

September 5, 2013

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce-Division of Energy Resources**
Docket No. ET6133/TX-13-575

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce-Division of Energy Resources (Department) in the following matter:

Efficiency Ratio Determination & Certification per Minn. Stat. § 272.0211 subd. 1 for
Hometown Bioenergy Generating Facility

This petition was filed on August 6, 2013 by:

Bethany Pribila
Avant Energy, Inc.
Agent for HTBE and MMPA
220 South Sixth Street, Suite 1300
Minneapolis, MN 55402

The Department recommends **approval** of the proposed petition and is available to answer any questions the Commission may have.

Sincerely,

/s/ CHRISTOPHER SHAW
Rates Analyst

CS/sm
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. ET6133/TX-13-575

I. INTRODUCTION

On July 23, 2013 Hometown Bioenergy, LLC (HTBE) filed a petition for a personal property tax exemption determination (Petition) for its biogas facility located in Le Sueur, Minnesota (Facility) under Minn. Stat. § 272.0211. HTBE is a Minnesota liability company and subsidiary of Minnesota Renewable Energy, LLC, which is a subsidiary of the Minnesota Municipal Power Agency (MMPA). HTBE will own the Facility and its energy output will be used to supply electricity to MMPA's municipal members.

The final determination regarding a request for a personal property tax exemption is made by the Commissioner of the Minnesota Department of Revenue (Commissioner of Revenue). However, the Commissioner of the Minnesota Department of Commerce (Commissioner of Commerce) is required to make a determination for the Commissioner of Revenue regarding the efficiency of the Facility (Minn. Stat. § 272.0211, subd. 1). The Commissioner of Commerce will send a letter to the Department of Revenue with the efficiency determination when the analysis is complete.

In addition to the process noted above, the Minnesota Public Utilities Commission (Commission) must make a finding for the Commissioner of Revenue regarding the use of the energy produced by the Facility (Minn. Stat. § 272.0211, subd. 4 (2)). Subdivision 4(2) of the Statute requires that the finding be made by the Commission within 90 days of notification of the application. Since HTBE requested this determination on August 6, 2013 the Commission has until November 4, 2013 to notify the Commissioner of Revenue of the Commission's determination.

II. ANALYSIS

The overall purpose of the statute is to provide an incentive to construct highly efficient electric generation facilities in general and co-generation projects in particular. The emphasis on high efficiency is apparent from Minn. Stat. § 272.0211, subd. 1, where efficiency must exceed 40 percent to receive any property tax exemption.

Also, the language of Minn. Stat. § 272.0211 appears to assume that the electric generation facility would be owned by a non-utility rather than a public utility. Based on this assumption, Minn. Stat. § 272.0211 provides protections against granting incentives to industrial customers that force utilities to purchase energy from their co-generation project under the Public Utility Regulatory Policies Act (PURPA).

In this case, the project will not be constructed as a co-generation facility nor will it be owned by a non-utility. (HTBE is a subsidiary of Minnesota Renewable Energy, LLC, which is a subsidiary of MMPA.) However, it will be highly efficient. Thus, the Department concludes that this project fits the legislation's general intent for facilities that should receive an exemption. The electricity will not be owned by an industrial customer and resold to the local public utility as envisioned by Minn. Stat. § 272.0211. Instead, HTBE will own the electric generation equipment and sell the output to the MMPA. The Department concludes that nothing in Minn. Stat. § 272.0211 prohibits qualification of a subsidiary of a utility that builds an efficient facility and sells power to its own members.

Minn. Stat. § 272.0211, subd. 4 states that "an owner or operator of a new or existing electric power generation facility who offers electric power generated by the facility for sale is eligible for an exclusion." Since HTBE will own the energy output, the Department concludes it is eligible for exclusion.

Minn. Stat. § 272.0211, sub. 4 continues by providing three criteria. The first criterion (subdivision 4(1)) is that the owner has received a certificate of need (CN), if required. A CN is not required in this case because the Facility is a small power production facility with a total capacity of 8 MW

The second criterion (Subdivision 4(2)) is that the Commission finds "an agreement exists or a good faith offer has been made to sell the majority of the net power generated by the facility to an electric utility which has a demonstrated need for the power." In general, Subdivision 4(2) is attempting to prevent the granting of exclusion to a facility that is forcing the utility to purchase the power.

The Department concludes that, since MMPA will purchase the entire output of the Facility under a power purchase agreement the second criterion has been met.

The third criterion is that "the electric utility has agreed in advance not to offer the electric power for resale to a retail customer located outside of the utility's assigned service area ... unless otherwise permitted by law." In the Petition, MMPA agreed that it will not offer the electric power for resale to a retail customer located outside of the utility's assigned service area.

Therefore, the Department concludes that the third criterion has been met.

III. RECOMMENDATION

The Department recommends the Commission approve HTBE's Petition and determine that HTBE meets the criteria of Minn. Stat. § 272.0211, subd. 4.

/sum

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. ET6133/TX-13-575

Dated this **5th** day of **September, 2013**

/s/Sharon Ferguson

| First Name | Last Name | Email | Company Name | Address | Delivery Method | View Trade Secret | Service List Name |
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