

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1735

(SENATE AUTHORS: MARTY, Dibble, Weber, Benson and Hoffman)

DATE	D-PG	OFFICIAL STATUS
03/16/2015	894	Introduction and first reading Referred to Environment and Energy
04/16/2015	1733a	Comm report: To pass as amended Joint rule 2.03, referred to Rules and Administration
05/06/2015		Comm report: Adopt previous comm report Second reading

1.1 A bill for an act
1.2 relating to energy; allowing performance-based, multiyear rate plans; providing
1.3 for competitive rate schedules for energy-intensive trade-exposed electric utility
1.4 customers; amending Minnesota Statutes 2014, sections 216B.16, subdivisions
1.5 6, 7b, 19; 216B.2425.

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

1.7 Section 1. Minnesota Statutes 2014, section 216B.16, subdivision 6, is amended to read:

1.8 Subd. 6. **Factors considered, generally.** The commission, in the exercise of its
1.9 powers under this chapter to determine just and reasonable rates for public utilities, shall
1.10 give due consideration to the public need for adequate, efficient, and reasonable service
1.11 and to the need of the public utility for revenue sufficient to enable it to meet the cost of
1.12 furnishing the service, including adequate provision for depreciation of its utility property
1.13 used and useful in rendering service to the public, and to earn a fair and reasonable return
1.14 upon the investment in such property. In determining the rate base upon which the utility
1.15 is to be allowed to earn a fair rate of return, the commission shall give due consideration to
1.16 evidence of the cost of the property when first devoted to public use, to prudent acquisition
1.17 cost to the public utility less appropriate depreciation on each, to construction work in
1.18 progress, to offsets in the nature of capital provided by sources other than the investors,
1.19 and to other expenses of a capital nature. For purposes of determining rate base, the
1.20 commission shall consider the original cost of utility property included in the base and
1.21 shall make no allowance for its estimated current replacement value. If the commission
1.22 orders a generating facility to terminate its operations before the end of the facility's
1.23 physical life in order to comply with a specific state or federal energy statute or policy,
1.24 the commission may allow the public utility to recover any positive net book value of the
1.25 facility as determined by the commission.

2.1 Sec. 2. Minnesota Statutes 2014, section 216B.16, subdivision 7b, is amended to read:

2.2 Subd. 7b. **Transmission cost adjustment.** (a) Notwithstanding any other provision
2.3 of this chapter, the commission may approve a tariff mechanism for the automatic annual
2.4 adjustment of charges for the Minnesota jurisdictional costs net of associated revenues of:

2.5 (i) new transmission facilities that have been separately filed and reviewed and
2.6 approved by the commission under section 216B.243 or new transmission or distribution
2.7 facilities that are certified as a priority project or deemed to be a priority transmission
2.8 project under section 216B.2425;

2.9 (ii) new transmission facilities approved by the regulatory commission of the state
2.10 in which the new transmission facilities are to be constructed, to the extent approval
2.11 is required by the laws of that state, and determined by the Midcontinent Independent
2.12 System Operator to benefit the utility or integrated transmission system; and

2.13 (iii) charges incurred by a utility under a federally approved tariff that accrue
2.14 from other transmission owners' regionally planned transmission projects that have been
2.15 determined by the Midcontinent Independent System Operator to benefit the utility or
2.16 integrated transmission system.

2.17 (b) Upon filing by a public utility or utilities providing transmission service, the
2.18 commission may approve, reject, or modify, after notice and comment, a tariff that:

2.19 (1) allows the utility to recover on a timely basis the costs net of revenues of
2.20 facilities approved under section 216B.243 or certified or deemed to be certified under
2.21 section 216B.2425 or exempt from the requirements of section 216B.243;

2.22 (2) allows the utility to recover charges incurred under a federally approved tariff that
2.23 accrue from other transmission owners' regionally planned transmission projects that have
2.24 been determined by the Midcontinent Independent System Operator to benefit the utility
2.25 or integrated transmission system. These charges must be reduced or offset by revenues
2.26 received by the utility and by amounts the utility charges to other regional transmission
2.27 owners, to the extent those revenues and charges have not been otherwise offset;

2.28 (3) allows the utility to recover on a timely basis the costs net of revenues of facilities
2.29 approved by the regulatory commission of the state in which the new transmission
2.30 facilities are to be constructed and determined by the Midcontinent Independent System
2.31 Operator to benefit the utility or integrated transmission system;

2.32 (4) allows the utility to recover costs associated with distribution planning required
2.33 under section 216B.2425;

2.34 (5) allows the utility to recover costs associated with investments in distribution
2.35 facilities to modernize the utility's grid that have been certified by the commission under
2.36 section 216B.2425;

3.1 (6) allows a return on investment at the level approved in the utility's last general
 3.2 rate case, unless a different return is found to be consistent with the public interest;

3.3 ~~(5)~~ (7) provides a current return on construction work in progress, provided that
 3.4 recovery from Minnesota retail customers for the allowance for funds used during
 3.5 construction is not sought through any other mechanism;

3.6 ~~(6)~~ (8) allows for recovery of other expenses if shown to promote a least-cost project
 3.7 option or is otherwise in the public interest;

3.8 ~~(7)~~ (9) allocates project costs appropriately between wholesale and retail customers;

3.9 ~~(8)~~ (10) provides a mechanism for recovery above cost, if necessary to improve the
 3.10 overall economics of the project or projects or is otherwise in the public interest; and

3.11 ~~(9)~~ (11) terminates recovery once costs have been fully recovered or have otherwise
 3.12 been reflected in the utility's general rates.

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

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

3.16 (2) a schedule for implementation of applicable projects;

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

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

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

3.22 (d) Upon receiving a filing for a rate adjustment pursuant to the tariff established in
 3.23 paragraph (b), the commission shall approve the annual rate adjustments provided that,
 3.24 after notice and comment, the costs included for recovery through the tariff were or are
 3.25 expected to be prudently incurred and achieve transmission system improvements at the
 3.26 lowest feasible and prudent cost to ratepayers.

3.27 Sec. 3. Minnesota Statutes 2014, section 216B.16, subdivision 19, is amended to read:

3.28 Subd. 19. **Multiyear rate plan.** (a) A public utility may propose, and the
 3.29 commission may approve, approve as modified, or reject, a multiyear rate plan as provided
 3.30 in this subdivision. The term "multiyear rate plan" refers to a plan establishing the rates the
 3.31 utility may charge for each year of the specified period of years, which cannot exceed ~~three~~
 3.32 five years, to be covered by the plan. A utility proposing a multiyear rate plan shall provide
 3.33 a general description of the utility's major planned investments over the plan period.
 3.34 The commission may also require the utility to provide a set of reasonable performance
 3.35 measures and incentives that are quantifiable, verifiable, and consistent with state energy

4.1 policies. The commission may allow the utility to adjust recovery of its cost of capital or
 4.2 other costs in a reasonable manner within the plan period. The utility may propose:

4.3 (1) recovery of the utility's forecasted rate base, based on a formula, a budget forecast,
 4.4 or a fixed escalation rate, individually or in combination. The forecasted rate base must
 4.5 include the utility's planned capital investments and investment-related costs, including
 4.6 income tax impacts, depreciation and property taxes, as well as forecasted capacity-related
 4.7 costs from purchased power agreements that are not recovered through subdivision 7;

4.8 (2) recovery of operations and maintenance expenses, based on an electricity-related
 4.9 price index or other formula;

4.10 (3) tariffs that expand the products and services available to customers, including,
 4.11 but not limited to, an affordability rate for low-income residential customers; and

4.12 (4) adjustments to the rates approved under the multiyear plan for rate changes
 4.13 that the commission determines to be just and reasonable, including, but not limited
 4.14 to, changes in the utility's cost of operating its nuclear facilities, or other significant
 4.15 investments not addressed in the plan.

4.16 (b) A utility that has filed a petition with the commission to approve a multiyear
 4.17 rate plan may request to be allowed to implement interim rates for the first and second
 4.18 years of the multiyear plan. If the commission approves the request, interim rates shall be
 4.19 implemented in the same manner as allowed under subdivision 3.

4.20 (c) The commission may approve a multiyear rate plan only if it finds that the plan
 4.21 establishes just and reasonable rates for the utility, applying the factors described in
 4.22 subdivision 6. Consistent with subdivision 4, the burden of proof to demonstrate that the
 4.23 multiyear rate plan is just and reasonable is on the public utility proposing the plan.

4.24 ~~(b)~~ (d) Rates charged under the multiyear rate plan must be based only upon the
 4.25 utility's reasonable and prudent costs of service over the term of the plan, as determined
 4.26 by the commission, provided that the costs are not being recovered elsewhere in rates.
 4.27 Rate adjustments authorized under subdivisions 6b and 7 may continue outside of a plan
 4.28 authorized under this subdivision.

4.29 ~~(e)~~ (e) The commission may, by order, establish terms, conditions, and procedures
 4.30 for a multiyear rate plan necessary to implement this section and ensure that rates remain
 4.31 just and reasonable during the course of the plan, including terms and procedures for rate
 4.32 adjustment. At any time prior to conclusion of a multiyear rate plan, the commission,
 4.33 upon its own motion or upon petition of any party, has the discretion to examine the
 4.34 reasonableness of the utility's rates under the plan, and adjust rates as necessary.

4.35 ~~(d)~~ (f) In reviewing a multiyear rate plan proposed in a general rate case under
 4.36 this section, the commission may extend the time requirements for issuance of a final

5.1 determination prescribed in this section by an additional 90 days beyond its existing
5.2 authority under subdivision 2, paragraph (f).

5.3 (e) (g) A utility may not file a multiyear rate plan that would establish rates under the
5.4 terms of the plan until after May 31, 2012.

5.5 (h) The commission may initiate a proceeding to determine a set of performance
5.6 measures that can be used to assess a utility operating under a multiyear rate plan.

5.7 Sec. 4. Minnesota Statutes 2014, section 216B.2425, is amended to read:

5.8 **216B.2425 STATE TRANSMISSION AND DISTRIBUTION PLAN.**

5.9 Subdivision 1. **List.** The commission shall maintain a list of certified high-voltage
5.10 transmission line projects.

5.11 Subd. 2. **List development; transmission projects report.** (a) By November
5.12 1 of each odd-numbered year, a transmission projects report must be submitted to the
5.13 commission by each utility, organization, or company that:

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

5.17 (2) owns or operates electric transmission lines in Minnesota, except a company or
5.18 organization that owns a transmission line that serves a single customer or interconnects a
5.19 single generating facility.

5.20 (b) The report may be submitted jointly or individually to the commission.

5.21 (c) The report must:

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

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

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

5.27 (4) provide a summary of public input related to the list of inadequacies and the role
5.28 of local government officials and other interested persons in assisting to develop the list
5.29 and analyze alternatives.

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

5.34 (e) In addition to providing the information required under this subdivision, a utility
5.35 operating under a multiyear rate plan approved by the commission under section 216B.16,

6.1 subdivision 19, shall identify in its report investments that it considers necessary to
6.2 modernize the transmission and distribution system by enhancing reliability, improving
6.3 security against cyber and physical threats, and by increasing energy conservation
6.4 opportunities by facilitating communication between the utility and its customers
6.5 through the use of two-way meters, control technologies, energy storage and microgrids,
6.6 technologies to enable demand response, and other innovative technologies.

6.7 Subd. 3. **Commission approval.** By June 1 of each even-numbered year, the
6.8 commission shall adopt a state transmission project list and shall certify, certify as
6.9 modified, or deny certification of the transmission and distribution projects proposed
6.10 under subdivision 2. The commission may only certify a project that is a high-voltage
6.11 transmission line as defined in section 216B.2421, subdivision 2, that the commission
6.12 finds is:

6.13 (1) necessary to maintain or enhance the reliability of electric service to Minnesota
6.14 consumers;

6.15 (2) needed, applying the criteria in section 216B.243, subdivision 3; and

6.16 (3) in the public interest, taking into account electric energy system needs and
6.17 economic, environmental, and social interests affected by the project.

6.18 Subd. 4. **List; effect.** Certification of a project as a priority electric transmission
6.19 project satisfies section 216B.243. A certified project on which construction has not begun
6.20 more than six years after being placed on the list, must be reapproved by the commission.

6.21 Subd. 5. **Transmission inventory.** The Department of Commerce shall create,
6.22 maintain, and update annually an inventory of transmission lines in the state.

6.23 Subd. 6. **Exclusion.** This section does not apply to any transmission line proposal
6.24 that has been approved by, or was pending before, a local unit of government, the
6.25 Environmental Quality Board, or the Public Utilities Commission on August 1, 2001.

6.26 Subd. 7. **Transmission needed to support renewable resources.** (a) Each entity
6.27 subject to this section shall determine necessary transmission upgrades to support
6.28 development of renewable energy resources required to meet objectives under section
6.29 216B.1691 and shall include those upgrades in its report under subdivision 2.

6.30 (b) MS 2008 [Expired]

6.31 Subd. 8. **Distribution study for distributed generation.** Each entity subject to
6.32 this section that is operating under a multiyear rate plan approved under section 216B.16,
6.33 subdivision 19, shall conduct a distribution study to identify interconnection points on
6.34 its distribution system for small-scale distributed generation resources and shall identify
6.35 necessary distribution upgrades to support the continued development of distributed
6.36 generation resources, and shall include the study in its report required under subdivision 2.

7.1 Sec. 5. **COMPETITIVE RATE FOR ENERGY-INTENSIVE, TRADE-EXPOSED**
7.2 **ELECTRIC UTILITY CUSTOMER.**

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

7.5 (b) "Energy-intensive, trade-exposed (EITE) customer" means a customer of an
7.6 investor-owned utility that has at least 40 percent of its load from 15 or fewer customers
7.7 and is:

7.8 (1) an iron mining extraction and processing facility, including a "scram mining
7.9 operation," as that term is defined in Minnesota Rules, part 6130.0100, subpart 16;

7.10 (2) a paper mill, wood products manufacturer, sawmill, or oriented strand board
7.11 manufacturer;

7.12 (3) a steel mill and related facility; or

7.13 (4) any other globally competitive electric customer who can demonstrate that: (i)
7.14 energy costs are at least 15 percent of the customer's overall cost of production; (ii) their
7.15 energy rates are significantly higher than their competitors; and (iii) those higher rates
7.16 impede the customer's ability to compete in the global market.

7.17 (c) "EITE rate schedule" means a rate schedule that establishes the terms of service
7.18 for an individual or group of energy-intensive, trade-exposed customers.

7.19 (d) "EITE rate" means the rate or rates offered by the utility under an EITE rate
7.20 schedule.

7.21 Subd. 2. Rates and terms of EITE rate schedule. (a) An investor-owned electric
7.22 utility that has at least 40 percent of its load from 15 or fewer customers may propose an
7.23 EITE rate schedule for commission approval that includes various EITE rate options
7.24 such as fixed rates or market-based rates.

7.25 (b) The minimum rate for the EITE schedule must recover at least the incremental
7.26 cost of providing the service, including the cost of additional capacity that is to be added
7.27 while the rate is in effect and any applicable on-peak or off-peak differential.

7.28 (c) Notwithstanding Minnesota Statutes, section 216B.03, 216B.05, 216B.06,
7.29 216B.07, or 216B.16, the commission shall approve a proposed EITE rate schedule if
7.30 it finds the schedule provides net benefits to the utility and its customers, considering
7.31 among other things:

7.32 (1) potential cost impacts to the utility's customers;

7.33 (2) the net benefit to the local or state economy through the retention or increase of
7.34 jobs;

7.35 (3) a net increase in economic development in the utility's service territory; and

8.1 (4) the extent to which a significant rate increase for all other customers might
8.2 otherwise be avoided by preventing a reduction of EITE customer load.

8.3 Subd. 3. **Eligibility for EITE rate.** A customer is eligible for an EITE rate under
8.4 the EITE rate schedule if the customer can demonstrate to the commission that it meets
8.5 the defined criteria under subdivision 1, paragraph (b).

8.6 Subd. 4. **Commission process.** (a) The commission shall review the EITE rate
8.7 schedule proposed by an investor-owned electric utility and make a final determination in
8.8 any proceeding begun under this section within 120 days of a miscellaneous rate filing by
8.9 the electric utility.

8.10 (b) An EITE rate offered by an electric utility under an approved EITE rate schedule
8.11 must be filed with the commission.

8.12 Subd. 5. **Cost recovery.** (a) Upon approval of an EITE rate, the utility shall create
8.13 a separate account to track the difference in revenue between what would have been
8.14 collected under the electric utility's applicable standard tariff and the EITE rate schedule.
8.15 In its next general rate case or other methodology the commission shall determine, the
8.16 commission shall allow the utility to recover the incremental costs if it determines that
8.17 recovery is in the public interest, or refund the incremental revenues, associated with
8.18 providing service to a customer under the EITE rate from the utility's nonenergy-intensive,
8.19 trade-exposed customers.

8.20 (b) The commission shall take steps as necessary to mitigate the impacts of
8.21 cost recovery of the implementation of the EITE rate on other ratepayers, unless the
8.22 commission finds that the cost impacts are minimal.