount of risk as compared to other proposals. The Board carefully reviewed the PERI analysis and did not find any reason to reject its recommendation for selection of this project;

Guidance on Innovative Energy Projects

One of the proposals submitted for second cycle funding involved an innovative energy project as defined by Minn. Stat. Section 216B. 1694 according to the project developer Excelsior Energy LLC. Excelsior Energy added legal advocacy in its proposal to the effect that the criteria and methodology provided in the Request for Proposals do not apply to an innovative energy project. The developer maintains that the Legislature prescribed criteria for an innovative energy project in the statutes and would be accorded special treatment as a clean energy technology under Minn. Stat. Section 216B.1693 and therefore must be considered by the RDF Board in its recommendations for RDF funding.

The Legislature has indicated under Minn. Stat. Section 216B.1694, Subd. 2 (a) (8) that an innovative energy project shall be eligible for a grant from the renewable development account subject to approval of the entity administering that account, of $2,000,000 for 5 years for certain project related expenses. This new law was enacted under Laws 2003, First Special Session, Chapter 11, article 4 section 1 and became effective on May 30, 2003. The RDF Board carefully reviewed the Excelsior Energy proposal.

The RDF Board determined that the Excelsior Energy proposal was eligible for a grant as the statute provides. However, the RDF Board does not read the statute to declare that eligibility for a grant is a mandated award of the renewable development account funds under the above section of Minn. Stat. Section 216B.1694. The RDF Board must evaluate, and the Commission must approve expenditures from the RDF. The Commission's authority over expenditures is expressly set out in Minn. Stat. Sect. 116C.779 and requires a Commission order. The proposal was evaluated and scored by PERI under the same methodology and preference as stated in the Request for Proposals as approved by the Commission and was not recommended for funding comparably applying the Commission approved methodology for evaluation and selection of proposals. The RDF Board saw no compelling reason to deviate or make a special exception in its administration of the RDF for the Mesaba Energy Project proposal submitted by Excelsior Energy in this second funding cycle.

Mindful of the special legislation for innovative energy projects, the RDF Board suggests that the Commission may want to provide guidance for future RDF funding obligations for such projects, including who is obligated to seek such funding approvals for such innovative energy projects from the Commission under Minn. Stat. Section 216B.1694 and how the funds approved for such projects will affect the availability funds for projects without any special legislative treatment.

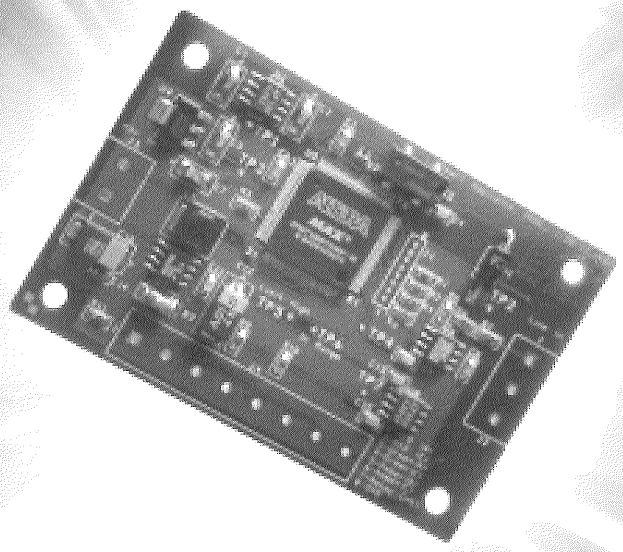
MESABA ENERGY PROJECT

Update – April 2005

- Selected ConocoPhillips as technology partner - entered into Strategic Alliance Agreement and completed preliminary process design work.
- Completed conceptual engineering study with Bechtel.
- Secured full funding of project development and engineering budget (a key barrier to technologically advanced generation alternatives):
  - Iron Range Resources committed to $8 million development loan.
  - Selected by Department of Energy under Round II of its Clean Coal Technology Initiative to receive $36 million of funding from competitive solicitation. Matching funds required to release funds.
  - Obtained PUC approval for grant of $2 million per year for five years (out of more than $80 million available during that timeframe), completing matching requirements for DOE funding for project development and engineering budget. Grant was approved two years after State legislation made project eligible for funding, after detailed application completed, six months of detailed briefing of issues and a full day hearing at the PUC.
- Engaged Fluor Engineering to conduct fuel flexibility and project optimization engineering work.
- Retained Credit Suisse First Boston as financial advisor to advise on project structure and place project debt and equity.
- Increased project leadership team to nine seasoned power industry executives, including the following Vice Presidents:
  - Development
  - Operations and Technology
  - Fuel and Energy Markets
  - Marketing and Regulatory Affairs
  - Chief Financial Officer
  - General Counsel
  - Environmental Affairs
- Completed transmission feasibility studies and filed generator interconnection request with Midwest Independent System Operator.
- Issued request for proposals from coal suppliers and transportation providers and formulated fuel procurement strategy.
- Commenced permitting and licensing plan and held numerous meetings with MPCA, DNR and EQB.

PUBLIC UTILITIES FORTNIGHTLY

January 2005



The Digitized Grid

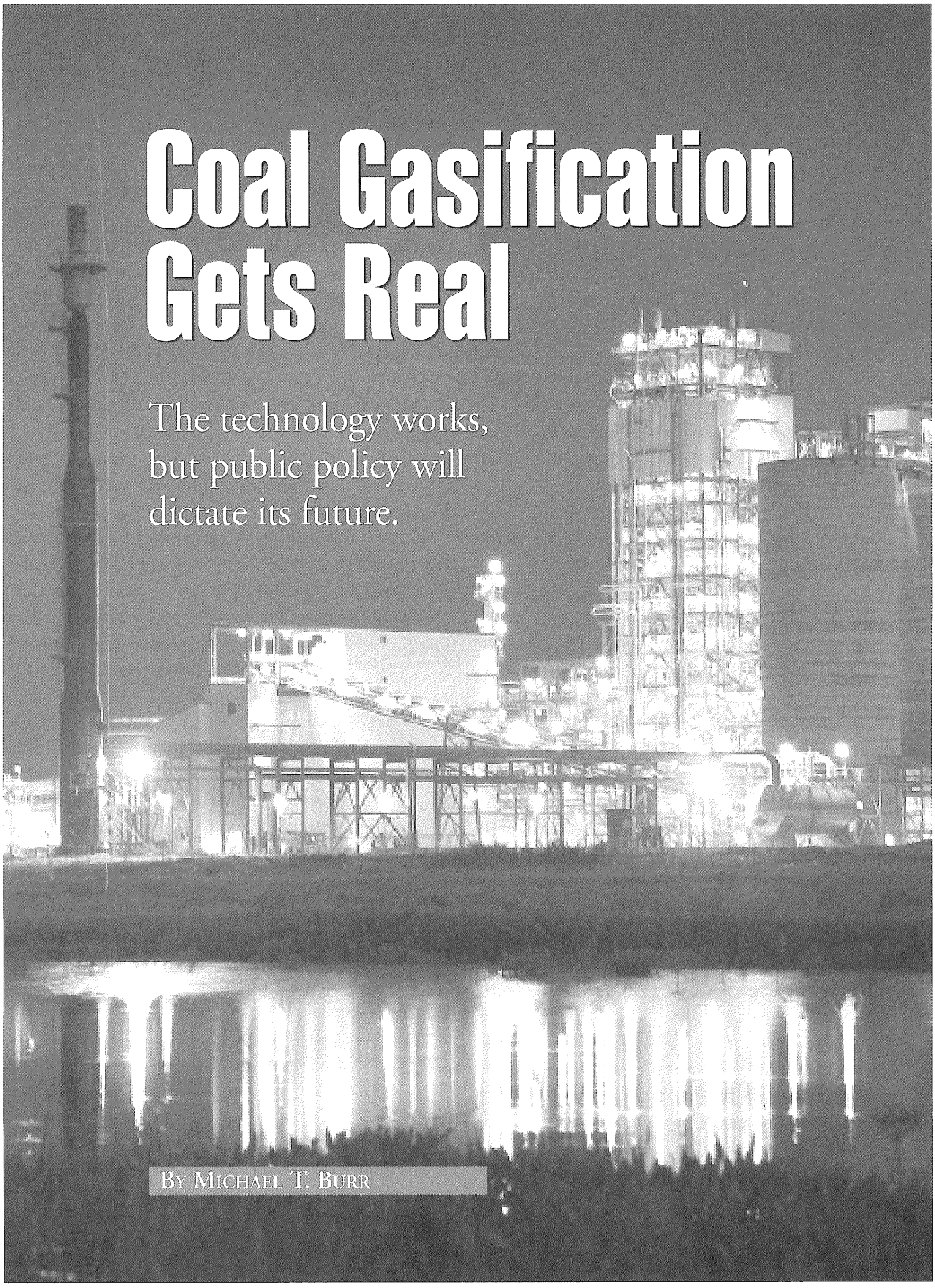
Boosting Capacity With IT

PLUS

- The Gas Crisis Solution
- New Risk Management Series
- Coal Gasification: Is It Real?
- Merchant Power: Ratepayers at Risk P.23
- FERC's William F. Hederman

Coal Gasification Gets Real

The technology works, but public policy will dictate its future.



By Michael T. Burr

Photo Courtesy of Tampa Electric Company

A distant train whistle breaks the silence of a mid-winter evening on Minnesota's Iron Range. The melancholy sound echoes across the expanse of a frozen lake that now fills a long-disused LTV Steel pit near the town of Hoyt Lakes.

In years past, that train carried iron ore from mines like this one to ports on Lake Superior, where ships took the ore and carried it to blast furnaces in Pennsylvania, Ohio, and Indiana. But that was before the U.S. steel industry went into decline, taking the iron-mining business along with it.

In the past decade, Minnesota's Iron Range has lost thousands of well-paying mining jobs. Hoyt Lakes alone has lost more than 1,000 jobs since 2001, and the employment lines are longer there than elsewhere in Minnesota. For this reason, local residents are welcoming plans to build an integrated gasification combined-cycle (IGCC) power plant—possibly on the site of an abandoned taconite mine—and state and federa, and state and federal politicians on both sides of the aisle are lining up to support it as well.

The Mesaba Energy Project, being developed by Minnetonka-based Excelsior Energy, would employ more than 1,000 workers during its three-year construction phase, and create about 150 operations and maintenance (O&M) jobs for the life of the facility.

But the future of the $1.18 billion project is uncertain. Just like other IGCC plants being developed in the United States, the Mesaba plant—which costs about 20 percent more to build than a like-sized pulverized coal-fired (PC) plant—depends on public support. So far, however, the public seems enthusiastic about the Mesaba project.

"We laid the first cornerstone in 2003, by securing Minnesota legislation that gives the project a market for its power," says Julie Jorgenson, Excelsior's co-CEO. The legislation directs Minneapolis utility Xcel Energy to enter a power-purchase agreement with Excelsior for the plant's electric output. Additionally, the state-funded Iron Range Resources Board pledged $8 million to support the project, and in October 2004, Sen. Norm Coleman, R-Minn., brought home $36 million in development support from the U.S. Department of Energy (DOE).

It's a long way from $44 million to $1.18 billion, but Excelsior is confident the company will reach its goal in time to get the project up and running by 2010. "With gas prices where they are, policy-makers are nervous," she says. "And in the face of ever-tightening emissions limits and carbon constraints, IGCC is the flagship technology that makes coal a viable option for baseload generation in the United States."

Betting on Coal

Jorgenson's statement isn't just about self-promotion. NYMEX gas prices exceeded $8/MMBtu in early November, and new liquefied natural gas (LNG) terminals continue to face tough siting and permitting challenges (*see "Too Little, Too Late," Public Utilities Fortnightly, September 2004, p. 34*). Other alternatives—nuclear and renewables—face practical constraints that seem unlikely to diminish any time soon. As a result, coal looks like the fuel of choice to meet future power demands.

"We have a lot of coal, it is relatively easy to mine, and it is concentrated in large deposits," says Stu Dalton, a director with the Electric Power Research Institute (EPRI). "If you have invested in the capital, you can use coal at an attractive marginal cost."

Additionally, coal offers advantages in terms of energy security, particularly in the context of plans to import more natural gas in the future.

"I don't think the general public understands the energy risks we face," says John Stowell, a vice president with Cinergy. "They've seen prices at the gas pump, but we haven't seen a hot summer followed by a cold winter, which could drive natural gas prices into the $12 range. That would signal a crisis." In such a situation, coal would become even more vital as a plentiful, indigenous energy resource.

The rub, of course, is pollution, and that's where IGCC shines. Tampa Electric's Polk IGCC facility, for example, has removed 97 percent of the sulfur in its fuel feedstock over its five-year lifespan, and emits less than half the nitrogen oxide (NO_x) allowed under the Clean Air Act's New Source Performance Standards. But such performance comes at a significant capital cost—about $200/kW to $300/kW of installed capacity, to be precise.

"There's definitely a cost gap between conventional and IGCC technologies," says Mike Mudd, manager of generation technologies with American Electric Power (AEP). "Based purely on competitive forces, the market will drive me toward the least-cost option."

If coal is the fuel of choice, then the least-cost option is a PC plant. But in the past few years, the calculus has been changing in IGCC's favor.

The biggest factor is global warming, or more specifically, the emerging consensus that the phenomenon is real and calls for action to stop it. While the Bush administration strongly opposes any new regulation around carbon dioxide (CO_2), utility companies are beginning to see it as inevitable.

"You can debate the issue of global warming, but there is a

◄ **UDOE demonstration projects, such as TECO Energy's Polk IGCC plant pictured here, have helped refine coal gasification technology and prove its technical viability. Commercial economics and ratemaking treatment, however, remain unproven.**

"The real test will be whether vendors will provide sufficient warranties to support investment decisions."

—Ed Feo, Partner, Milbank, Tweed, Hadley & McCloy

clear need for society to reduce CO_2 emissions from the combustion of fossil fuels," Mudd says. "Strategically, you have to acknowledge the possibility of future regulations."

In present form, IGCC technology's CO_2 emissions performance is good, but not great; it emits about 20 percent less CO_2 than conventional coal-fired technologies, and significantly more than plants burning natural gas. But the conversion process itself simplifies the process of capturing CO_2 before the fuel is burned, making IGCC a favored technology in a carbon-constrained world.

"Because gasification is done under pressure, you have 0.5 percent of the volume of gas to be treated, compared to what you'd have if you just burned the coal and tried to deal with the CO_2," Dalton says. "That high concentration makes it easier and less energy-intensive to remove CO_2 from the gas. That's why people see gasification as the great hope for CO_2 removal."

Specifically, a gasifier lies at the heart of the Future Gen concept, an emissions-free commercial power plant that the Bush administration is promoting for long-term development. And more generally, an IGCC plant would be in a better position to comply with increasing environmental pressures.

"We see a clear path to retrofitting a system to remove carbon from syngas produced at an IGCC plant," Mudd says. "We don't see that for a PC plant, so if we build a PC plant, will it become a stranded asset if we have carbon reductions mandated in the future? It's hard to put that into a *pro-forma*, but a long-term strategy must address these uncertainties."

Although existing plants might qualify for grandfathering provisions in future environmental laws, as they did under the Clean Air Act, a cleaner plant nevertheless would help manage the owner's exposure to legal and regulatory changes.

"IGCC is a hedge against change-of-law risk," says Ed Feo, a partner with Milbank, Tweed, Hadley & McCloy in Los Angeles. "If you look at the lawsuits being brought against the owners of existing coal plants in the Northeast and Midwest, you can understand the kind of after-the-fact legal risk that owners face. With clean-coal technology, presumably you'd be ahead of the regulatory curve."

Another factor that plays in IGCC's favor is the potential for a plant to produce other fuels and chemicals to sell. Most of the gasifiers in operation today, in fact, are being used by chemical companies to get hydrocarbon products from petroleum and waste feedstock. "Having synthesis gas as an intermediary opens up all kinds of potential markets," says Dale Simbeck, vice president of technology for SFA Pacific, a consulting firm in Mountain View, Calif. "If you have clean syngas, you can convert it to hydrogen, methane, methanol, diesel. … It's all commercial technology, but the question is cost and market price."

While the cost analysis is uncertain, the ability to manufacture other products gives IGCC a potential hedge against falling electricity prices. "You will see different transactions structured to account for revenue from different product streams," Feo says. "Clearly IGCC will benefit from being able to sell these products, in addition to burning fuel and selling electricity."

Going Commercial

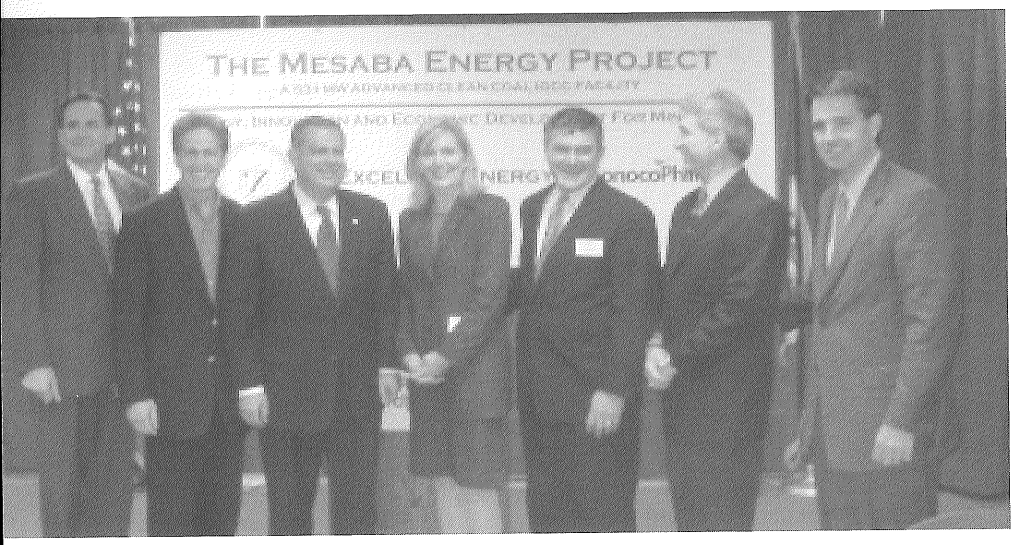
With environmental and market factors included in the calculus, IGCC is beginning to look like a winning technology for the future. DOE demonstration projects have shown that IGCC works, and the petroleum and chemical industries have been operating petroleum coke gasifiers commercially for decades. Nevertheless, most generation companies are reluctant to become first-movers in the IGCC game.

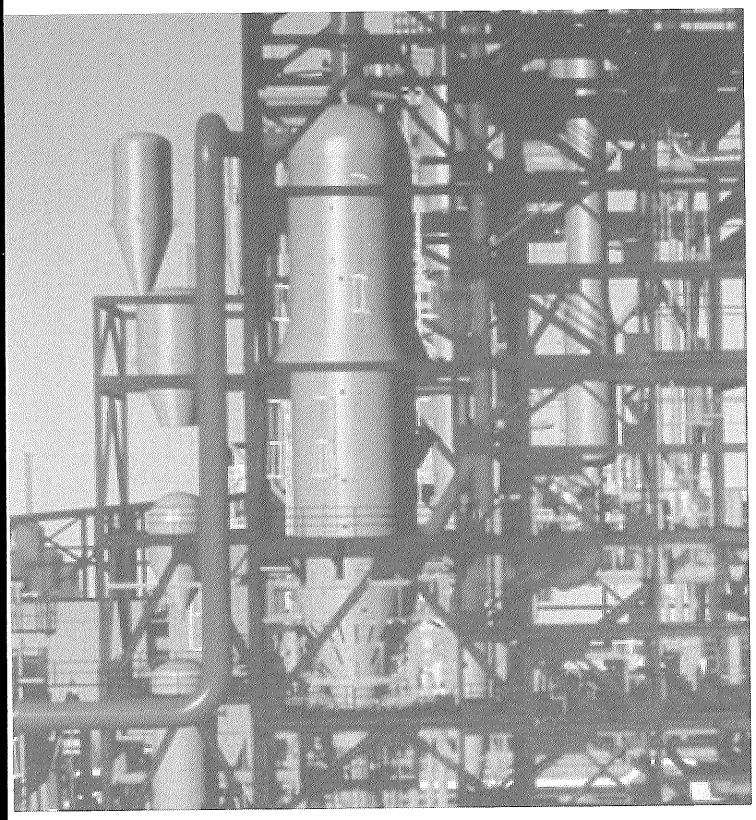
"Right now there is mixed interest in making that type of procurement for the long term," says Michael Zimmer, a partner with Thompson Hine in Washington, D.C. "Development times are too long, the market timing is uncertain, and the regulatory environment is unclear."

Additionally, an integrated coal gasifier and power plant has never operated on a commercial basis in this country. Consequently, IGCC presents technology risks for stakeholders, whether those stakeholders are commercial banks, equity investors, or utility ratepayers.

"The real test will be whether vendors will provide sufficient warranties to support investment decisions, and whether they will stand behind claims of efficiency and availability," Feo says. "Over the next year we will see standards and benchmarks develop that will make it possible to look at these projects and determine whether they are bankable."

In fact, the framework for a commercial IGCC business has begun taking shape. Specifically, in June 2004, GE Energy acquired the gasification business of Chevron Texaco, which had demonstrated its design at TECO's plant in Florida. The GE acquisition followed Conoco Phillips' 2003 buyout of the competing e-Gas technology developed by Dow Chemical and demonstrated at Cinergy's Wabash River IGCC facility in Indiana.





Top: An all-star squad has assembled to press the Mesaba IGCC project to the goal line. Pictured here are Minnesota Governor Tim Pawlenty, Sen. Norm Coleman, R-Minn., DOE Secretary Spencer Abraham, Excelsior Energy co-CEOs Julie Jorgenson and Tom Micheletti, NRRI Director Mike Lalich, and Acting DOE Assistant Secretary for Fossil Energy Mark Maddox. In its earlier phases, the project also was championed by the late Sen. Paul Wellstone, D-Minn.

Bottom: Although oxygen-blown gasification technology has been demonstrated successfully for power generation, advanced technologies such as air-blown gasification are still in development phases. Sierra Pacific Power's Piñion Pine IGCC facility (left) faced a series of engineering problems.

Additionally, GE has allied with Bechtel to develop commercial IGCC plant designs, and Conoco Phillips has done the same with Fluor Corp. Meanwhile, European companies Shell and Krupp Uhde merged their gasification technologies in 2002 and are working together to market their combined system.

All these developments bode well for IGCC's commercialization. "These are three quality technologies, and their owners have the resources and technical capabilities to do it right," Simbeck says. "You also have serious competition among the leading gasification technologies, and that is a very positive trend."

Indeed, some power generators are encouraged enough that they are beginning to include IGCC in their resource plans. Specifically, AEP announced at the end of August that it would build at least one IGCC plant totaling 1,000 MW or more as soon as 2010. The company is still evaluating vendors and siting options. "We've identified some potential sites in the eastern AEP region," Mudd says. "We have the full commitment of the company from the top down, and we're anxious to make it happen as soon as possible."

Then, in late October, Cinergy signed a letter of intent with GE and Bechtel to develop plans for a 500-MW to 600-MW IGCC facility for PSI Energy in Indiana, prospectively at the site of PSI's Edwardsport PC plant. "We've had formal discussions with some of the [state PUC] commissioners and the governor, and they are very interested in bringing IGCC to Indiana," Stowell says. "We have a pending generation shortage in Indiana, and IGCC is the way to go."

Among the commercial IGCC facilities being considered in the United States, Excelsior's Mesaba plant is furthest along in development. In addition to the aforementioned legislative and financial milestones, the project gained a state exemption obtaining a certificate of need for both generation and transmission facilities. The project's site, located in one of Minnesota's most economically strapped areas, qualifies the project for various tax benefits. And in 2003, Excelsior successfully lobbied to get a DOE loan guarantee included in the omnibus energy bill—which, though defeated in the 108th Congress, appears certain to reemerge in the 109th.

Excelsior, however, is not putting all its eggs in that decidedly unpredictable basket.

R&D INVESTMENT

TECH FUNDING: SEEKING A NEW PARADIGM

When the U.S. Department of Energy announced the winners in the second round of its Clean Coal Power (CCP) initiative, one project took the lion's share of the funds: a 285-MW, air-blown integrated gasification combined-cycle (IGCC) project being developed by Southern Co., Orlando Utilities Service, and Kellogg Brown & Root.

The Orlando project's $235 million grant accounts for 78 percent of the CCP initiative's $300 million round-two disbursement, and it represents a significant share of the DOE's total $600 million budget for fossil energy R&D. As such, it illustrates a fundamental problem with federally funded energy R&D projects; namely, the federal cash cow has nowhere near enough milk to feed the industry's research needs.

In the past five years, Congress has increased funding for the DOE's fossil energy R&D programs, from about $404 million in fiscal year 2000 to $603 million for fiscal 2005. While this funding increase is substantial in percentage terms, it represents a paltry sum for what many see as America's most critical R&D funding need.

Energy R&D Crisis

In the late 1990s, researchers Robert Margolis and Daniel Kammen studied energy R&D funding and technology patent awards in the United States, and they reported a disturbing trend in the journal *Science*—namely, "the energy sector dangerously underinvests relative to other technology-intensive sectors of the economy" ("Underinvestment: The Energy Technology and R&D Policy Challenge," *Science*, July 1999). Energy technology R&D investments, both government and private, dwindled steadily over two decades, going from a combined $12 billion in the late 1970s to $4 billion in the late 1990s.

Moreover, as a percentage of U.S. energy revenues, R&D spending is miniscule compared to the R&D commitments of other major industries. The Margolis and Kammen report showed that the energy industry spends less than 1 percent of its revenues on R&D, while industries like telecommunications, healthcare, and pharmaceuticals spend more than 10 percent.

The main culprit seems to be a combination of market competition and political priorities. In short, private companies won't invest in R&D unless it has a chance of translating into greater profitability. But the power industry's research priorities focus mostly on achieving societal goals, such as environmental stewardship and energy security. Investments toward such goals yield no profit for private companies, so achieving them requires government intervention—either through regulatory incentives or direct monetary support for R&D efforts. Both types of intervention, however, are problematic in the context of budget constraints and political realities.

The Bush administration's Future Gen initiative is a prime example. Future Gen envisions an emissions-free, coal-fired power facility being built in the next 10 years, combining R&D efforts in gasification, hydrogen separation, fuel cells, carbon sequestration, and other technologies. In the face of competing budget priorities, however, the Future Gen project has been sidelined despite the president's support for it.

"Future Gen is needed for the future of the industry, but it has been struggling to get research funding," says Stu Dalton, a director with EPRI. For the 2005 budget, Congress deferred funding Future Gen for another year, and it directed to the DOE to keep it on life support using existing clean-coal technology funds.

Finding a Better Way

Given the political difficulties of government R&D funding, politicians frequently cite the need to unleash the power of private-sector innovation to advance technologies for the public good. Indeed, free-market solutions often result in creative and cost-effective answers to public-policy questions. But under the *status quo*, policy-makers aren't asking the right questions.

For example, the Environmental Protection Agency (EPA) effectively is discouraging private investments in clean-coal technologies by weakening environmental enforcement and relaxing New Source Review policies for repowering projects. And in state capitals across the country, regulatory regimes discourage utilities from investing in R&D.

"Utilities earn an allowable rate of return from a repowered plant, but they don't earn a rate of return for R&D," says Michael Zimmer, a partner with Thompson Hine in Washington, D.C. "It's an expense that does nothing to enhance the rate base, so utilities can't make the investment."

In spite of such challenges, private companies continue making important contributions, particularly when they combine their efforts. EPRI, for example, recently formed a coalition of nearly 20 companies to support the institute's research on commercializing clean coal and carbon sequestration technologies. The initiative focuses less on the technologies themselves than on the regulatory, engineering, and market barriers that prevent those technologies from being implemented.

"There is inertia in human events just as there is in physics," Dalton says. "We see momentum in industry-led coalitions pulling together to make things happen. Government can't lead everything. The industry needs to take the initiative."

But while such initiative is important, achieving broad public-policy goals will require more investment than any research coalition is likely to mobilize. What's needed, ultimately, is a new approach to advancing energy technology that eschews the need for annual federal budget allocations, provides certainty about the goals being targeted, and rewards private investments that serve long-term, public-policy goals.

The industry, moreover, would welcome such reform if it is applied equitably. "We need certainty about what we need to do," says John Stowell, a vice president with Cinergy. "If we can get a long-term view on environmental regulations and technology development, we can make more progress, quicker and cheaper."

Approaches that could bring such certainty include permanent tax credits that help companies bear R&D costs, and regulatory reform at the state and federal levels to remove disincentives for R&D—both in terms of environmental regulation and ratemaking treatment.

Under the *status quo*, however, the crisis that Margolis and Kammen identified five years ago is only getting worse. "The old way of funding R&D is ineffective," Zimmer says. "It is not achieving our goals, and is putting us at risk. We need to step away from timeworn answers and find new ones." ***- M.T.B.***

"We have Credit Suisse First Boston as our financial adviser, making sure there won't be a disconnect by the time we start bringing in lenders," Jorgenson says. "The federal loan guarantee would make the project all the more attractive, but we will get the project over the finish line with or without it. We believe there are ample funds out there. The lynchpin will be the power-purchase agreement (PPA)."

Although the Minnesota legislature declared that Excelsior

is "entitled" to a PPA with Xcel Energy, Excelsior still must negotiate the deal with Xcel and make its case to the state public utility commission, through a least-cost analysis and public-interest determination. Its case got a boost in November, when Xcel Energy released its resource plan for meeting demand through 2019. "Xcel said they would not be able to have a coal-fired generator online before 2013, but acknowledged that they need it sooner to reduce reliance on natural gas," Jorgenson says. "That is a most significant step."

Additionally, Excelsior must obtain various permits and secure contracts for the project. The company's current timetable calls for financial closing and groundbreaking in June 2006, with startup beginning in 2008. If the project stays on schedule, it will enter full commercial operation in June 2010.

> "The president's Clear Skies legislation clearly favors life extension at big, dirty PC plants."
>
> —Dale Simbeck, vice president, SFA Pacific

Real Deal or Red Herring?

The U.S. electric utility industry in the 21st century is a weird chimera of public policy mandates and market forces. No power asset—whether owned by a regulated utility or an independent power company—is built without accounting for a variety of political factors.

Employment is one such factor, and it weighs more heavily in some cases than it does in others. Cinergy's project in Indiana, like Excelsior's in Minnesota, has received praise from state lawmakers for its ability to create jobs.For most power-plant investments today, however, the dominant public-policy considerations involve concerns about the environment and the nation's energy security.

Today, coal is the single largest fuel source for America's power industry, and no resource will challenge that position in the foreseeable future. Indeed, to the degree that natural gas supplies are unable to meet increasing demand, coal's role seems certain to expand. Furthermore, given rising concerns about air quality and the greenhouse effect, IGCC increasingly appears to be a leading technology for the power industry of the 21st century.

Appearances, however, can be misleading.

First, the natural gas crisis might not be as dire or as enduring as analysts have predicted. Breakthroughs in LNG and gas-pipeline investments, for example, could reverse the gas-price rise and curtail momentum toward coal.

"Clearly we will see a number of gasification investments going forward in the next couple of years," Feo says. "But the gestation period is fairly long, and a lot could happen. If natural gas prices get back to the $3 range, the discussion is ended."

Second, emissions restrictions might not intensify significantly in the mid-term future. Indeed, lacking a dramatic public outcry on environmental issues, the *status quo* could prevail for many years—at least at the federal level. In such a scenario, companies would be more likely to make token investments in clean-air technologies than to invest in a substantial number of IGCC plants.

"The president's Clear Skies legislation clearly favors life extension at big, dirty PC plants over new clean-coal plants," Simbeck says. "And from a purely economic perspective, the choice is clear: Relicense the big dirties forever. In fact there is no economic value for a company in reducing emissions."

In a scenario where cost continues to trump the environment, an IGCC investment would be little more than a red herring. "It has a lot of sex appeal and neutralizes the environmentalists," Simbeck says. The "red herring" role would translate into a few medium-sized IGCC plants being developed slowly over the next decade, but no rapid tidal shift toward gasification.

Put another way, global warming and energy security are long-term issues, and stock performance and profitability are immediate concerns. When immediate concerns conflict with long-term ones, human nature usually favors the immediate.

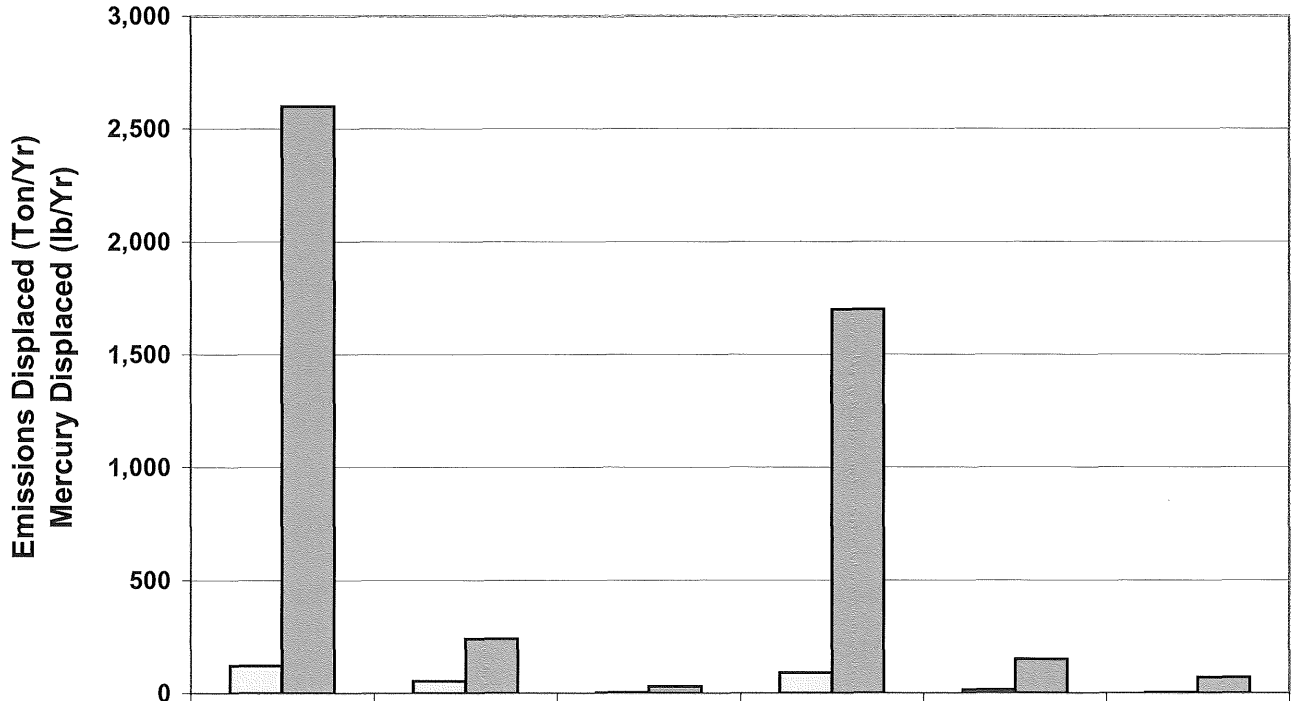
Thus the future of IGCC remains unclear, despite some promising developments. In the short term, government support for at least a few projects likely will force IGCC's transformation from a demonstration technology into a prime-time commercial one. The involvement of companies like GE, Bechtel, and Conoco Phillips supports such a transformation.

Beyond that, however, IGCC's future might depend on state-level decision makers and environmental advocates. To the degree advocates make the case for long-term thinking and public utility commissions pursue long-term public policy goals through ratemaking decisions, IGCC might well become the technology of choice for the next generation of coal-fired power plants. But it won't happen on a purely economic basis, no matter how compelling or laudable the public policy benefits might be.

Michael T. Burr is Public Utility Fortnightly's editor-at-large, and a consultant and writer based in Minnesota. E-mail him at info@mtburr.com.

Supercritical Pulverized Coal (SCPC) Power Plant Emissions Displaced Annually By Renewable Development Fund (RDF) Projects vs. Mesaba Project*

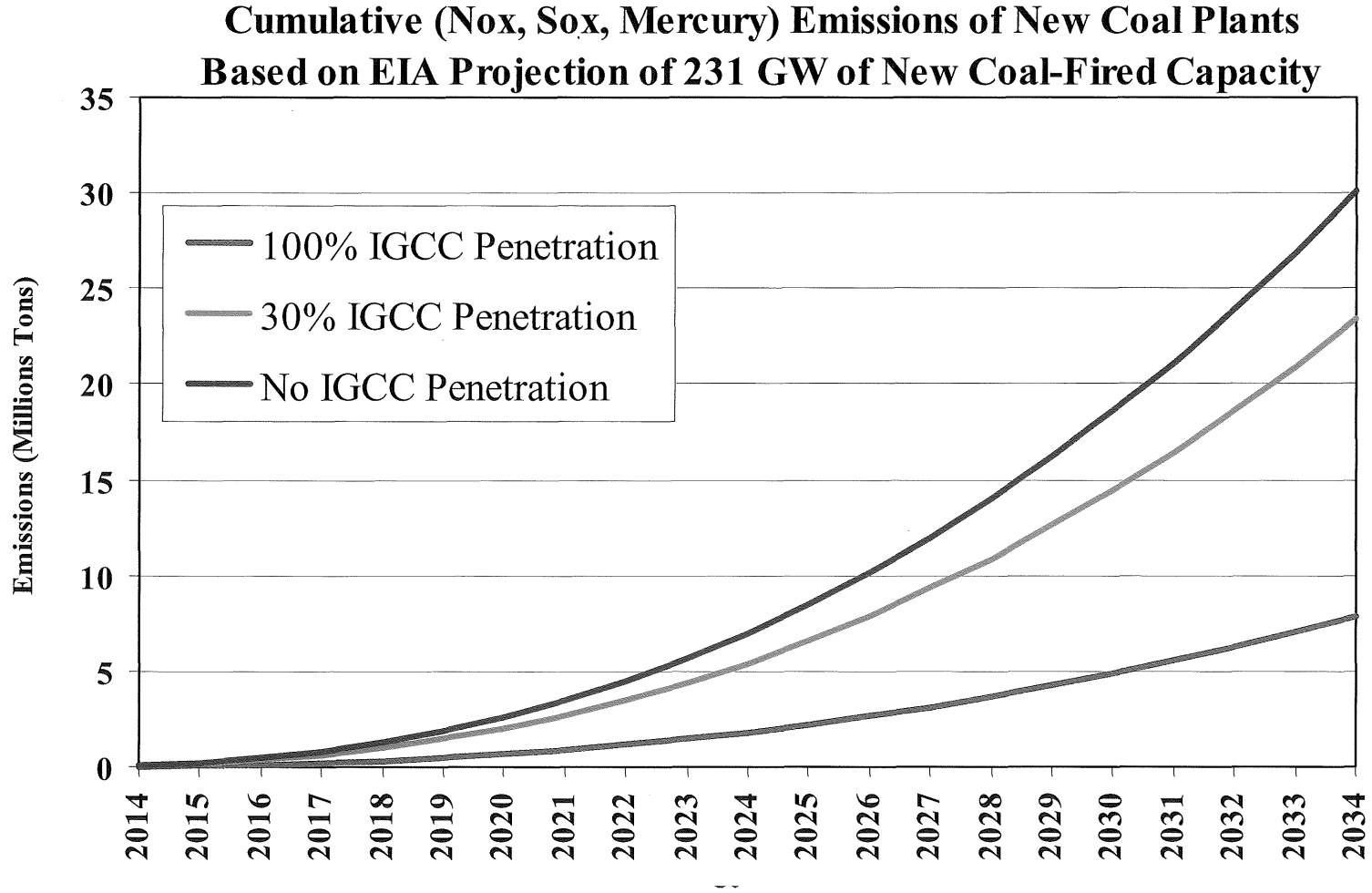
April 8, 2005



	SO2	NOx	VOC	CO	PM/PM10	Hg (lb/Yr)
SCPC Emissions Displaced By RDF	122	53	3	91	14	3
SCPC Emissions Displaced By Mesaba	2,600	240	30	1,700	150	70

*Analysis assumes all proposed RDF projects and Mesaba operate at an annual capacity factor of 90%; RDF projects likely to operate at lower capacity factor decreasing emissions displaced. Data for SCPC obtained from BACT emission rates provided in Appendix D of Final EIS Elm Road Generating Station, Volume 1, Wisconsin DNR, July 2003.

Avoided Emissions With IGCC: The Importance of IGCC Plants in 2010 To Ensure IGCC Market Penetration



EXCELSIOR ENERGY INC.

NATIONAL ENVIRONMENTAL ADVOCATES SUPPORT IGCC TECHNOLOGY

Natural Resource Defense Council;

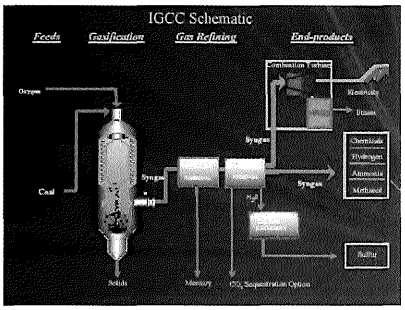
http://www.nrdc.org/globalWarming/tdh0602.asp

New fossil power plants that are now in the planning and financing stage represent a major commitment of the remaining carbon [greenhouse gas] budget. Once built, these long-lived capital investments will operate and emit carbon for a large fraction of this century. The International Energy Agency forecasts over 600 gigawatts of new coal plants will be built between 1997 and the year 2020, an increase of 60 percent above today's world coal capacity in a little over 20 years. Much of this capacity is in the fast growing economies of the developing world…

The logic of the market dictates that these plants will be conventional coal plants, which are still slightly cheaper than more efficient, sequestration-ready IGCC plants. The U.S. has the power to change that calculus. If we do so, the benefits to us and other countries will be enormous. We can provide a needed technology to a worldwide market and the use of that technology together with a balanced portfolio of efficiency programs and renewable energy systems, can avoid committing the planet to unmanageable growth in CO2 emissions. The opportunity cost posed by those 600 gigawatts of new coal plants now being planned and built is enormous. We and others will rue our choice if we do nothing to steer that massive investment to a lower-carbon alternative.

Clean Air Task Force:

http://www.catf.us/projects/power_sector/advanced_coal/background.php



A schematic diagram of IGCC technology, which uses a chemical process, rather than combustion, to convert coal to energy. The result is much lower emissions of key pollutants, and relatively easy separation of CO2 from the process, for geologic sequestration.

[IGCC's] promise is not to be ignored: 90% (or more) of coal's carbon content can be readily captured and other key emissions related to the burning of coal (SO2, nitrogen oxides, mercury) can be either removed in production or reduced to trace amounts or to levels consistent with cleaner gas plant emission levels. We believe this technology will likely be a major player in a future power generation landscape of low or zero carbon and is likely an essential element to any effective approach to climate change for the foreseeable future.

Wyoming Sierra Club:

http://wyoming.sierraclub.org/alerts/a120404.html

[T]here are … exciting new technologies for taking energy from coal without producing the kinds and amounts of pollution that traditional coal-fired plants emit. For example, utilities and government agencies are investing enormous effort and funding in next-generation power plants that extract energy from coal without inefficient and dirty combustion.

IGCC, or "Integrated Gasification Combined Cycle," power plants are being built or planned from Florida to Indiana to the Southwest. IGCC plants use a catalyst to draw synthetic gas out of coal without burning it. Pollutants are removed with far greater efficiency and volumes of resulting waste products are vastly reduced.

Faced with evidence of this better way to continue generating energy and local wealth from coal production, the Western Governors Association this spring listed IGCC as a worthy focus of greater public support.

But Wyoming's proposed new plants do not employ this promising new technology, partly because the public has not given enough information to demand it as a priority. Sierra Club members can help lead the state and the utilities to a genuine commitment to these new methods of energy production.

New York Times Op Ed: Coal in a Nice Shade of Green

(March 25, 2005, by Thomas Homer-Dixon, Director of the Center for Peace and Conflict Studies at the University of Toronto and S. Julio Friedmann, director of carbon sequestration at Lawrence Livermore National Laboratory)

"When it comes to energy, we are trapped between a rock and several hard places….for the near term, there is no silver bullet. The scale and complexity of American energy consumption are such that the country needs to look at many different solutions simultaneously. On the demand side, this means huge investments in conservation and energy efficiency – two areas that policy makers and consumers have sadly neglected. On the supply side, the important thing is to come up with so-called bridge technologies that can power our cities, factories and cars with fewer emissions than traditional fossil fuels while we move to clean energy…A prime example of a bridge technology – one that exists right now – is coal gasification…On balance, this combination of [IGCC and geologic storage] technologies is probably among the best ways to provide the energy needed by modern societies – including populous, energy-hungry and coal-rich societies like China and India – without wrecking the global climate.

The New York Times

March 25, 2005

OP-ED CONTRIBUTORS

Coal in a Nice Shade of Green

By THOMAS HOMER-DIXON and S. JULIO FRIEDMANN

WHEN it comes to energy, we are trapped between a rock and several hard places. The world's soaring demand for oil is pushing against the limits of production, lifting the price of crude nearly 90 percent in the last 18 months. Congress's vote in favor of drilling in the Arctic National Wildlife Refuge won't make much difference because the amount of oil there, at best, is tiny relative to global or even American needs. And relief isn't likely to come anytime soon from drilling elsewhere: oil companies spent $8 billion on exploration in 2003, but discovered only $4 billion of commercially useful oil.

Sadly, most alternatives to conventional oil can't give us the immense amount of energy we need without damaging our environment, jeopardizing our national security or bankrupting us. The obvious alternatives are other fossil fuels: natural gas and oil products derived from tar sands, oil shale and even coal. But natural gas supplies are tightening, at least in North America.

And, of course, all fossil fuels have a major disadvantage: burning them releases carbon dioxide, a greenhouse gas that may contribute to climate change. This drawback is especially acute for tar sands, oil shale and coal, which, joule for joule, release far more carbon dioxide than either conventional oil or natural gas.

As for energy sources not based on carbon, it would be enormously hard to meet a major percentage of America's energy needs at a reasonable cost, at least in the near term. Take nuclear power - a source that produces no greenhouse emissions. Even assuming we can find a place to dispose of nuclear waste and deal with the security risks, to meet the expected growth in total American energy demand over the next 50 years would require building 1,200 new nuclear power plants in addition to the current 104 - or one plant every two weeks until 2050.

Solar power? To satisfy its current electricity demand using today's technology, the United States would need 10 billion square meters of photovoltaic panels; this would cost $5 trillion, or nearly half the country's annual gross domestic product.

How about hydrogen? To replace just America's surface transportation with cars and trucks running on fuel cells powered by hydrogen, America would have to produce 230,000 tons of the gas - or enough to fill 13,000 Hindenburg dirigibles - every day. This could be generated by electrolyzing water, but to do so America would have to nearly double its electricity output, and generating this extra power with carbon-free renewable energy would mean covering an area the size of Massachusetts with solar panels or of New York State with windmills.

Of course technology is always improving, and down the road some or all of these technologies may become more feasible. But for the near term, there is no silver bullet. The scale and complexity of American energy consumption are such that the country needs to look at many different solutions simultaneously. On the demand side, this means huge investments in conservation and energy efficiency - two areas that policy makers and consumers have sadly neglected.

On the supply side, the important thing is to come up with so-called bridge technologies that can power our cities, factories and cars with fewer emissions than traditional fossil fuels while we move to clean energy like solar, wind and safe nuclear power. A prime example of a bridge technology - one that exists right now - is gasification.

Here's how it works: in a type of power plant called an integrated gasification combined-cycle facility, we change any fossil fuel, including coal, into a superhot gas that is rich in hydrogen - and in the process strip out pollutants like sulfur and mercury. As in a traditional combustion power plant, the heat generates large amounts of electricity; but in this case, the gas byproducts can be pure streams of hydrogen and carbon dioxide.

This matters for several reasons. The hydrogen produced could be used as a transportation fuel. Equally important, the harmful carbon dioxide waste is in a form that can be pumped deep underground and stored, theoretically for millions of years, in old oil and gas fields or saline aquifers. This process is called geologic storage, or carbon sequestration, and recent field demonstrations in Canada and Norway have shown it can work and work safely.

The marriage of gasified coal plants and geologic storage could allow us to build power plants that produce vast amounts of energy with virtually no carbon dioxide emissions in the air. The Department of Energy is pursuing plans to build such a zero-emission power plant and is encouraging energy companies to come up with proposals of their own. The United States, Britain and Germany are also collaborating to build such plants in China and India as part of an effort by the Group of 8. Moreover, these plants are very flexible: although coal is the most obvious fuel source, they could burn almost any organic material, including waste cornhusks and woodchips.

This is an emerging technology, so inevitably there are hurdles. For example, we need a crash program of research to find out which geological formations best lock up the carbon dioxide for the longest time, followed by global geological surveys to locate these formations and determine their capacity. Also, coal mining is dangerous and strip-mining,

of course, devastates the environment; if we are to mine a lot more coal in the future we will want more environmentally friendly methods.

On balance, though, this combination of technologies is probably among the best ways to provide the energy needed by modern societies - including populous, energy-hungry and coal-rich societies like China and India - without wrecking the global climate.

Fossil fuels, especially petroleum, powered the industrialization of today's rich countries and they still drive the world economy. But within the lifetimes of our grandchildren, the age of petroleum will wane. The combination of gasified coal plants and geologic storage can be our bridge to the clean energy - derived from renewable resources like solar and wind power and perhaps nuclear fusion - of the 22nd century and beyond.

Thomas Homer-Dixon is director of the Center for Peace and Conflict Studies at the University of Toronto. S. Julio Friedmann directs the carbon sequestration project at Lawrence Livermore National Laboratory in Livermore, Calif.

Senator ..... moves to amend S.F. No. 462 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 116C.63, subdivision 3, is amended to read:

Subd. 3. [PAYMENT.] In addition to the payments required by subdivision 3a, and unless the parties otherwise agree, the amount the owner shall receive for the property is one and a-half times the estimated market value of the property acquired as contained in the most recent property tax statement. If the tax statement applies to a larger parcel than the property acquired, the estimated market value must be multiplied by a percentage equal to the percentage that the land area of the easement acquired is of the area of the larger parcel. When such property is acquired by eminent domain proceedings or voluntary purchase and the amount the owner shall receive for the property is finally determined, the owner who is entitled to payment may elect to have the amount paid in not more than ten annual installments, with interest on the deferred installments, at the rate of eight percent per annum on the unpaid balance, by submitting a written request to the utility before any payment has been made. After the first installment is paid the petitioner may make its final certificate, as provided by law, in the same manner as though the entire amount had been paid.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment and applies to easements acquired on or after that date."

Delete the title and insert:

"A bill for an act relating to utilities; regulating the taking of land for transmission of electricity; amending Minnesota Statutes 2004, section 116C.63, subdivision 3."

FOR INCLUSION IN S.F. NO. 1368

Sec. 1. [LANDOWNER PAYMENTS WORKING GROUP.]

Subdivision 1. [MEMBERSHIP.] By June 15, 2005, the Legislative Electric Energy Task Force shall convene a landowner payments working group consisting of up to 12 members, including representatives from each of the following groups: transmission-owning investor-owned utilities, electric cooperatives, municipal power agencies, Farm Bureau, Farmers Union, county commissioners, real estate appraisers and others with an interest and expertise in landowner rights and the market value of rural property.

Subd. 2. [APPOINTMENT.] The chairs of the Legislative Electric Energy Task Force and the chairs of the senate and house committees with primary jurisdiction over energy policy shall jointly appoint the working group members.

Subd. 3. [CHARGE.] (a) The landowner payments working group shall research alternative methods of remunerating landowners on whose land high voltage transmission lines have been constructed.

(b) In developing its recommendations, the working group shall:

(1) examine different methods of landowner payments that operate in other states and countries;

(2) consider innovative alternatives to lump-sum payments that extend payments over the life of the transmission line and that run with the land if the land is conveyed to another owner;

(3) consider alternative ways of structuring payments that are equitable to landowners and utilities.

Subd. 4. [EXPENSES.] Members of the working group shall be reimbursed for expenses as provided in Minnesota Statutes, section 15.059, subdivision 6. Expenses of the landowner payments working group shall not exceed $10,000 without the approval of the chairs of the Legislative Electric Energy Task Force.

Subd. 5. [REPORT.] The landowner payments working group shall present its findings and recommendations, including

legislative recommendations and model legislation, if any, in a report to the Legislative Electric Energy Task Force by January 15, 2006.