

CHAPTER 216B

PUBLIC UTILITIES

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NOTE: For penalties for the violation of the provisions of this chapter, see section 235.13.

216B.01 LEGISLATIVE FINDING.

It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers. Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, and cooperative electric associations are presently effectively regulated and controlled by the membership under the provisions of chapter 308, it is deemed unnecessary to subject such utilities to regulation under this chapter except as specifically provided herein.

History: 1974 c 429 s 1; 1978 c 795 s 1

216B.02 DEFINITIONS.

Subdivision 1. For the purposes of Laws 1974, Chapter 429 the terms defined in this section have the meanings given them.

Subd. 2. "Corporation" means a private corporation, a public corporation, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, or any political subdivision or agency.

Subd. 3. "Person" means a natural person, a partnership, or two or more persons having a joint or common interest, and a corporation as hereinbefore defined.

Subd. 4. "Public utility" means persons, corporations or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include a municipality or a cooperative electric association, organized under the provisions of chapter 308 producing or furnishing natural, manufactured or mixed gas or electric service. Except as otherwise provided, the provisions of Laws 1974, Chapter 429 shall not be applicable to any sale of natural gas or electricity by a public utility to another public utility for resale. No person shall be deemed to be a public utility if it presently furnishes its services only to tenants in buildings owned, leased or operated by such person. No person shall be deemed to be a public utility if it presently furnishes service to occupants of a mobile home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it presently produces or furnishes service to less than 25 persons.

A cooperative electric association may elect to become subject to rate regulation by the commission pursuant to sections 216B.03 to 216B.23. The election shall be (a) approved by July 1, 1978 by the board of directors of the association in accordance with the procedures for amending the articles of incorporation contained in section 308.15, subdivision 1, excluding the filing requirements; or (b) approved by a majority of members of stockholders voting by mail ballot initiated by petition of no less than five percent of the members or stockholders of the association. The ballot to be used for the election shall be approved by the board of directors and the department of public service. The department shall mail the ballots to the cooperative's members who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the cooperative shall count the ballots. If a majority of the cooperative's members who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after certified copies of the resolutions approving the election are filed with the commission. Any cooperative electric association subject to regulation of rates by the commission shall be exempt from the provisions of sections 216B.48, 216B.49, 216B.50, and 216B.51.

Subd. 5. "Rate" means every compensation, charge, fare, toll, tariff, rental and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.

Subd. 6. "Service" means natural, manufactured or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity.

Subd. 7. "Commission" means the public utilities commission of the department of public service.

Subd. 8. "Department" means the department of public service of the state of Minnesota.

Subd. 9. "Municipality" means any city however organized.

History: 1974 c 429 s 2; 1978 c 795 s 2; 1980 c 614 s 123

216B.03 REASONABLE RATE.

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers. Any doubt as to reasonableness should be resolved in favor of the consumer. For rate making purposes a public utility may treat two or more municipalities served by it as a single class wherever the populations are comparable in size or the conditions of service are similar.

History: 1974 c 429 s 3

216B.04 STANDARD OF SERVICE.

Every public utility shall furnish safe, adequate, efficient, and reasonable service; provided that service shall be deemed adequate if made so within 90 days after a person requests service. Upon application by a public utility, and for good cause shown, the commission may extend the period for not to exceed another 90 days.

History: 1974 c 429 s 4

216B.05 PUBLISH SCHEDULES; REGULATIONS; FILES; JOINT RATES.

Subdivision 1. Every public utility shall file with the commission schedules showing all rates, tolls, tariffs and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

Subd. 2. Every public utility shall file with and as a part of the schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the commission may by general or special order direct.

Subd. 3. Every public utility shall keep copies of the schedules open to public inspection under rules and regulations as the commission may prescribe.

History: 1974 c 429 s 5

216B.06 RECEIVING DIFFERENT COMPENSATION.

No public utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto when filed in the manner provided in Laws 1974, Chapter 429, nor shall any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon January 1, 1975 may be continued until schedules are filed.

History: 1974 c 429 s 6; 1978 c 795 s 3

216B.07 RATE PREFERENCE PROHIBITED.

No public utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

History: 1974 c 429 s 7

216B.08 DUTIES OF COMMISSION.

The commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate in accordance with the provisions of Laws 1974, Chapter 429 every public utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the commission. The commission is authorized to make rules and regulations in furtherance of the purposes of Laws 1974, Chapter 429.

History: 1974 c 429 s 8

216B.09 STANDARDS; CLASSIFICATIONS; REGULATIONS; PRACTICES.

The commission, after hearing upon reasonable notice had upon its own motion or upon complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any public utility may be filed by it with the commission, and the same shall continue in force until amended by the public utility or until changed by the commission as herein provided.

The commission may require the filing of all rates, including rates charged to and by public utilities. The commission is empowered to appear before the Federal Power Commission to offer evidence and to seek appropriate relief in any case in which the rates charged consumers within the state of Minnesota may be affected.

History: 1974 c 429 s 9

216B.10 ACCOUNTING SYSTEM.

Subdivision 1. The commission shall establish a system of accounts to be kept by public utilities subject to its jurisdiction. A public utility which maintains its accounts in accordance with the system of accounts prescribed by a federal agency or authority shall be deemed to be in compliance with the system of accounts prescribed by the commission. Where optional accounting is prescribed by a federal agency or authority, the commission may prescribe which option is to be followed.

Subd. 2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electric service shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all the other business, in which case all the provisions of Laws 1974, Chapter 429 shall apply to the books, accounts, papers and records of the other business.

Subd. 3. Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to these books, accounts, papers and records.

Subd. 4. The commission may require any public utility to file annual reports in the form and content, having regard for the provisions of this section, as the commission may require, and special reports concerning any matter about which the commission is authorized to inquire or to keep itself informed. The commission may require the reports to be verified. The basic financial statements in the annual report of a public utility may, at the direction of the public utilities commission, be examined by an independent certified public accountant and his opinion thereof included in the annual report filed with the commission.

Subd. 5. The commission may require the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.

Subd. 6. The term public utility as used in this section includes a municipal utility.

History: 1974 c 429 s 10; 1980 c 614 s 123

216B.11 DEPRECIATION RATES AND PRACTICES.

The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion in respect of utility property, including utility property owned by a municipally owned gas or electric utility, and every public and every municipally owned gas and electric utility shall conform its depreciation, amortization or depletion accounts to the rates and methods fixed by the commission.

History: 1974 c 429 s 11

216B.12 RIGHT OF ENTRANCE; INSPECTION.

Subdivision 1. The commissioners and the duly authorized officers and employees of the department, during business hours, may enter upon any premises occupied by any public utility for the purpose of making examinations and tests and to inspect the accounts, books, papers, and documents of any public utility for the purpose of exercising any power provided for in Laws 1974, Chapter 429, and may set up and use on the premises any apparatus and appliance necessary therefor. Such public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility, its officers and employees, shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the commissioners and any person or persons designated by the department for the duties aforesaid.

Subd. 2. The term public utility as used in this section includes a municipal utility.

History: 1974 c 429 s 12

216B.13 PRODUCTION OF RECORDS.

Subdivision 1. The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at a reasonable time and place as the commission may designate, of any books, accounts, papers, or records of the public utility relating to its business or affairs within the state, pertinent to any lawful inquiry and kept by said public utility in any office or place within or without this state, or, at its option, verified or photostatic copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction.

Subd. 2. The term public utility as used in this section includes a municipal utility.

History: 1974 c 429 s 13

216B.14 INVESTIGATION.

The commission upon complaint or upon its own initiative and whenever it may deem it necessary in the performance of its duties may investigate and examine the condition and operation of any public utility or any part thereof. In conducting the investigations the commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the affected parties a hearing.

History: 1974 c 429 s 14

216B.15 HEARINGS; EXAMINER.

The commission may, in addition to the hearings specifically provided for by Laws 1974, Chapter 429, conduct any other hearings as may reasonably be required in the administration of the powers and duties conferred upon it by Laws 1974, Chapter 429. The commission may designate one of its members to act as an examiner for the purpose of holding any hearing which the commission has the power or authority to hold or in the event parties to the hearing so stipulate the commission may designate a qualified commission employee as the examiner. Reasonable notice of all hearings shall be given the persons interested therein as determined by the commission.

History: 1974 c 429 s 15

216B.16 RATE CHANGES; PROCEDURE; HEARING.

Subdivision 1. Unless the commission otherwise orders, no public utility shall change any rate which has been duly established under this chapter, except after 90 days notice to the commission, which notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and further shall state the change proposed to be made in the rates then in force, and the time when the modified rates will go into effect. The filing utility shall give written notice, as approved by the commission, of the proposed change to the governing body of each municipality and county in the area affected. All proposed changes shall be shown by filing new schedules or shall be plainly indicated upon schedules on file and in force at the time.

Subd. 2. Whenever there is filed with the commission any schedule modifying or resulting in a change in any rates then in force as provided in subdivision 1, the commission may suspend the operation of the schedule by filing with the schedule of rates and delivering to the affected utility a statement in writing of its reasons for the suspension, at any time before the rates become effective. The suspension shall not be for a longer period than 90 days beyond the time when the schedule of rates would otherwise go into effect. During the suspension the commission shall determine whether all questions of the reasonableness of the rates requested raised by persons deemed interested or by the administrative division of the department of public service can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition by ten percent of the affected customers or 100 affected customers, whichever is less, it shall refer the matter to the office of administrative hearings with instructions for a public hearing as a contested case pursuant to chapter 15, and may further extend the period of suspension for a period not to exceed a total of nine months. If the commission does not make a final determination concerning any schedule of rates within a period of nine months beyond the time when the schedule of rates would otherwise go into effect, under subdivision 1, the schedule shall be deemed to have been approved by the commission. For the purposes of this subdivision, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all such petitions.

Subd. 3. Notwithstanding any order of suspension of a proposed increase in rates, the public utility may put the suspended schedule into effect on the date when it would have become effective if not suspended, or any date subsequent thereto within the suspension period, by filing with the commission a bond in an amount approved by the commission with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission, of the excess in increased rates, including interest thereon which shall be at the current rate of interest as determined by the commission, collected during the period of the suspension if the schedule so put into effect is finally disallowed by the commission. There may be substituted for the bond other arrangements satisfactory to the commission for the protection of persons affected. If the public utility fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and is authorized to recover on behalf of all persons entitled to a refund. In addition to the amount of the refund and interest due, the commission shall be entitled to recover reasonable attorney's fees, court costs and estimated cost of administering the distribution of the refund to persons entitled thereto. No suit under this subdivision shall be maintained unless instituted within two years after the end of the period of time prescribed by the commission for repayment of refunds. However, no public utility shall put a suspended rate schedule into effect as provided by this subdivision until at least 90 days after the commission has made a determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2.

Subd. 4. The burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change.

Subd. 5. If, after the hearing, the commission finds the rates to be unjust or unreasonable or discriminatory, the commission shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; and the rates are thereafter to be observed until changed, as provided by Laws 1974, Chapter 429. In no event shall the rates exceed the level of rates requested by the public utility, except that individual rates may be adjusted upward or downward.

Subd. 6. The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property. In determining the rate base upon which the utility is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. For purposes of determining rate base, the commission shall consider the original cost of utility property included in the base and shall make no allowance for its estimated current replacement value.

Subd. 6a. To the extent that construction work in progress is included in the rate base, the commission shall determine in its discretion whether and to what extent the income used in determining the actual return on the public utility property shall include an allowance for funds used during construction, considering the following factors:

(a) The magnitude of the construction work in progress as a percentage of the net investment rate base;

- (b) The impact on cash flow and the utility's capital costs;
- (c) The effect on consumer rates;
- (d) Whether it confers a present benefit upon an identifiable class or classes of customers; and
- (e) Whether it is of a short term nature or will be imminently useful in the provision of utility service.

Subd. 6b. All investments and expenses of a public utility as defined in section 216B.241, subdivision (1), clause (c), incurred in connection with energy conservation improvements shall be recognized and included by the commission in the determination of just and reasonable rates as if the investments and expenses were directly made or incurred by the utility in furnishing utility service.

Subd. 7. Notwithstanding any other provision of Laws 1974, Chapter 429, the commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in federally regulated wholesale rates for energy delivered through interstate facilities or fuel used in generation of electricity or the manufacture of gas.

Subd. 8. The commission shall disapprove the portion of any rate which makes an allowance directly or indirectly for expenses incurred by a public utility to provide a public advertisement which:

(a) Is designed to influence or has the effect of influencing public attitudes towards legislation or proposed legislation, or toward a rule, proposed rule, authorization or proposed authorization of the public utilities commission or other agency of government responsible for regulating a public utility;

(b) Is designed to justify or otherwise support or defend a rate, proposed rate, practice or proposed practice of a public utility;

(c) Is designed primarily to promote consumption of the services of the utility; or

(d) Is designed primarily to promote good will for the public utility or improve the utility's public image.

The commission may approve a rate which makes an allowance for expenses incurred by a public utility to disseminate information which:

(a) Is designed to encourage conservation of energy supplies;

(b) Is designed to promote safety; or

(c) Is designed to inform and educate customers as to financial services made available to them by the public utility.

The commission shall not withhold approval of a rate because it makes an allowance for expenses incurred by the utility to disseminate information about corporate affairs to its owners.

Subd. 9. The commission shall allow as operating expenses only those charitable contributions which the commission deems prudent and which qualify under section 290.21, subdivision 3, clause (b). Only 50 percent of the qualified contributions shall be allowed as operating expenses.

History: 1974 c 429 s 16; 1977 c 359 s 1-6; 1977 c 364 s 5; 1978 c 694 s 1; 1980 c 579 s 16; 1980 c 614 s 123; 1980 c 615 s 60

216B.165 ENERGY AUDITS.

Subdivision 1. A customer who asks a public utility to perform an energy audit of his residence pursuant to 42 United States Code 8211 et seq. shall pay no more than \$10 of the administrative and general expenses associated with the audit. The remainder of the administrative and general expenses of operating a

program of energy audits pursuant to 42 United States Code 8211 et seq., including those associated with program audits, list distribution, customer billing services, arranging services and post-installation inspections shall be treated as current operating expenses of providing utility service and shall be charged to all ratepayers of the public utility in the same manner as other current operating expenses of providing utility service.

Subd. 2. All audits performed pursuant to 42 United States Code 8211 et seq. of residences which are required by section 116H.129, 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 116H.129, subdivision 3, and a statement describing remedies available to tenants for violations.

History: 1980 c 579 s 17

216B.17 COMPLAINTS.

Subdivision 1. On its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, by the department, or by any 50 consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act or omission affecting or relating to the production, transmission, delivery or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.

Subd. 2. The commission shall, prior to any formal hearing, notify the public utility complained of that a complaint has been made, and ten days after the notice has been given the commission may proceed to set a time and place for a hearing and an investigation as provided in this section.

Subd. 3. The commission shall give the public utility and the complainant, ten days notice of the time and place when and where the hearing will be held and such matters to be considered and determined. Both the public utility and complainant shall be entitled to be heard and be represented by counsel.

Subd. 4. Notice shall also be given to the governing bodies of affected municipalities and counties, and to any other persons the commission shall deem necessary.

Subd. 5. The notice provided for in subdivisions 2 and 3 may be combined but if combined the notice shall not be less than ten days.

Subd. 6. The commission shall have the power to hear, determine and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the non-resident consumers of the municipally owned utility or 25 such non-resident consumers whichever is less. The hearing of the complaints shall be governed by subdivisions 1 to 5.

Subd. 6a. For the purposes of this section, public utility shall include cooperative electric associations with respect to service standards and practices only.

Subd. 7. Section 15.0419 shall be applicable to all contested cases before the commission.

History: 1974 c 429 s 17; 1978 c 795 s 4; 1980 c 614 s 113

216B.18 SERVICE OF NOTICE.

Service of notice of all hearings, investigations and proceedings pending before the commission and of complaints, reports, orders and other documents shall be made personally or by mail as the commission may direct.

History: 1974 c 429 s 18

216B.19 JOINT HEARINGS AND INVESTIGATIONS.

In the discharge of its duties under Laws 1974, Chapter 429, the commission or the department may cooperate with similar commissions of other states and any federal agency and may hold joint hearings and make joint investigations with other commissions.

History: 1974 c 429 s 19; 1980 c 614 s 114

216B.20 SEPARATE RATE HEARINGS.

The commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at times it may prescribe.

History: 1974 c 429 s 20

216B.21 SUMMARY INVESTIGATIONS.

Subdivision 1. Whenever the commission has reason to believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice.

Subd. 2. If, after making the summary investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters investigated, it shall set a time and place for a hearing.

Subd. 3. Notice of the time and place for the hearing shall be made as provided in sections 216B.17 and 216B.18.

History: 1974 c 429 s 21

216B.22 MUNICIPALITIES; AMICUS CURIAE AUTHORITY.

Any municipality that regulates and controls the exercise of a public utility franchise by reason of its home rule charter on January 1, 1975 is authorized to assist the public utilities commission as amicus curiae in any proceeding brought before the commission with respect to the rates, fares, prices, regulation or control of any utility operating therein.

History: 1974 c 429 s 22; 1980 c 614 s 123

216B.23 LAWFUL RATES; REASONABLE SERVICE.

Subdivision 1. Whenever upon an investigation made under the provisions of Laws 1974, Chapter 429, the commission shall find rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and by order fix reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future in lieu of those found to be unreasonable or unlawful.

Subd. 2. Whenever the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or shall find that any service which can be reasonably demanded cannot be obtained, the

commission shall determine and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate or otherwise unlawful, and shall make any other order respecting the measurement, regulation, act, practice or service as shall be just and reasonable.

Subd. 3. A copy of the order shall be served upon the person against whom it runs or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys.

History: 1974 c 429 s 23

216B.24 CONSTRUCTION OF FACILITIES; COMMISSION APPROVAL.

Subdivision 1. The words "major utility facility" means: (1) electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more; (2) an electric transmission line and associated facilities of a design capacity of 125 kilovolts or more; and (3) a gas transmission line and associated facilities designed for, or capable of, transporting gas at pressures in excess of 125 pounds per square inch; provided, however, that the words "major utility facility" shall not include electric or gas distribution lines and gas gathering lines and associated facilities as defined by the commission.

Subd. 2. Under rules and regulations as the commission may prescribe, every public utility shall file with the commission, within the time and in the form as the commission may designate, plans showing any contemplated construction of major utility facilities.

Subd. 3. The provisions of this section shall apply to the construction of major utility facilities by a municipally owned gas or electric utility.

History: 1974 c 429 s 24

216B.241 ENERGY CONSERVATION IMPROVEMENTS.

Subdivision 1. **Definitions.** For purposes of this section, the terms defined in this subdivision shall have the meanings given them:

(a) "Commission" means the public utilities commission, department of public service;

(b) "Energy conservation improvement" means the purchase or installation of any device, method or material that increases the efficiency in the residential use of electricity or natural gas including, but not limited to:

- (1) insulation and ventilation;
- (2) storm or thermal doors or windows;
- (3) caulking and weatherstripping;
- (4) furnace efficiency modifications;
- (5) thermostat or lighting controls;
- (6) awnings; or

(7) systems to turn off or vary the delivery of energy. The term "energy conservation improvement" does not include any device or method which creates, converts or actively uses energy from renewable sources such as solar, wind and biomass.

(c) "Investments and expenses of a public utility" includes the investments and expenses incurred by a public utility in connection with an energy conservation improvement including, but not limited to:

(1) the differential in interest cost between the market rate and the rate charged on a no interest or below market interest loan made by a public utility to a customer for the purchase or installation of an energy conservation improvement;

(2) the difference between the utility's cost of purchase or installation of energy conservation improvements and any price charged by a public utility to a customer for such improvements.

(d) "Public utility" has the same meaning as given that term in section 216B.02, subdivision 4. For the purposes of this section, "public utility" shall not include cooperative electric associations that become subject to rate regulation after April 16, 1980.

Subd. 2. Programs. Prior to January 1, 1981, the commission, after consultation with the energy agency, shall initiate a pilot program designed to demonstrate the feasibility of investments and expenses of a public utility in energy conservation improvements. The commission, as part of the pilot program, shall order at least one public utility to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements shall be offered to the customers. The order of the commission shall provide to the extent practicable for a free choice of contractor, qualified under the residential conservation services program of the energy agency, for consumers participating in the pilot program. The commission shall not order a utility to make any energy conservation improvement investment or expenditure unless it first 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. Investments and expenditures made pursuant to an order shall be treated for ratemaking purposes in the manner prescribed in section 216B.16, subdivision 6b. No utility shall make an energy conservation improvement pursuant to this section to a residential building envelope unless it is the primary supplier of energy used for either space heating or cooling in the building.

Subd. 3. Ownership of residential energy conservation improvements. Any energy conservation improvement made to or installed in any residential building pursuant to this section shall be the exclusive property of the owner of the building except insofar as it is subjected to a security interest in favor of the utility in case of a loan to the building owner. The utility shall have no liability for loss, damage or injury caused directly or indirectly by any energy conservation improvement except for negligence by the utility in purchase, installation, or modification of the product.

Subd. 4. Federal law prohibitions. If investments by public utilities in energy conservation improvements are in any manner prohibited or restricted by federal law and there is a provision under which such prohibition or restriction may be waived, then the commission, the governor, or any other necessary state agency or officer shall take all necessary and appropriate steps to secure a waiver with respect to those public utility investments in energy conservation improvements included in this section.

History: 1980 c 579 s 18; 1980 c 614 s 123

216B.25 CHANGE; AMENDMENT; RESCISSION OF ORDERS.

The commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending or reopening a prior order shall have the same effect as an original order.

History: 1974 c 429 s 25

216B.26 ORDERS; EFFECTIVE DATE.

Every decision made by the commission constituting an order or determination shall be in force and effective 20 days after it has been filed and has been served by personal delivery or by mailing a copy thereof to all parties to the proceeding in which the decision was made or to their attorneys, unless the commission shall specify a different date upon which the order shall be effective.

History: 1974 c 429 s 26

216B.27 REHEARINGS BEFORE COMMISSION; CONDITION PRECEDENT TO JUDICIAL REVIEW.

Subdivision 1. Within 20 days after the service by the commission of any decision constituting an order or determination, any party to the proceeding and any other person, aggrieved by the decision and directly affected thereby, may apply to the commission for a rehearing in respect to any matters determined in the decision. The commission may grant and hold a rehearing on the matters, or upon any of them as it may specify in the order granting the rehearing, if in its judgment sufficient reason therefor exists.

Subd. 2. The application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. No cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof shall accrue in any court to any person or corporation unless the plaintiff or petitioner in the action or proceeding within 20 days after the service of the decision, shall have made application to the commission for a rehearing in the proceeding in which the decision was made. No person or corporation shall in any court urge or rely on any ground not so set forth in the application for rehearing.

Subd. 3. Applications for rehearing shall be governed by general rules which the commission may establish. In case a rehearing is granted the proceedings shall conform as nearly as may be to the proceedings in an original hearing, except as the commission may otherwise direct. If in the commission's judgment, after the rehearing, it shall appear that the original decision, order or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify or suspend the original action accordingly. Any decision, order or determination made after the rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination. Only one rehearing shall be granted by the commission; but this shall not be construed to prevent any party from filing a new application or complaint. No order of the commission shall become effective while an application for a rehearing or a rehearing is pending and until ten days after the application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing.

Subd. 4. Any application for a rehearing not granted within 20 days from the date of filing thereof, shall be deemed denied.

Subd. 5. It is hereby declared that the legislative powers of the state, insofar as they are involved in the issuance of orders and decisions by the commission, have not been completely exercised until the commission has acted upon an application for rehearing, as provided for by this section and by the rules of the commission, or until the application for rehearing has been denied by implication, as above provided for.

History: 1974 c 429 s 27

216B.28 SUBPOENA; WITNESSES; FEES; AND MILEAGE.

The commission and each commissioner, or the secretary of the commission may issue subpoenas and all necessary processes in proceedings pending before it; and each process shall extend to all parts of the state and may be served by any person authorized to serve processes of courts of record. Each witness who shall appear before the commission, or at a hearing before one of the individuals designated by it as provided in section 216B.15, or whose deposition is taken, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record.

History: 1974 c 429 s 28

216B.29 OATHS; CONTEMPT; EXAMINER'S POWERS.

The commission and each of the commissioners or authorized examiner, for the purpose mentioned in Laws 1974, Chapter 429, may administer oaths and examine witnesses. In case of failure on the part of any person to comply with any subpoena, or in the case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction or a judge thereof, on application of the commission, may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify therein.

History: 1974 c 429 s 29

216B.30 DEPOSITIONS.

The commission or any party to the proceedings may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

History: 1974 c 429 s 30

216B.31 TESTIMONY AND PRODUCTION OF RECORDS; PERJURY.

No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation, or inquiry by, or hearing before, the commission or any commissioner, or person designated by it to conduct hearings, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which he shall have been compelled under oath to testify or produce documentary evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

History: 1974 c 429 s 31

216B.32 COPIES OF DOCUMENTS AS EVIDENCE.

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the original shall be evidence in like manner as the originals, in all matters before the commission and in the courts of this state.

History: 1974 c 429 s 32

216B.33 ORDERS AND FINDINGS IN WRITING.

Every order, finding, authorization, or certificate issued or approved by the commission under any provisions of Laws 1974, Chapter 429 shall be in writing and filed in the office of the secretary of the commission. A certificate under the seal of the commission that any order, finding, authorization, or certificate has not been modified, stayed, suspended, or revoked, shall be received as evidence in any proceedings as to the facts therein stated.

History: 1974 c 429 s 33

216B.34 PUBLIC RECORDS.

All decisions, transcripts, and orders of the commission shall be public records.

History: 1974 c 429 s 34

216B.35 TRANSCRIBED RECORD TO BE KEPT.

A full and complete record shall be kept of all proceedings at any formal hearing had before the commission or any commissioner or hearing examiner and all testimony shall be taken down by a reporter appointed by the commission. A copy of the transcript shall be furnished on demand to any party to the proceedings upon payment of reasonable costs of reproduction.

History: 1974 c 429 s 35

216B.36 FRANCHISES CONTINUED.

Any public utility furnishing the utility services enumerated in Laws 1974, Chapter 429 or occupying streets, highways, or other public property within a municipality may be required to obtain a license, permit, right or franchise in accordance with the terms, conditions, and limitations of regulatory acts of the municipality, including the placing of distribution lines and facilities underground, and under the license, permit, right, or franchise, the utility may be obligated by any municipality to pay to the municipality fees to raise revenue or defray increased municipal costs accruing as a result of utility operations, or both, including but not limited to a sum of money based upon gross operating revenues or gross earnings from its operations in the municipality so long as the public utility shall continue to operate in the municipality, unless upon request of the public utility it is expressly released from the obligation at any time by such municipality. All existing licenses, permits, franchises and other rights acquired by any public utility or municipality prior to the passage of Laws 1974, Chapter 429 including the payment of existing franchise fees, shall not be impaired or affected in any respect by the passage of Laws 1974, Chapter 429, except with respect to matters of rate and service regulation and service area assignments that have been vested to the jurisdiction of the commission by Laws 1974, Chapter 429. However, in the event that a court of competent jurisdiction determines, or the parties by mutual agreement determine, that an existing license, permit, franchise or other right has been abrogated or impaired by Laws 1974, Chapter 429, or its execution, the municipality affected shall impose and the public utility shall collect an excise tax on the utility charges which from year to year yields an amount which is reasonably equivalent to that amount of revenue which then would be due as a fee, charges or other thing or service of value to the municipality under the franchise, license or permit. The authorization shall be over and above taxing limitations including, but not limited to those of section 477A.01, subdivision 18. Franchises granted pursuant to this section shall be exempt from the provisions of chapter 80C. For purposes of this section, a public utility shall include a cooperative electric association.

History: 1974 c 429 s 36; 1978 c 795 s 5

216B.37 ASSIGNED SERVICE AREAS; ELECTRIC UTILITIES; LEGISLATIVE POLICY.

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

History: 1974 c 429 s 37

216B.38 DEFINITIONS.

Subdivision 1. MS 1974 [Renumbered subd 1a]

Subdivision 1. For the purpose of sections 216B.37 to 216B.44 only, the following definitions shall apply.

Subd. 1a. "Person" means a natural person, a partnership, private corporation, a public corporation, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, any political subdivision or agency, or two or more persons having joint or common interest.

Subd. 2. "Customer" means a person contracting for or purchasing electric service at retail from an electric utility.

Subd. 3. "Electric service" means electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale.

Subd. 4. "Electric line" means lines for conducting electric energy at a design voltage of 25,000 volts phase to phase or less used for distributing electric energy directly to customers at retail.

Subd. 5. "Electric utility" means persons, their lessees, trustees, and receivers, separately or jointly, now or hereafter operating, maintaining or controlling in Minnesota equipment or facilities for providing electric service at retail and which fall within the definition of "public utility" in section 216B.02, subdivision 4, and includes facilities owned by a municipality or by a cooperative electric association.

Subd. 6. "Assigned service area" means the geographical area in which the boundaries are established as provided in section 216B.39.

Subd. 7. "Municipality" means any city, however organized.

History: 1974 c 429 s 38; 1978 c 795 s 6

216B.39 ASSIGNED SERVICE AREAS.

Subdivision 1. On or before six months from April 12, 1974, or, when requested in writing by an electric utility and for good cause shown, and at a further time as the commission may fix by order, each electric utility shall file with the commission a map or maps showing all its electric lines outside of incorporated municipalities as they existed on April 12, 1974. Each electric utility shall also submit in writing a list of all municipalities in which it provides electric service on the effective date of Laws 1974, Chapter 429. Where two or more electric utilities serve a single municipality, the commission may require each utility to file with the commission a map showing its electric lines within the municipality.

Subd. 2. On or before 12 months from April 12, 1974, the commission shall after notice and hearing establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to accu-

rately and clearly show the boundaries of the assigned service area of each electric utility.

Subd. 3. To the extent that it is not inconsistent with the legislative policy stated in section 216B.37, the boundaries of each assigned service area, outside of incorporated municipalities, shall be a line equidistant between the electric lines of adjacent electric utilities as they exist on April 12, 1974; provided that these boundaries may be modified by the commission to take account of natural and other physical barriers including, but not limited to, highways, waterways, railways, major bluffs, and ravines and shall be modified to take account of the contracts provided for in subdivision 4; and provided further that at any time after April 12, 1974, the commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service areas, but only after notice and hearing as provided for in sections 216B.17 and 216B.18.

Subd. 4. Contracts between electric utilities, which are executed on or before 12 months from April 12, 1974, designating service areas and customers to be served by the electric utilities when approved by the commission shall be valid and enforceable and shall be incorporated into the appropriate assigned service areas. The commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.

Subd. 5. Where a single electric utility provides electric service within a municipality on April 12, 1974, that entire municipality shall constitute a part of the assigned service area of the electric utility in question. Where two or more electric utilities provide electric service in a municipality on April 12, 1974, the boundaries of the assigned service areas shall conform to those contained in municipal franchises with the electric utilities on April 12, 1974. In the absence of a franchise, the boundaries of the assigned service areas within an incorporated municipality shall be a line equidistant between the electric lines of the electric utilities as they exist on April 12, 1974; provided that these boundaries may be modified by the commission to take account of natural and other physical barriers including, but not limited to, major streets or highways, waterways, railways, major bluffs and ravines and shall be modified to take account of the contracts provided for in subdivision 4.

Subd. 6. In those areas where, on April 12, 1974, the existing electric lines of two or more electric utilities are so intertwined that subdivisions 2 to 5 cannot reasonably be applied, the commission shall determine the boundaries of the assigned service areas for the electric utilities involved as will promote the legislative policy in section 216B.37, subdivision 1.

History: 1974 c 429 s 39

216B.40 EXCLUSIVE SERVICE RIGHTS.

Except as provided in sections 216B.42 and 216B.421, each electric utility shall have the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

History: 1974 c 429 s 40; 1977 c 99 s 1

216B.41 EFFECT OF INCORPORATION, ANNEXATION, OR CONSOLIDATION.

After April 12, 1974, the inclusion by incorporation, consolidation, or annexation of any part of the assigned service area of an electric utility within the boundaries of any municipality shall not in any respect impair or affect the rights of the electric utility to continue and extend electric service at retail throughout any part of its assigned service area unless a municipality which owns and operates an electric utility elects to purchase the facilities and property of the electric utility as provided in section 216B.44.

History: 1974 c 429 s 41

216B.42 SERVICE EXTENSIONS IN CERTAIN SITUATIONS.

Subdivision 1. Notwithstanding the establishment of assigned service areas for electric utilities provided for in section 216B.39, customers located outside municipalities and who require electric service with a connected load of 2,000 kilowatts or more shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the commission so determines after consideration of following factors:

- (a) the electric service requirements of the load to be served;
- (b) the availability of an adequate power supply;
- (c) the development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto;
- (d) the proximity of adequate facilities from which electric service of the type required may be delivered;
- (e) the preference of the customer;
- (f) any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

Subd. 2. Notwithstanding the provisions in section 216B.39, any electric utility may extend electric lines for electric service to its own utility property and facilities.

History: 1974 c 429 s 42

216B.421 HOMESTEAD; OPTION OF ELECTRIC SERVICE.

Subdivision 1. **Multiple service areas; customer election.** Notwithstanding the establishment of assigned service areas for electric utilities provided for in section 216B.39, when a customer requires electric service for buildings or other structures located on land constituting his homestead and the buildings or structures are located within more than one assigned service area, the customer may elect to contract for or purchase his entire electric service requirements from either of the electric utilities providing him with electric service. An electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting a customer who elects to purchase or contract for service from it pursuant to this section.

Subd. 2. **Restriction.** The provisions of subdivision 1 shall only apply to the provision of electric service to buildings and other structures that were under construction on April 11, 1974.

History: 1977 c 99 s 2

216B.43 HEARINGS; COMPLAINTS.

Upon the filing of an application under section 216B.42 or upon complaint by an affected utility that the provisions of sections 216B.39 to 216B.42 have been violated, the commission shall hold a hearing, upon notice, within 15 days after the filing of the application of complaint, and shall render its decision within 30 days after said hearing.

History: 1974 c 429 s 43

216B.44 SERVICE EXTENSIONS IN ANNEXED AREAS; MUNICIPAL PURCHASE.

Notwithstanding the provisions of sections 216B.38 to 216B.42, whenever a municipality which owns and operates an electric utility extends its corporate boundaries through annexation or consolidation, the municipality shall thereafter furnish electric service to the annexed area unless the area is already receiving electric service from an electric utility, in which event, the annexing municipality may purchase the facilities of the electric utility serving the annexed area. The municipality acquiring the facilities shall pay to the utility formerly serving the annexed area the appropriate value of its properties within the area which payment may be by exchange of other electric utility property outside the municipality on an appropriate basis giving due consideration to revenue from and value of the respective properties. In the event the municipality and the electric utility involved are unable to agree as to the terms of the payment or exchange, the municipality or the electric utility may file an application with the commission requesting that the commission determine the appropriate terms for the exchange or sale. After notice and hearing, the commission shall determine appropriate terms for an exchange, or in the event no appropriate properties can be exchanged, the commission shall fix and determine the appropriate value of the property within the annexed area, and the transfer shall be made as directed by the commission. In making that determination the commission shall consider the original cost of the property, less depreciation, loss of revenue to the utility formerly serving the area, expenses resulting from integration of facilities, and other appropriate factors. Until the determination by the commission, the facilities shall remain in place and service to the public shall be maintained by the owner. However, the electric utility being displaced, serving the annexed area, shall not extend service to any additional points of delivery within the annexed area if the commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

When property of a public utility located within an area annexed to a municipality which owns and operates a public utility is proposed to be acquired by the municipality, ratification by the electors is not required.

History: 1974 c 429 s 44

216B.45 MUNICIPAL PURCHASE OF PUBLIC UTILITY.

Any public utility operating in a municipality under a license, permit, right or franchise shall be deemed to have consented to the purchase by the municipality, for just compensation, of its property operated in the municipality under such license, permit, right or franchise. The municipality, subject to the provisions of Laws 1974, Chapter 429, may purchase the property upon notice to the public utility as herein provided. Whenever the commission is notified by the municipality or the public utility affected that the municipality has, pursuant to law, determined to purchase the property of the public utility, and that the parties to the purchase and sale have been unable to agree on the amount to be paid and received therefor, the commission shall set a time and place for a public hearing, after not less than 30 days notice to the parties, upon the matter

of just compensation or the matter of the property to be purchased. Within a reasonable time the commission shall, by order, determine the just compensation for the property to be purchased by the municipality. In determining just compensation, the commission shall consider the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from integration of facilities and other appropriate factors. The order of the commission may be reviewed as provided in section 216B.52. Commission expenses arising out of the exercise of its jurisdiction under this section shall be assessed to the municipality. For purposes of this section, a public utility shall include a cooperative electric association.

History: 1974 c 429 s 45; 1978 c 795 s 7

216B.46 MUNICIPAL PROCEDURE; NOTICE; ELECTION.

Any municipality which desires to acquire the property of a public utility as authorized under the provisions of section 216B.45 may determine to do so by resolution of the governing body of the municipality taken after a public hearing of which at least 30 days published notice shall be given as determined by the governing body. The determination shall become effective when ratified by a majority of the qualified electors voting on the question at a special election to be held for that purpose, not less than 60 nor more than 120 days after the resolution of the governing body of the municipality.

History: 1974 c 429 s 46

216B.47 ACQUISITION BY EMINENT DOMAIN.

Nothing in Laws 1974, Chapter 429 shall be construed to preclude a municipality from acquiring the property of a public utility by eminent domain proceedings; provided that damages to be paid in eminent domain proceedings shall include the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from integration of facilities, and other appropriate factors. For purposes of this section, a public utility shall include a cooperative electric association.

History: 1974 c 429 s 47; 1978 c 795 s 8

216B.48 RELATIONS WITH AFFILIATED INTERESTS.

Subdivision 1. "Affiliated interests" with a public utility means the following:

(a) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility.

(b) Every corporation and person in any chain of successive ownership of five percent or more of voting securities.

(c) Every corporation five percent or more of whose voting securities is owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities.

(d) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities.

(e) Every corporation operating a public utility or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal and similar services to utilities, which has one or more officers or one or more directors in common with the public utility, and every other corporation which has directors in common with the public utility where the number of the directors is more than one-third of the total number of the utility's directors.

(f) Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of the public utility even though the influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(g) Every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising substantial influence over the policies and actions of the public utility in conjunction with one or more other corporations or persons with which or whom they are related by ownership or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated.

Subd. 2. The term "person" as used in subdivision 1 shall not be construed to exclude trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers and partnerships.

Subd. 3. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those above enumerated, made or entered into after January 1, 1975 between a public utility and any affiliated interest as defined in Laws 1974, Chapter 429, shall be valid or effective unless and until the contract or arrangement has received the written approval of the commission. It shall be the duty of every public utility to file with the commission a verified copy of the contract or arrangement, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements, whether written or unwritten, entered into prior to January 1, 1975 and in force and effect at that time. The commission shall approve the contract or arrangement made or entered into after that date only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. No contract or arrangement shall receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to each public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original or verified copies of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract or summary as the commission may deem adequate, properly identified and duly authenticated, provided, however, that the commission may, where reasonable, approve or disapprove the contracts or arrangements without the submission of cost records or accounts. The burden of proof to establish the reasonableness of the contract or arrangement shall be on the public utility.

Subd. 4. The provisions of this section requiring the written approval of the commission shall not apply to transactions with affiliated interests where the amount of consideration involved is not in excess of \$10,000 or five percent of the capital equity of the utility whichever is smaller; provided, however, that regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within the aforesaid exemption. Such transactions shall be valid or effective without commission approval under this section. However, in any proceeding involving the rates or practices of the public utility, the commission may exclude from the accounts of such public utility any payment or compensation made pursuant to the transaction unless the public utility shall establish the reasonableness of the payment or compensation.

Subd. 5. In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with the affiliated interest unless the public utility shall establish the reasonableness of the payment or compensation.

Subd. 6. The commission shall have continuing supervisory control over the terms and conditions of the contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.

Subd. 7. [Repealed, 1978 c 795 s 10]

History: 1974 c 429 s 48

216B.49 SECURITIES.

Subdivision 1. For the purpose of this section, "security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; assumption of any obligation or liability as a guarantor, endorser, surety, or otherwise in the security of another person; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under an oil, gas, or mining right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Subd. 2. For the purpose of this section, "capital structure" is the total capitalization of the public utility including, but not limited to, all outstanding common stock, preferred stock, and the permanent financing of said public utility represented by long term debt, and shall further include retained earnings and paid in surplus in excess of par values.

Subd. 3. It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness unless the capital structure of the public utility shall first be approved by the commission. Approval by the commission shall be by formal written order.

Subd. 4. Upon the application of a public utility for approval of its capital structure prior to the issuance of any security or the encumbrance of any property for the purpose of securing the payment of any indebtedness, the commission may make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers, documents, or contracts, as in its discretion it may deem necessary. Prior to approval the commission shall ascertain that the amount of securities of each class which any public utility may issue shall bear a reasonable proportion to each other and to the value of the property, due consideration being given to the nature of the business of the public utility, its credit and prospects, the possibility that the value of the property may change from time to time, the effect which the issue shall have upon the management

and operation of the public utility, and other considerations which the commission as a matter of fact shall find to be relevant. If the commission shall find that the proposed capital structure is reasonable and proper and in the public interest and will not be detrimental to the interests of the consumers and patrons affected thereby, the commission shall by written order grant its permission for the proposed public financing.

Subd. 5. The requirements of this section are in addition to any other requirements of law and, specifically, the requirements of chapter 80A, and the rules and regulations promulgated pursuant thereto.

Subd. 6. [Repealed, 1978 c 795 s 10]

History: 1974 c 429 s 49

216B.50 ACQUIRING PROPERTY; MERGER.

Subdivision 1. 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 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 a public hearing, upon such notice as the commission may require, and if it shall find 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 not be construed as applicable to the purchase of units of property for replacement or to the addition to the plant of the public utility by construction.

Subd. 2. [Repealed, 1978 c 795 s 10]

Subd. 3. Mergers and consolidations as enumerated in subdivision 1 hereof shall be exempt from the provisions of chapter 80B.

History: 1974 c 429 s 50

216B.51 STOCK PURCHASE.

Subdivision 1. No public utility shall purchase voting stock in another public utility doing business in Minnesota without first having made application to and received the consent of the commission in writing or by order.

Subd. 2. [Repealed, 1978 c 795 s 10]

Subd. 3. Mergers and consolidations as enumerated in subdivision 1 hereof shall be exempt from the provisions of chapter 80B.

History: 1974 c 429 s 51

216B.52 APPEALS.

Subdivision 1. Any party to a proceeding before the commission or any other person, aggrieved by a decision and order and directly affected thereby, shall be entitled to appeal from such decision and order of the commission. The proceedings shall be instituted by serving a notice of appeal personally or by certified mail upon the commission or one of its members or upon its secretary, and by filing the notice in the office of the clerk of the district court of the county of Ramsey or of the county in which the appellant resides or maintains his principal place of business, all within 30 days after the service of the order and decision of the commission or in cases where a rehearing is requested within 30 days after service of the order finally disposing of the application for the rehearing, or within 30 days after the final disposition by operation of law of the

application for rehearing. The notice shall state the nature of the appellant's interest, the facts showing that the appellant is aggrieved and directly affected by the decision, and the grounds upon which the appellant contends that the decision should be reversed or modified. Copies of the notice shall be served, personally or by certified mail, not later than 30 days after the institution of the appeal, upon all parties who appeared before the commission in the proceeding in which the order sought to be reviewed was made. The commission and all parties to the proceeding before it, shall have the right to participate in the appeal. The court, in its discretion, may permit other interested parties to intervene.

Subd. 2. Every person served with a notice of appeal as provided in this section and who desires to participate in the appeal thereby instituted shall, within 20 days after the service of the notice, serve upon the appellant a notice of appearance stating his position with reference to the affirmance, vacation, or modification of the order or decision under appeal. The notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service, with the clerk of the reviewing court within ten days after service. Service of all subsequent papers or notices in the appeal need be made only upon the appellant and other persons who have served and filed the notice as herein provided or have been permitted to intervene in the proceeding, as parties, by order of the court.

Subd. 3. Within 30 days after service of the notice of appeal upon the commission, or within a further time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record of the proceedings in which the decision under appeal was made, including all pleadings, notices, testimony, exhibits, findings, decisions, orders, and exceptions; but by stipulation of all parties to the appeal the record may be shortened by eliminating any portion. The cost of preparing the transcript of the testimony, objections, rulings, and exceptions, shall be paid by the appellant to the official reporter of the commission. Any party, other than the commission, refusing to stipulate to limit the record may be taxed by the court for the additional costs.

Subd. 4. The appeal shall be conducted by the court without a jury and shall be confined to the record, arguments and brief, except that in cases of alleged irregularities in procedure before the commission testimony thereon may be taken in the court. The court may affirm the decision of the commission or may reverse or modify it.

Subd. 5. Any party, including the commission, may secure a review of the final judgment of the district court by appeal to the supreme court. The appeal shall be taken in the manner provided by law for appeals from the district court in other civil cases, except that the time for appeal shall be limited to 30 days from the notice of entry of the judgment.

History: 1974 c 429 s 52; 1978 c 674 s 60

216B.53 SUSPENSION OF COMMISSION ORDERS.

The pendency of proceedings on appeal shall not of itself stay or suspend the operation of the order of the commission unless the commission so orders, but during the pendency of the proceedings the court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order on terms it deems just, and in accordance with the practice of courts exercising equity jurisdiction. No stay shall be granted by the court without notice to the parties and opportunity to be heard. Any party shall have the right to secure from the court in which an appeal of an order of the commission is sought an order suspending or staying the operation of an order of the commission, pend-

ing an appeal of the order, but no commission order relating to rates or rules shall be stayed or suspended absent a finding that great or irreparable damage would otherwise result to the party seeking the stay or suspension, and any order staying or suspending a commission order shall specify the nature of the damage.

In case the order of the commission is stayed or suspended, the court shall require a bond with good and sufficient surety, conditioned that the public utility petitioning for review shall answer for all damages caused by the delay in enforcing the order of the commission, and for all compensation for whatever sums for transmission or service any person shall be compelled to pay pending review proceedings in excess of the sum the person or corporation would have been compelled to pay had the commission's order not been stayed or suspended. The court, may, in addition or in lieu of the bond require other further security for the payment of such excess damages or charges it deems proper.

History: 1974 c 429 s 53; 1977 c 364 s 6

216B.54 ACTIONS BY COMMISSION OR DEPARTMENT; ATTORNEY GENERAL TO INSTITUTE.

Whenever the commission or department shall be of the opinion that any person or public utility is failing or omitting or is about to fail or omit to do anything required of it by Laws 1974, Chapter 429 or by any order of the commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of Laws 1974, Chapter 429 or of any order of the commission, it shall refer the matter to the attorney general who shall take appropriate legal action.

History: 1974 c 429 s 54; 1980 c 614 s 115

216B.55 PRIORITY OF ACTION.

All actions and proceedings under Laws 1974, Chapter 429, and all actions or proceedings to which the commission or the state of Minnesota may be parties, and in which any question arises under Laws 1974, Chapter 429, or under or concerning any order or decision of the commission, shall be preferred over all other civil causes, except election causes, irrespective of position on the calendar.

History: 1974 c 429 s 55

216B.56 BURDEN OF PROOF.

In all proceedings before the commission in which the modification or vacation of any order of the commission is sought, the burden of proof shall be on the person seeking such modification or vacation.

History: 1974 c 429 s 56

216B.57 PENALTIES.

Any person who knowingly and intentionally violates any provision of Laws 1974, Chapter 429, or who knowingly and intentionally fails, omits, or neglects to obey, observe, or comply with any lawful order, or any part or provision thereof, of the commission is subject to a penalty of not less than \$100 nor more than \$1,000 for each violation.

History: 1974 c 429 s 57

216B.58 ACTS; OMISSION; FAILURE; CONSTRUCTION THEREOF.

In construing and enforcing the provision of Laws 1974, Chapter 429 relating to penalties, the act, omission, or failure of any officer, agent or employee of any person acting within the scope of his official duties of employment shall in every case be deemed to be also the act, omission, or failure of that person.

History: 1974 c 429 s 58

216B.59 CONTINUING VIOLATIONS.

Every violation of the provisions of Laws 1974, Chapter 429 or of any lawful order of the commission, or any part or portion thereof by any person, is a separate and distinct offense, and in case of a continuing violation after a first conviction thereof each day's continuance thereof shall be deemed to be a separate and distinct offense.

History: 1974 c 429 s 59

216B.60 PENALTIES CUMULATIVE.

All penalties accruing under Laws 1974, Chapter 429 shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility or any officer, director, agent, or employee thereof or any person.

History: 1974 c 429 s 60

216B.61 ACTIONS TO RECOVER PENALTIES.

Actions to recover penalties under Laws 1974, Chapter 429 shall be brought in the name of the state of Minnesota in the district court of Ramsey county.

History: 1974 c 429 s 61

216B.62 COST OF EXAMINATION; ASSESSMENT OF EXPENSES; LIMITATIONS; OBJECTIONS.

Subdivision 1. [Repealed, 1980 c 614 s 191]

Subd. 2. Whenever the commission or department, in a proceeding upon its own motion, on complaint, or upon an application to it, shall deem it necessary, in order to carry out the duties imposed by Laws 1974, Chapter 429, to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, the public utility shall pay the expenses reasonably attributable to the investigation, appraisal, or service. The commission and department shall ascertain the expenses, and the department shall render a bill therefor to the public utility, either at the conclusion of the investigation, appraisal, or services, or from time to time during its progress, which bill shall constitute notice of the assessment and a demand for payment. The amount of the bills so rendered by the department shall be paid by the public utility into the state treasury within 30 days from the date of rendition. The total amount, in any one calendar year, for which any public utility shall become liable, by reason of costs incurred by the commission within that calendar year, shall not exceed two-fifths of one percent of the gross operating revenue from retail sales of gas, or electric service by the public utility within the state in the last preceding calendar year. Where, pursuant to this subdivision, costs are incurred within any calendar year which are in excess of two-fifths of one percent of the gross operating revenues, the excess costs shall not be chargeable as part of the remainder under subdivision 3, but shall be paid out of the general appropriation to the department and commission. In the case of public utilities offering more than one public utility service only the gross operating revenues from the public utility service in connection with which the investigation is being conducted shall be considered when determining this limitation.

Subd. 3. The department and commission shall annually, within 90 days after the close of each fiscal year, ascertain the total of their expenditures to the

performance of their duties relating to public utilities under Laws 1974, Chapter 429, and shall deduct therefrom all amounts chargeable to public utilities under subdivision 2. The remainder shall be assessed by the commission and department to the several public utilities in proportion to their respective gross operating revenues from retail sales of gas or electric service within the state during the last calendar year. The assessment shall be paid into the state treasury within 30 days after the bill has been mailed to the several public utilities, which shall constitute notice of the assessment and demand of payment thereof. The total amount which may be assessed to the public utilities, under authority of this subdivision, shall not exceed one-eighth of one percent of the total gross operating revenues of the public utilities during such calendar year from retail sales of gas or electric service within the state.

Subd. 4. Within 30 days after the date of the mailing of any bill as provided by subdivisions 2 and 3, the public utility against which the bill has been rendered may file with the commission objections setting out the grounds upon which it is claimed the bill is excessive, erroneous, unlawful or invalid. The commission shall within 60 days hold a hearing and issue an order in accordance with its findings. The order shall be appealable in the same manner as other final orders of the commission.

Subd. 5. The commission and department shall be authorized to charge cooperative electric associations their proportionate share of the expenses incurred in the adjudication of service area disputes and all of the costs incurred in the adjudication of complaints over service standards and practices. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.02, subdivision 4, shall be subject to this section.

History: 1974 c 429 s 62 subds 1-4; 1978 c 674 s 60; 1978 c 795 s 9; 1980 c 614 s 116

216B.63 INTEREST ON ASSESSMENTS.

The amounts assessed against any public utility not paid after 30 days after the mailing of a notice advising the public utility of the amount assessed against it, shall draw interest at the rate of six percent per annum, and upon failure to pay the assessment the attorney general shall proceed by action in the name of the state against the public utility to collect the amount due, together with interest and the cost of the suit.

History: 1974 c 429 s 63

216B.64 ATTORNEY GENERAL TO REPRESENT COMMISSION AND DEPARTMENT.

The attorney general of the state shall, upon request of the commission or department, represent and appear for the commission or department in all actions and proceedings involving any question under Laws 1974, Chapter 429, and shall aid in any investigation or hearing had under the provisions of Laws 1974, Chapter 429. The attorney general shall perform all duties and services in connection with Laws 1974, Chapter 429 and the enforcement thereof as the commission or department may require. He shall also bring all actions to collect penalties herein provided.

History: 1974 c 429 s 64; 1980 c 614 s 117

216B.65 DEPARTMENT TO EMPLOY NECESSARY STAFF.

The department may employ experts, engineers, statisticians, accountants, inspectors, clerks, hearing examiners who may be attorneys and employees it deems necessary to carry out the provisions of Laws 1974, Chapter 429.

History: 1974 c 429 s 67

216B.66 CONSTRUCTION.

Laws 1974, Chapter 429 is complete in itself and other Minnesota statutes are not to be construed as applicable to the supervision or regulation of public utilities by the commission. All acts and parts of acts in conflict with Laws 1974, Chapter 429 are repealed insofar as they pertain to the regulation of public utilities as defined herein.

History: 1974 c 429 s 69

216B.67 CITATION.

Laws 1974, Chapter 429 may be cited as the Minnesota public utilities act.

History: 1974 c 429 s 71