

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

Presented to the governor April 28, 1990

Signed by the governor May 3, 1990, 5:42 p.m.

CHAPTER 593—S.F.No. 2158

An act relating to utilities; regulating flexible gas utility rates; repealing sunset provisions relating to flexible gas utility rates; appropriating money; amending Minnesota Statutes 1988, section 216B.163; and Laws 1987, chapter 371, section 4.

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

Section 1. Minnesota Statutes 1988, section 216B.163, is amended to read:

216B.163 FLEXIBLE TARIFFS.

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

(b) "Effective competition" means that a customer of a gas utility who either receives interruptible service or whose daily requirement exceeds 50,000 cubic feet maintains or plans on acquiring the capability to switch to the same, equivalent or substitutable energy supplies or service, except indigenous biomass energy supplies composed of wood products, grain, biowaste, and cellulosic materials, at comparable prices from a supplier not regulated by the commission.

(c) "Flexible tariff" means a rate schedule under which a gas utility may set or change the price for its service to an individual customer or group of customers without prior approval of the commission within a range of prices determined by the commission to be just and reasonable.

Subd. 2. **FLEXIBLE TARIFFS PERMITTED.** Notwithstanding ~~any other provision of this chapter~~ section 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16, the commission is ~~authorized to~~ may approve a flexible tariff for any class of customers of a gas utility when provision of service, including the sale or transportation of gas, to any customers within the class is subject to effective competition. Upon application of a gas utility, the commission shall find that effective competition exists for a class of customers taking interruptible service at a level exceeding 199,000 cubic feet per day. A gas utility may ~~only~~ only apply a flexible tariff only to a customer that is subject to effective competition and a gas utility may not apply a flexible tariff or otherwise reduce its rates to compete with indigenous biomass energy supplies; ~~or with customers of district heating facilities as of June 1, 1987.~~ Customers of a gas utility whose only alternative source of energy is gas from a supplier not regulated by the commission and who must use the gas utility's system to transport the gas are not subject to effective

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competition unless the customers have or can reasonably acquire the capability to bypass the gas utility's system to obtain gas from a supplier not regulated by the commission. A customer subject to effective competition may elect to take service either under the flexible tariff or under the appropriate nonflexible tariff for that class of service set in accordance with section 216B.03, provided that a customer that uses an alternative energy supply or service ~~other than indigenous biomass energy supplies~~ from a supplier not regulated by the commission for reasons of price shall be are deemed to have elected to take service under the flexible tariff.

Subd. 2a. DISTRICT HEATING CUSTOMERS. Notwithstanding subdivision 2, a gas utility may not apply a flexible tariff or otherwise reduce its rates to compete with customers of district heating facilities as of June 1, 1987. This subdivision expires July 1, 1992.

Subd. 3. ESTABLISHING OR CHANGING A FLEXIBLE TARIFF. The commission may establish a flexible tariff through a miscellaneous rate filing only if the filing does not seek to recover ~~any~~ revenues ~~which~~ the utility expects to lose by implementing flexible tariffs from ~~any~~ customers who do not take service under the flexible tariff, nor to change ~~any other rates~~ another rate. If a gas utility requests authority to establish a flexible tariff and as part of that request seeks to recover ~~any~~ revenues ~~which~~ the utility expects to lose by implementing flexible tariffs from ~~any~~ customers who do not take service under the flexible tariff or to change ~~any other rates~~ the commission may only establish that flexible tariff within a general rate case for that gas utility. ~~The commission may only change the rates in a flexible tariff within a gas utility's general rate case.~~

Subd. 4. RATES AND TERMS OF SERVICE. Whenever the commission authorizes a flexible tariff, it shall set the terms, and conditions of service for that tariff, ~~which shall include~~ including:

(1) ~~that~~ the minimum rate for the tariff, which must recover at least the incremental cost of providing the service;

(2) ~~that there is no upward~~ the maximum for the rate for the tariff; and

(3) a requirement that a customer who elects to take service under the flexible tariff remain on that tariff for a reasonable period of time; ~~which shall not be less than one year; and.~~

(4) ~~that any customer changing from a flexible tariff to the appropriate nonflexible tariff for that class pay all costs incurred by the utility due to that change.~~

The commission may set the terms and conditions of service for a flexible tariff in a gas utility proceeding, a miscellaneous filing, or a complaint proceeding under section 216B.17.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 5. **RECOVERY OF REVENUES.** In a general rate case ~~which that~~ establishes a flexible tariff for a gas utility, and in each general rate case of a gas utility for which a flexible tariff has been authorized, the commission shall determine a projected level of revenues and expenses from services under that tariff ~~based on a single target rate for all sales under that tariff, which projection shall be used and use the projection~~ to determine the utility's overall rates. That target rate method used to establish a level of projected revenues ~~shall~~ may not limit the gas utility's ability or right to set rates for ~~any a~~ customer taking service under the flexible tariff.

Subd. 6. **INTERIM FLEXIBLE TARIFF.** Notwithstanding section 216B.16, subdivision 3, if a gas utility files with the commission to establish or change a flexible tariff the commission shall permit the proposed flexible tariff to take effect on an interim basis no later than 30 days after filing. If any customers receive an increase in rates during the period that an interim flexible tariff is in effect, the increase is subject to refund as provided in section 216B.16, subdivision 3. The gas utility shall provide ten days written notice, or other notice as may be established by contract not to exceed 30 days, to a customer before implementing an interim rate ~~increase~~ change for that customer under this section.

Subd. 7. **FINAL DETERMINATION.** The commission shall make a final determination in a proceeding begun under this section for approval of a flexible tariff, other than a filing made within a general rate case, within 180 days of the filing by the gas utility.

Subd. 8. **STUDY AND REPORT.** The department shall review the operation and effects of any rates implemented under this section. The review must include, at a minimum, an evaluation of the impact of flexible gas rates on alternative energy sources, including indigenous biomass energy, and the impact on the utility and its customers of setting a maximum rate for the tariff. The department shall submit its report to the legislature by January 1, 1995. The department shall assess gas utilities that utilize a flexible tariff under section 1 for the actual cost of conducting the study, not to exceed \$5,000. Each utility utilizing a flexible tariff must be assessed an equal share of the cost.

Sec. 2. Laws 1987, chapter 371, section 4, is amended to read:

Sec. 4. **EFFECTIVE DATE.**

Sections 1 to 3 are effective the day following final enactment; ~~and are repealed effective July 1, 1990.~~

Sec. 3. **APPROPRIATION.**

\$5,000 is appropriated from the general fund to the department of public service for the purpose of conducting the study required by section 1. The money is available until February 1, 1995.

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Sec. 4. EFFECTIVE DATES.

Sections 1 and 3 are effective July 1, 1990. Section 2 is effective the day following final enactment.

Presented to the governor April 28, 1990

Signed by the governor May 3, 1990, 5:43 p.m.

CHAPTER 594—H.F.No. 2419

An act relating to the organization and operation of state government; appropriating money for the general legislative, judicial, and administrative expenses of state government; providing for the transfer of certain money in the state treasury; fixing and limiting the amount of fees, penalties, and other costs to be collected in certain cases; creating, abolishing, modifying, and transferring agencies and functions; defining and amending terms; providing for settlement of claims; imposing certain duties, responsibilities, authority, and limitations on agencies and political subdivisions; consolidating certain funds and accounts and making conforming changes; changing the organization, operation, financing, and management of certain courts and related offices; amending Minnesota Statutes 1988, sections 2.722, subdivision 4; 3.736, subdivision 7; 11A.07, subdivision 5; 15.53, by adding a subdivision; 89.58; 115A.15, subdivision 6; 116.36, subdivision 1; 116.65, subdivision 3; 116D.045, subdivision 3; 116P.05; 116P.11; 176B.02; 176B.04; 190.08, by adding a subdivision; 201.023; 243.48, subdivision 1; 268.677, subdivision 2; 268.681, subdivision 3; 270.68, subdivision 1; 282.014; 296.06, subdivision 2; 296.12, subdivisions 1 and 2; 296.17, subdivisions 10 and 17; 297.03, subdivision 5a; 326.75, subdivision 4; 349.22, subdivision 2; 349.36; 349.52, subdivision 3; and 480A.01, subdivision 3; Minnesota Statutes 1989 Supplement, sections 16A.11, subdivision 3; 16A.133, subdivision 1; 16B.24, subdivision 6; 16B.28, subdivision 3; 16B.465, subdivision 1; 41A.05, subdivision 1; 43A.02, subdivision 25; 43A.24, subdivision 2; 85.205; 105.41, subdivision 5a; 115A.54, subdivision 2a; 116.85; 190.25, subdivision 3; 270.064; 357.021, subdivision 2; 357.022; and 357.08; Laws 1989, chapter 335, articles 1, section 28; and 4, section 109, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 15; 16A; 88; 116; and 484; proposing coding for new law as Minnesota Statutes, chapter 116Q; repealing Minnesota Statutes 1988, sections 85.30; 268.681, subdivision 4; and 326.82; Minnesota Statutes 1989 Supplement, section 480.241; Laws 1989, chapter 303, section 10.

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

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