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 elec-

tric 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 308A, 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; 1989 c 356 s 8*

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 (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A producing or furnishing natural, manufactured or mixed gas or electric service or (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility. Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured or mixed gas or electricity by a public utility to another public utility for resale. In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility. No person shall be deemed to be a public utility if it furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a public utility if it furnishes service to occupants of a manufactured home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons.

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, 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. 6a. "Submetering" means measuring, by a building's owner, through mechanical or electronic devices, the use of electricity by occupants in multiple-unit residential or commercial buildings to fairly apportion the entire electrical costs for the building among its occupants.

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; 1981 c 17 s 1; 1981 c 144 s 1; 1981 c 365 s 9; 1983 c 366 s 1,2; 1984 c 428 s 1; 1985 c 248 s 70; 1989 c 356 s 9*

216B.022 SUBMETERING.

Nothing in this chapter grants the commission or a public utility the authority to limit the availability of submetering to a building occupant when the building is served by a public utility's master meter which measures the total electric energy delivered to the building.

History: *1983 c 366 s 3*

216B.025 MUNICIPAL REGULATION OPTION.

A municipality may elect to become subject to regulation by the commission pursuant to sections 216B.10 and 216B.11. An election for regulation may be effected by resolution of the governing body requesting regulation and filed with the commission.

History: *1981 c 142 s 1*

216B.026 COOPERATIVE ELECTRIC ASSOCIATION; ELECTION ON REGULATION.

Subdivision 1. **Petition.** 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 approved by a majority of members or stockholders voting by mail ballot initiated by petition of not less than five percent of the members or stockholders of the association, as determined by membership figures submitted by the association to the rural electric administration for the month in which the petition was submitted.

Subd. 2. **Petition contents; verification.** The petition form shall be prescribed by the department and sample forms shall be available from the department and electric cooperative associations. Petitions shall include a uniform statement that petition signers are requesting a balloting of the association membership on the question of regulation of electric rates of the association by the commission. The department shall, upon receipt, transmit the prescribed form of petition to the appropriate association for validation of petition signatures in accordance with agreed procedures between the association and the department. When the association rejects any signature on a petition as invalid, it shall provide the department with a written statement as to the reason the cooperative deems the signature invalid. The department may challenge the association's decisions on the validity of signatures and may appeal to the commission for a resolution of the issue through informal proceedings before the commission after notice to all parties.

Subd. 3. **Voting for members.** Whenever a vote or petition of members or stockholders of an association is submitted pursuant to this section, the spouse of the member or stockholder may sign the petition and vote on behalf of the member or stockholder unless the member or stockholder has notified the association in writing otherwise. Such a notification by a member or stockholder shall be provided to the association and to the department for those petition matters pursuant to this section.

Subd. 4. **Election procedure; effect.** If the department determines that the petition meets the five percent requirement, a balloting of members on the question of regulation of electric rates by the commission shall be supervised by the department. The ballot to be used for the election shall be approved by the board of directors of the association and the department. In the event of a dispute on balloting procedures, the dispute shall be resolved through informal proceedings before the commission after notice to all parties. The association shall mail ballots to the association's members who

shall return the ballots to the department. The department shall 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 association shall count the ballots. If a majority of the association's members or spouses 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. These provisions also apply to associations that wish to be deregulated. Any cooperative that is regulated by the commission, pursuant to sections 216B.03 to 216B.23 may follow the procedures set forth above. Any 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.

History: *1981 c 144 s 2*

216B.027 COOPERATIVE ELECTRIC ASSOCIATION STOCKHOLDER RIGHTS.

Subdivision 1. **Intent.** It is the intent of this section to specify those rights which shall be extended to stockholders of cooperative electric associations. The guarantee of these rights, as specified herein, is intended to further the active participation of stockholders in any and all matters pertaining to the prudent operation of their organization.

Subd. 2. **Scope.** Cooperative associations organized under chapter 308A for the purpose of providing rural electrification at retail to ultimate consumers shall comply with the provisions of this section in addition to other applicable provisions of chapter 308A and other applicable state and federal laws.

Subd. 3. **Business records.** The provisions of section 302A.461 and any amendments or successor requirements to it shall apply to every wholesale or retail cooperative electric association. The rights granted to wholesale and retail electric cooperative stockholders in this section shall apply also to the spouse of the stockholder. In addition to the requirements of section 302A.461, a wholesale or retail electric cooperative shall maintain records of all proceedings of meetings of stockholders and directors during the previous three-year period including the vote of each director on roll call votes. Roll call votes are required on actions which directly establish service charge and rate schedules. Roll call voting is also required on any matter upon the request of one or more directors. Every duly elected director of a retail cooperative electric association shall have the right to inspect under section 302A.461, in person and at any reasonable time, the business records required by this subdivision and maintained by the wholesale cooperative electric association from which it purchases the majority of its electric requirements.

Subd. 4. **Open meetings.** Meetings of the board of directors of any retail cooperative electric association must be open to the stockholders of the cooperative and the stockholders' spouses. Stockholders must be given notice of all regularly scheduled meetings except those of an emergency nature. Duly elected directors of retail cooperative associations must be given notice, through their retail cooperative associations, of all meetings of the board of directors of the wholesale cooperative association, except those of an emergency nature, from which the retail cooperative purchases the majority of its electric requirements. Portions of meetings relating to labor negotiations, current litigation, personnel matters, and nonpayment of customer accounts are excluded from the provisions of this subdivision.

Subd. 5. **Petitions; voting.** Notwithstanding the provisions of sections 308A.611 and 308A.615, upon receipt of a written petition concerning governance matters signed by at least 500 stockholders or five percent of the stockholders, whichever is less, of a retail cooperative electric association, the matter in the petition must be presented to the stockholders of the cooperative for a vote at the next annual meeting. Petitions must be received by the cooperative electric association 60 days prior to the scheduled annual meeting. For purposes of this section, "governance matters" means matters properly contained in the articles of incorporation or bylaws by adopting, amending, or repealing bylaws or the articles of incorporation.

Subd. 6. **Equal time; petitioners.** Whenever the directors of a retail cooperative electric association provide information to stockholders to influence their vote on a matter to be decided by a vote of the stockholders pursuant to a successful petition submitted under the provisions of subdivision 5 or section 216B.026, subdivision 4, the directors shall provide the organizers of the petition or person presenting the petition the opportunity to include their position on the matter to the stockholders in a substantially similar mode and range of distribution. The organizers of the petition shall pay the costs of such inclusion.

Subd. 7. **Optional referendum.** No cooperative shall be bound by the provisions of this section unless adoption has been approved at referendum using the petition and election procedures in section 216B.026. Within 60 days of the effective date of this section, the board of directors of each cooperative electric association shall notify the stockholders of the provisions of this section and shall explain the process for ratification by petition and election as provided in this subdivision.

History: *1983 c 162 s 1; 1989 c 144 art 2 s 3; 1989 c 356 s 10*

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. To the maximum reasonable extent, the commission shall set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164, 216B.241, and 216C.05. 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; 1983 c 179 s 4; 1987 c 312 art 1 s 10 subd 1*

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.045 REGULATION OF INTRASTATE NATURAL GAS PIPELINES.

Subdivision 1. **Definition.** For the purposes of this section "intrastate pipeline" means a pipeline wholly within the state of Minnesota which transports or delivers natural gas received from another person at a point inside or at the border of the state, which is delivered at a point within the state to another, provided that all the natural gas is consumed within the state. An intrastate pipeline does not include a pipeline owned or operated by a public utility.

Subd. 2. **Reasonable rate.** Every rate and contract relating to the sale or transportation of natural gas through an intrastate pipeline shall be just and reasonable. No owner or operator of an intrastate pipeline shall provide intrastate pipeline services in a manner which unreasonably discriminates among customers receiving like or contemporaneous services.

Subd. 3. **Transportation rates; discrimination.** Every owner or operator of an intrastate pipeline shall offer intrastate pipeline transportation services by contract on an open access, nondiscriminatory basis. To the extent the intrastate pipeline has available capacity, the owner or operator of the intrastate pipeline must provide firm and interruptible transportation on behalf of any customer. If physical facilities are needed to establish service to a customer, the customer may provide those facilities or the owner or operator of the intrastate pipeline may provide the facilities for a reasonable and compensatory charge.

Subd. 4. **Contracts; commission approval.** No contract establishing the rates, terms, and conditions of service and facilities to be provided by intrastate pipelines is effective until it is filed with and approved by the commission. The commission has the authority to approve the contracts and to regulate the types and quality of services to be provided through intrastate pipelines. The approval of a contract for an intrastate pipeline to provide service to a public utility does not constitute a determination by the commission that the prices actually paid by the public utility under that contract are reasonable or prudent nor does approval constitute a determination that purchases of gas made or deliveries of gas taken by the public utility under that contract are reasonable or prudent.

Subd. 5. **Complaints.** Any customer of an intrastate pipeline, any person seeking to become a customer of an intrastate pipeline, the department, or the commission on its own motion, may bring a complaint regarding the rates, contracts, terms, conditions, and types of service provided or proposed to be provided through an intrastate pipeline, including a complaint that a service which can reasonably be demanded is not offered by the owner or operator of the intrastate pipeline. If a complaint involves the question of whether or not an intrastate pipeline has capacity available, the commission shall after hearing make a determination of the available capacity but shall not impair the owner or operator of the intrastate pipeline contractual obligation to provide firm transportation service. If a complaint concerns the use of available capacity by one or more customers of an intrastate pipeline, the commission shall after hearing determine the reasonable use of the available capacity by the customers. The commission shall not require an owner or operator of an intrastate pipeline to expand its available capacity but may require the owner or operator to maintain a reasonable quality of service. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest. Complaints brought under this subdivision shall be governed by section 216B.17.

Subd. 6. **Records; assessment.** Sections 216B.10, subdivisions 1 and 4, 216B.12, 216B.13, and 216B.62, subdivisions 2, 4, and 6 shall apply to owners and operators of intrastate pipelines.

Subd. 7. **Natural gas emergency.** The commission may declare a natural gas supply emergency if it finds that a severe natural gas shortage endangering the health or safety of the citizens of the state exists or is imminent in the state. If the commission declares that a natural gas supply emergency exists, it may for the duration of the emergency order the suspension of any contract providing for the sale and transportation of natural gas through an intrastate pipeline, and may for the duration of the emergency order an owner or operator of the intrastate pipeline to furnish such transportation services as are required by the public interest. The owner or operator of the intrastate pipeline shall be compensated for its services furnished under an emergency order issued under this section, and the commission shall determine the just and reasonable compensation for the services required to be provided during the emergency.

History: *1987 c 9 s 1; 1990 c 370 s 1*

216B.05 PUBLISH SCHEDULES; RULES; 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 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 as the commission may prescribe.

History: *1974 c 429 s 5; 1985 c 248 s 70*

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.075 PUBLIC UTILITY METER READING; ACCOMMODATION OF CUSTOMER SCHEDULING NEEDS.

Notwithstanding any other provision of rule or policy to the contrary, every public utility providing natural gas or electricity at retail shall make a reasonable effort to obtain readings at least once every 18 months from nonaccessible meters. Readings shall be obtained at times that meet the needs of customer schedules. Utilities shall make a reasonable effort to provide evening and Saturday or Sunday meter reading service at no extra charge to a customer whose work or other schedule makes a business hour reading of meters a hardship. Utilities may refuse to read a customer's meter during nondaylight hours if such activity could threaten the safety of the utility meter-reading employee.

A utility may also allow a customer to self-read the customer's meter for periods of time not to exceed 18 months, provided that the customer is reminded periodically of the potentially serious financial consequences of errors in self-reading.

A utility may terminate service to a customer who refuses to allow a utility company employee access to a nonaccessible meter for a period of 18 months or more.

History: *1983 c 176 s 1*

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 in furtherance of the purposes of Laws 1974, chapter 429.

History: *1974 c 429 s 8; 1985 c 248 s 70*

216B.09 STANDARDS; CLASSIFICATIONS; RULES; 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, rules, 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 rules for the examination and testing of the service and for the measurement thereof; establish or approve reasonable rules, 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, rules, 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; 1985 c 248 s 70*

216B.095 DISCONNECTION DURING COLD WEATHER.

The commission shall amend its rules governing disconnection of residential utility customers who are unable to pay for utility service during cold weather to include the following:

(1) coverage of customers whose household income is less than 185 percent of the federal poverty level;

(2) a requirement that a customer who pays the utility at least ten percent of the customer's income or the full amount of the utility bill, whichever is less, in a cold weather month cannot be disconnected during that month;

(3) that the ten percent figure in clause (2) must be prorated between energy providers proportionate to each provider's share of the customer's total energy costs where the customer receives service from more than one provider;

(4) that a customer's household income does not include any amount received for energy assistance;

(5) verification of income by the local energy assistance provider, unless the customer is automatically eligible as a recipient of any form of public assistance, including energy assistance, that uses income eligibility in an amount at or below the income eligibility in clause (1); and

(6) a requirement that the customer receive, from the local energy assistance provider or other entity, budget counseling and referral to weatherization, conservation, or other programs likely to reduce the customer's consumption of energy.

For the purpose of clause (2), the "customer's income" means the actual monthly income of the customer except for a customer who is normally employed only on a seasonal basis and whose annual income is over 135 percent of the federal poverty level, in which case the customer's income is the average monthly income of the customer computed on an annual calendar year basis.

History: *1989 c 338 s 1; 1989 c 356 s 59*

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 the accountant's 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. [Repealed, 1981 c 142 s 3]

History: *1974 c 429 s 10; 1980 c 614 s 123; 1986 c 444*

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, and every public utility shall conform its depreciation, amortization or depletion accounts to the rates and methods fixed by the commission.

History: *1974 c 429 s 11; 1981 c 142 s 2*

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. [Repealed, 1981 c 142 s 3]

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. [Repealed, 1981 c 142 s 3]

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. **Notice.** Unless the commission otherwise orders, no public utility shall change a rate which has been duly established under this chapter, except upon 60 days notice to the commission. The notice shall include statements of facts, expert opinions, substantiating documents, and exhibits including an energy conservation improvement plan pursuant to section 216B.241, supporting the change requested, and 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. 1a. **Settlement.** When a public utility submits a general rate filing, the office of administrative hearings, before conducting a contested case hearing, shall convene a settlement conference including all of the parties for the purpose of encouraging settlement of any or all of the issues in the contested case. If a stipulated settlement is not reached before the contested case hearing, the office of administrative hearings may reconvene the settlement conference during or after completion of the contested case hearing at its discretion or a party's request. If the applicant and all intervening parties agree to a stipulated settlement of the case or parts of the case, the settlement must be submitted to the commission. The commission shall accept or reject the settlement in its entirety and, at any time until its final order is issued in the case, may require the office of administrative hearings to conduct a contested case hearing. The commission may accept the settlement on finding that to do so is in the public interest and is supported by substantial evidence. If the commission does not accept the settlement, it may issue an order modifying the settlement subject to the approval of the parties. Each party shall have ten days in which to reject the proposed modification. If no party rejects the proposed modification, the commission's order becomes final. If the commission rejects the settlement, or a party rejects the commission's proposed modification, a contested case hearing must be completed.

Subd. 2. **Suspension of rates; hearing.** (a) Whenever there is filed with the commission a 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 ten months beyond the initial filing date except as provided in paragraph (b). 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 250 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 14, except as otherwise provided in this section. The commission may order that the issues presented by the proposed rate changes be bifurcated into two separate hearings as follows: (1)

determination of the utility's revenue requirements and (2) determination of the rate design. Upon issuance of both administrative law judge reports, the issues shall again be joined for consideration and final determination by the commission. All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the department of public service. If the commission does not make a final determination concerning a schedule of rates within ten months after the initial filing date, the schedule shall be deemed to have been approved by the commission; except if a settlement has been submitted to and rejected by the commission, the schedule is deemed to have been approved 12 months after the initial filing.

(b) If the commission finds that it has insufficient time during the suspension period to make a final determination of a case involving changes in general rates because of the need to make final determinations of other previously filed cases involving changes in general rates under this section or section 237.075, the commission may extend the suspension period to the extent necessary to allow itself 20 working days to make the final determination after it has made final determinations in the previously filed cases. An extension of the suspension period under this paragraph does not alter the setting of interim rates under subdivision 3.

(c) For the purposes of this section, "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 those petitions.

Subd. 3. **Interim rates.** Notwithstanding any order of suspension of a proposed increase in rates, the commission shall order an interim rate schedule into effect not later than 60 days after the initial filing date. The commission shall order the interim rate schedule ex parte without a public hearing. Notwithstanding the provisions of sections 216.25, 216B.27 and 216B.52, no interim rate schedule ordered by the commission pursuant to this subdivision shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final determination. Unless the commission finds that exigent circumstances exist, the interim rate schedule shall be calculated using the proposed test year cost of capital, rate base, and expenses, except that it shall include: (1) a rate of return on common equity for the utility equal to that authorized by the commission in the utility's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the utility's most recent rate proceeding; and (3) no change in the existing rate design. In the case of a utility which has not been subject to a prior commission determination, the commission shall base the interim rate schedule on its most recent determination concerning a similar utility.

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. The utility shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the utility will recover the difference in revenues from the date of the final determination to the date the new rate schedules are put into effect.

If the public utility fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and may 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 to it. 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. The commission shall not order an interim rate schedule in a general rate case into effect as provided by this subdivision until at least four months after it has made a final

determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2, unless:

(1) the commission finds that a four month delay would unreasonably burden the utility, its customers, or its shareholders and that an earlier imposition of interim rates is therefore necessary; or

(2) the utility files a second general rate case at least 12 months after it has filed a previous general rate case for which the commission has extended the suspension period under subdivision 2.

Subd. 4. **Burden of proof.** 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. **Determination.** If, after the hearing, the commission finds the rates to be unjust or unreasonable or discriminatory, the commission shall determine the rates to be charged or applied by the utility for the service in question and shall fix them by order to be served upon the utility. The rates shall thereafter be observed until changed, as provided by this chapter. 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. Rate design changes shall be prospective from the effective date of the new rate schedules approved by the commission.

Subd. 6. **Factors to be considered.** 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. **Construction work in progress.** 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. **Energy conservation improvements.** 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. **Energy cost adjustments.** Notwithstanding any other provision of this chapter, 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: (1) federally regulated wholesale rates for energy delivered

through interstate facilities; (2) direct costs for natural gas delivered; or (3) costs for fuel used in generation of electricity or the manufacture of gas.

Subd. 8. **Advertising expenses.** 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. **Charitable contributions.** 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.

Subd. 10. **Intervenor payment.** The commission may order a utility to pay all or a portion of a party's intervention costs not to exceed $20,000 per intervenor in any proceeding when the commission finds that the intervenor has materially assisted the commission's deliberation and the intervenor has insufficient financial resources to afford the costs of intervention.

Subd. 11. **Pipeline safety programs.** All costs of a public utility that are necessary to comply with state pipeline safety programs under sections 216D.01 to 216D.07, 299F.56 to 299F.64, or 299J.01 to 299J.17 must be recognized and included by the commission in the determination of just and reasonable rates as if the costs were directly incurred by the utility in furnishing utility service.

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; 1981 c 357 s 70; 1Sp1981 c 4 art 4 s 15; 1982 c 414 s 1-6; 1982 c 424 s 130; 1983 c 179 s 5; 1983 c 247 s 95; 1983 c 289 s 104; 1986 c 346 s 1; 1986 c 409 s 6,7; 1987 c 353 s 6; 1988 c 457 s 1-3*

216B.161 AREA DEVELOPMENT RATE PLAN.

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

(b) "Area development rate" means a rate schedule established by a utility that provides customers within an area development zone service under a base utility rate schedule, except that monthly demand charges may be reduced from the base rate as agreed upon by the utility and the customer consistent with this section.

(c) "Area development zone" means a contiguous or noncontiguous area designated by an authority or municipality for development or redevelopment and within which one of the following conditions exists:

(1) obsolete buildings not suitable for improvement or conversion or other identified hazards to the health, safety, and general well-being of the community;

(2) buildings in need of substantial rehabilitation or in substandard condition; or

(3) low values and damaged investments.

(d) "Authority" means a rural development financing authority established under sections 469.142 to 469.150; a housing and redevelopment authority established under sections 469.001 to 469.047; a port authority established under sections 469.048 to 469.068; an economic development authority established under sections 469.090 to 469.108; a redevelopment agency as defined in sections 469.152 to 469.165; a municipality that is administering a development district created under sections 469.124 to 469.134 or any special law; a municipality that undertakes a project under sections 469.152 to 469.165, except a town located outside the metropolitan area as defined in section 473.121, subdivision 2, or with a population of 5,000 persons or less; or a municipality that exercises the powers of a port authority under any general or special law.

(e) "Municipality" means a city, however organized, and, with respect to a project undertaken under sections 469.152 to 469.165, "municipality" has the meaning given in sections 469.152 to 469.165, and, with respect to a project undertaken under sections 469.142 to 469.151 or a county or multicounty project undertaken under sections 469.004 to 469.008, also includes any county.

Subd. 2. **Pilot rate plan program.** The commission shall order at least one public utility to establish a pilot program that offers an area development rate. The program must be designed to assist industrial revitalization projects located within the service area of the participating utility.

Subd. 3. **Terms and conditions of the rate.** An area development rate offered under this section must:

(1) be offered for a period of more than two years but no more than five years;

(2) be offered as a supplement to other development incentives offered by the municipality in which the rate is available;

(3) be available only to new or expanding manufacturing or wholesale trade customers;

(4) be designed to recover at least the incremental cost of providing service to the participating customers;

(5) be offered in a fixed number of area development zones; and

(6) include a provision that the utility provide participating customers with an energy audit and inform those customers of all existing energy conservation programs available from the utility.

Recovery of costs under clause (4) may be made only from the class of customers to which the rate is offered and not from residential customers.

Subd. 4. **Evaluation.** The commission shall evaluate the impact and effectiveness of the area development plan or plans established under this section. The evaluation must include analysis of information submitted by the utility regarding the plan. Within 60 days after the expiration of a plan, the commission shall determine whether the area development rates should be continued, modified, or eliminated. The commission shall submit its findings to the legislature by January 1, 1995.

History: *1990 c 370 s 2*

NOTE: This section is repealed July 1, 1995. See Laws 1990, chapter 370, section 7.

216B.162 COMPETITIVE RATES FOR ELECTRIC UTILITIES.

Subdivision 1. **Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "Effective competition" means a market situation in which an electric utility serves a customer that:

(1) is located within the electric utility's assigned service area determined under section 216B.39; and

(2) has the ability to obtain its energy requirements from an energy supplier that is not regulated by the commission under section 216B.16.

(c) "Competitive rate schedule" means a rate schedule under which an electric utility may set or change the price for its service to an individual customer or group of customers subject to effective competition.

(d) "Competitive rate" means the actual rate offered by the utility, and approved by the commission, to a customer subject to effective competition.

Subd. 2. **Competitive rate schedule permitted.** Notwithstanding section 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16, the commission shall approve a competitive rate schedule when:

(1) the provision of service to a customer or a class of customers is subject to effective competition; and

(2) the schedule applies only to customers requiring electric service with a connected load of at least 2,000 kilowatts.

The commission may approve a competitive rate schedule that applies to customers subject to effective competition and requiring electric service with a connected load less than 2,000 kilowatts.

The commission shall make a final determination in a proceeding begun under this section within 90 days of a miscellaneous rate filing by the electric utility.

Subd. 3. **Establishing or changing competitive rate schedule.** The commission shall establish or change a competitive rate schedule through a miscellaneous or general rate filing by the utility.

Subd. 4. **Rates and terms of a competitive rate schedule.** When the commission authorizes a competitive rate schedule for a customer class, it shall set the terms and conditions of service for that schedule, which must include:

(1) that the minimum rate for the schedule recover at least the incremental cost of providing the service, including the cost of additional capacity that is to be added while the rate is in effect and any applicable on-peak or off-peak differential;

(2) that the maximum possible rate reduction under a competitive rate schedule does not exceed the difference between the electric utility's applicable standard tariff and the cost to the customer of the lowest cost competitive energy supply;

(3) that the term of a contract for a customer who elects to take service under a competitive rate must be no less than one year and no longer than five years;

(4) that the electric utility, within a general rate case, be allowed to seek recovery of the difference between the standard tariff and the competitive rate times the usage level during the test year period;

(5) a determination that a rate within a competitive rate schedule meets the conditions of section 216B.03, for other customers in the same customer class;

(6) that the rate does not compete with district heating or cooling provided by a district heating utility as defined by section 216B.166, subdivision 2, paragraph (c); and

(7) that the rate may not be offered to a customer in which the utility has a financial interest greater than 50 percent.

Subd. 5. **Competitive rate offered.** Within its own assigned service territory, the utility, at its discretion and using its best judgment at the time, may offer a competitive rate to a customer subject to effective competition.

Subd. 6. **Interim competitive rate.** Notwithstanding section 216B.16, subdivision 3, a proposed competitive rate takes effect on an interim basis after filing the proposed rate with the commission and on the date established by the electric utility. While an interim competitive rate is in effect, the difference between rates under the competitive rate and rates under the standard tariff for that class are not subject to recovery or refund. If the commission does not approve the competitive rate, the electric utility may seek to recover the difference in revenues between the interim competitive rate and the standard tariff from the customer that was offered the competitive rate.

Subd. 7. **Commission approval.** Except as provided under subdivision 6, competitive rates offered by electric utilities under this section must be filed with the commission and must be approved, modified, or rejected by the commission within 90 days.

The utility's filing must include statements of fact demonstrating that the proposed rates meet the standards of this subdivision. The filing must be served on the department of public service and the office of the attorney general at the same time as it is served on the commission. In reviewing a specific rate proposal, the commission shall determine:

(1) that the rate meets the terms and conditions in subdivision 4, unless the commission determines that waiver of one or more terms and conditions would be in the public interest;

(2) that the consumer can obtain its energy requirements from an energy supplier not rate-regulated by the commission under section 216B.16;

(3) that the customer is not likely to take service from the electric utility seeking to offer the competitive rate if the customer was charged the electric utility's standard tariffed rate; and

(4) that it is in the best interest of all other customers to offer the competitive rate to the customer subject to effective competition.

If the commission approves the competitive rate, it becomes effective as agreed to by the electric utility and the customer. If the competitive rate is modified by the commission, the commission shall issue an order modifying the competitive rate subject to the approval of the electric utility and the customer. Each party has ten days in which to reject the proposed modification. If no party rejects the proposed modification, the commissioner's order becomes final. If either party rejects the commission's proposed modification, the electric utility, on its behalf or on the behalf of the customer, may submit to the commission a modified version of the commission's proposal. The commission shall accept or reject the modified version within 30 days. If the commission rejects the competitive rate, it shall issue an order indicating the reasons for the rejection.

Subd. 8. **Energy efficiency measures.** If the commission approves a competitive rate or the parties agree to a modified rate, the commission may require the electric utility to provide the customer with an energy audit and assist in implementing cost-effective energy efficiency improvements to assure that the customer's use of electricity is efficient. An investment in cost-effective energy conservation improvements required under this section must be treated as an energy conservation improvement program and included in the department's determination of significant investments under section 216B.241. The utility shall recover energy conservation improvement expenses in a rate proceeding under section 216B.16 or 216B.17 in the same manner as the commission authorizes for the recovery of conservation expenditures made under section 216B.241.

Subd. 9. **Study and reporting.** The department of public service shall review the operation and effects of any rates implemented under this section. The review must include, but is not limited to, an analysis of the electric utilities changing capacity requirements due to approved competitive rates and a comprehensive evaluation of the impact of competitive electric rates on cogeneration and small power production in the state. The department shall submit its findings to the legislature by January 1, 1995.

History: *1990 c 370 s 3*

NOTE: This section is repealed July 1, 1995. See Laws 1990, chapter 370, section 7.

216B.163 FLEXIBLE TARIFFS.

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

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

(c) "Flexible tariff" means a rate schedule under which a gas utility may set or

change the price for its service to an individual customer or group of customers without prior approval of the commission within a range of prices determined by the commission to be just and reasonable.

Subd. 2. **Flexible tariffs permitted.** Notwithstanding section 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16, the commission may approve a flexible tariff for any class of customers of a gas utility when provision of service, including the sale or transportation of gas, to any customers within the class is subject to effective competition. Upon application of a gas utility, the commission shall find that effective competition exists for a class of customers taking interruptible service at a level exceeding 199,000 cubic feet per day. A gas utility may apply a flexible tariff only to a customer that is subject to effective competition and a gas utility may not apply a flexible tariff or otherwise reduce its rates to compete with indigenous biomass energy supplies. Customers of a gas utility whose only alternative source of energy is gas from a supplier not regulated by the commission and who must use the gas utility's system to transport the gas are not subject to effective competition unless the customers have or can reasonably acquire the capability to bypass the gas utility's system to obtain gas from a supplier not regulated by the commission. A customer subject to effective competition may elect to take service either under the flexible tariff or under the appropriate nonflexible tariff for that class of service set in accordance with section 216B.03, provided that a customer that uses an alternative energy supply or service from a supplier not regulated by the commission for reasons of price are deemed to have elected to take service under the flexible tariff.

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

Subd. 3. **Establishing or changing a flexible tariff.** The commission may establish a flexible tariff through a miscellaneous rate filing only if the filing does not seek to recover revenues the utility expects to lose by implementing flexible tariffs from customers who do not take service under the flexible tariff, nor to change another rate. If a gas utility requests authority to establish a flexible tariff and as part of that request seeks to recover revenues the utility expects to lose by implementing flexible tariffs from customers who do not take service under the flexible tariff or to change other rates, the commission may only establish that flexible tariff within a general rate case for that gas utility.

Subd. 4. **Rates and terms of service.** Whenever the commission authorizes a flexible tariff, it shall set the terms, and conditions of service for that tariff, including:

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

(2) the maximum rate for the tariff; and

(3) a requirement that a customer who elects to take service under the flexible tariff remain on that tariff for a reasonable period of time.

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

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

Subd. 6. **Interim flexible tariff.** Notwithstanding section 216B.16, subdivision 3, if a gas utility files with the commission to establish or change a flexible tariff the commission shall permit the proposed flexible tariff to take effect on an interim basis no later than 30 days after filing. If any customers receive an increase in rates during the

period that an interim flexible tariff is in effect, the increase is subject to refund as provided in section 216B.16, subdivision 3. The gas utility shall provide ten days' written notice, or other notice as may be established by contract not to exceed 30 days, to a customer before implementing an interim rate change for that customer under this section.

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

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

History: *1987 c 371 s 1,4; 1990 c 593 s 1,2*

216B.164 COGENERATION AND SMALL POWER PRODUCTION.

Subdivision 1. **Scope and purpose.** This section shall at all times be construed in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

Subd. 2. **Applicability.** This section as well as any rules promulgated by the commission to implement this section or the public utility regulatory policies act of 1978, Public Law Number 95-617, Statutes at Large, volume 92, page 3117, and the federal Energy Regulatory Commission regulations thereunder, Code of Federal Regulations, title 18, part 292, shall apply to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities.

Subd. 3. **Purchases; small facilities.** (a) For a qualifying facility having less than 40 kilowatt capacity, the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer. In the case of net input into the utility system by a qualifying facility having less than 40 kilowatt capacity, compensation to the customer shall be at a per kilowatt hour rate determined under paragraph (b) or (c) of this subdivision.

(b) In setting rates, the commission shall consider the fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge and shall ensure that the costs charged to the qualifying facility are not discriminatory in relation to the costs charged to other customers of the utility. The commission shall set the rates for net input into the utility system based on avoided costs as defined in the Code of Federal Regulations, title 18, section 292.101(b)(6), the factors listed in Code of Federal Regulations, title 18, section 292.304, and all other relevant factors.

(c) Notwithstanding any provision in this chapter to the contrary, a qualifying facility having less than 40 kilowatt capacity may elect that the compensation for net input by the qualifying facility into the utility system shall be at the average retail utility energy rate. "Average retail utility energy rate" is defined as the average of the retail energy rates, exclusive of special rates based on income, age, or energy conservation, according to the applicable rate schedule of the utility for sales to that class of customer.

(d) If the qualifying facility is interconnected with a nongenerating utility which has a sole source contract with a municipal power agency or a generation and transmission utility, the nongenerating utility may elect to treat its purchase of any net input under this subdivision as being made on behalf of its supplier and shall be reimbursed by its supplier for any additional costs incurred in making the purchase. Qualifying facilities having less than 40 kilowatt capacity may, at the customer's option, elect to be governed by the provisions of subdivision 4.

Subd. 4. **Purchases; wheeling.** (a) Except as otherwise provided in paragraph (c), this subdivision shall apply to all qualifying facilities having 40 kilowatt capacity or more as well as qualifying facilities as defined in subdivision 3 which elect to be governed by its provisions.

(b) The utility to which the qualifying facility is interconnected shall purchase all energy and capacity made available by the qualifying facility. The qualifying facility shall be paid the utility's full avoided capacity and energy costs as negotiated by the parties or set by the commission.

(c) For all qualifying facilities having 30 kilowatt capacity or more, the utility shall, at the qualifying facility's or the utility's request, provide wheeling or exchange agreements wherever practicable to sell the qualifying facility's output to any other Minnesota utility having generation expansion anticipated or planned for the ensuing ten years. The commission shall establish the methods and procedures to insure that except for reasonable wheeling charges and line losses, the qualifying facility receives the full avoided energy and capacity costs of the utility ultimately receiving the output.

Subd. 5. **Disputes.** In the event of disputes between an electric utility and a qualifying facility, either party may request a determination of the issue by the commission. In any such determination, the burden of proof shall be on the utility. The commission in its order resolving each such dispute shall require payments to the prevailing party of the prevailing party's costs, disbursements, and reasonable attorneys' fees, except that the qualifying facility will be required to pay the costs, disbursements, and attorneys' fees of the utility only if the commission finds that the claims of the qualifying facility in the dispute have been made in bad faith, or are a sham, or frivolous.

Subd. 6. **Rules and uniform contract.** (a) The commission shall promulgate rules to implement the provisions of this section. The commission shall also establish a uniform statewide form of contract for use between utilities and a qualifying facility having less than 40 kilowatt capacity.

(b) The commission shall require the qualifying facility to provide the utility with reasonable access to the premises and equipment of the qualifying facility if the particular configuration of the qualifying facility precludes disconnection or testing of the qualifying facility from the utility side of the interconnection with the utility remaining responsible for its personnel.

(c) The uniform statewide form of contract shall be applied to all new and existing interconnections established between a utility and a qualifying facility having less than 40 kilowatt capacity, except that existing contracts may remain in force until written notice of election that the uniform statewide contract form applies is given by either party to the other, with the notice being of the shortest time period permitted under the existing contract for termination of the existing contract by either party, but not less than ten nor longer than 30 days.

(d) The commission may promulgate emergency rules for the purpose of implementing this section. The emergency rules are subject to sections 14.29 to 14.36.

Subd. 7. **Reports.** On January 1, 1983, the commission shall submit a report to the legislature. The report shall describe:

(a) The location, type and output of cogenerators and small power producers in the state;

(b) Whether cogeneration and small power production has resulted in any major impacts on the utility system; and

(c) The effectiveness of the provisions of this section and the commission's rules in encouraging cogeneration and small power production.

Subd. 8. **Customer, interconnection and wheeling charges.** (a) Utilities shall be required to interconnect with a qualifying facility that offers to provide available energy or capacity and that satisfies the requirements of this section.

(b) Nothing contained in this section shall be construed to excuse the qualifying facility from any obligation for costs of interconnection and wheeling in excess of those normally incurred by the utility for customers with similar load characteristics who are

not cogenerators or small power producers, or from any fixed charges normally assessed such nongenerating customers.

Subd. 9. **Municipal electric utilities.** For purposes of this section only, except subdivisions 5 and 7, and with respect to municipal electric utilities only, the term "commission" means the governing body of each municipal electric utility that adopts and has in effect rules implementing this section which are consistent with the rules adopted by the Minnesota public utilities commission under subdivision 6. As used in this subdivision, the governing body of a municipal electric utility means the city council of that municipality; except that, if another board, commission, or body is empowered by law or resolution of the city council or by its charter to establish and regulate rates and days for the distribution of electric energy within the service area of the city, that board, commission, or body shall be considered the governing body of the municipal electric utility.

History: *1981 c 237 s 1; 1983 c 301 s 166-171; 1984 c 640 s 32*

216B.165 ENERGY AUDITS.

Subdivision 1. A customer who asks a public utility to perform an energy audit of the customer's residence pursuant to United States Code, title 42, section 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 United States Code, title 42, section 8211 et seq., including those associated with program audits, list distribution, customer billing services, arranging services and postinstallation 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 United States Code, title 42, section 8211 et seq. of residences which are required by section 216C.27, subdivision 3, to comply with energy efficiency standards shall include a separate list of those improvements to the residence which are required to bring the residence into compliance with section 216C.27, subdivision 3, and a statement describing remedies available to tenants for violations.

History: *1980 c 579 s 17; 1981 c 356 s 248; 1986 c 444; 1987 c 312 art 1 s 10 subd 1*

216B.166 COGENERATING POWER PLANTS.

Subdivision 1. **Finding.** The legislature finds and declares that significant public benefits may be derived from the cogeneration of electrical and thermal energy and that cogenerated district heating may result in improved utilization and conservation of fuel, the substitution of coal for scarce oil and natural gas, the substitution of domestic fuel for imported fuel, and the establishment of a reliable, competitively priced heat source. Since the cost of cogenerated thermal energy is dependent upon the method used to allocate costs between the production of electric and thermal energy at a power plant, and because the method of cost allocation can be a significant factor in determining investment in district heating, it is necessary to develop cost allocation methods rapidly.

Subd. 2. **Definitions.** For the purpose of this section, the following terms shall have the meanings given.

(a) "Cogeneration" means a combined process whereby electrical and thermal energy are simultaneously produced by a public utility power plant.

(b) "District heating" means a process whereby thermal energy is distributed within a community for use as a primary heat source.

(c) "District heating utility" means any person, corporation, or other legal entity which owns and operates a facility for district heating.

Subd. 3. **Allocation.** The methods used to allocate or assign costs between electrical

and thermal energy produced by cogeneration power plants owned by public utilities shall be consistent with the following principles:

(a) The method used shall result in a cost per unit of electricity which is no greater than the cost per unit which would exist if the power plants owned by the public utility had been normally constructed and operated without cogenerating capability;

(b) Costs which the public utility incurs for the exclusive benefit of the district heating utility, including but not limited to backup and peaking facilities, shall be assigned to thermal energy produced by cogeneration;

(c) The methods and procedures may be different for retrofitted than for new cogeneration power plants; and

(d) The methods should encourage cogeneration while preventing subsidization by electric consumers so that both heating and electricity consumers are treated fairly and equitably with respect to the costs and benefits of cogeneration.

History: *1981 c 334 s 9*

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 the matters to be considered and determined. Both the public utility and complainant are entitled to be heard and to be represented by counsel. A hearing under this section is not a contested case under chapter 14.

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 nonresident consumers of the municipally owned utility or 25 such nonresident consumers whichever is less. The hearing of the complaints shall be governed by this section.

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 14.60 shall be applicable to all contested cases before the commission.

Subd. 8. If after making an investigation under subdivision 1 and holding a hearing under this section, the commission finds that all significant factual issues raised have not been resolved to its satisfaction:

(1) for investigations concerning the reasonableness of rates of a public utility, if the commission is unable to resolve the complaint with the utility, the commission may order the utility to initiate a rate proceeding under section 216B.16, provided, however,

that the utility must be allowed at least 120 days after the date of the commission's order to initiate the proceeding; and

(2) for investigations of other matters, the commission shall order that a contested case proceeding be conducted under chapter 14.

History: *1974 c 429 s 17; 1978 c 795 s 4; 1980 c 614 s 113; 1982 c 424 s 130; 1990 c 370 s 4-6*

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 the person's attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys.

History: *1974 c 429 s 23; 1986 c 444*

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 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; 1985 c 248 s 70*

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) "Department" means the department of public service;

(c) "Energy conservation improvement" means the purchase or installation of any device, method or material that increases the efficiency in the 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" includes any device or method which creates, converts, or actively uses energy from renewable sources such as solar, wind, and biomass, providing such device or method conforms with national or state performance and quality standards whenever applicable.

(d) "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.

(e) "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.** The department may by rule require public utilities to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements must be offered to the customers. The required programs must cover a two-year period. The department shall require at least one public utility to establish a pilot program to make investments in and expenditures for energy from renewable resources such as solar, wind, or biomass. The department shall evaluate the program on the basis of cost-effectiveness and the reliability of technologies employed. The rules of the department must provide to the extent practicable for a free choice, by consumers participating in the program, of the device, method, or material constituting the energy conservation improvement and for a free choice of the seller, installer, or contractor of the energy conservation improvement, provided that the device, method, material, seller, installer, or contractor is duly licensed, certified, approved, or qualified, including under the residential conservation services program, where applicable. The department may require a utility to make an energy conservation improvement investment or expenditure whenever the department finds that the improvement will result in energy savings at a total cost to the utility less than the cost to the utility to produce or purchase an equivalent amount of new supply of energy. The department shall nevertheless ensure that every public utility operate one or more programs, under periodic review by the department, that make significant investments in and expenditures for energy conservation improvements. The department shall consider and may require a utility to undertake a program suggested by an outside source, including a political subdivision or a nonprofit or community organization. The department shall ensure that at least half the money spent on residential programs is devoted to programs that directly address the needs of renters and low-income families and individuals unless an insufficient number of appropriate programs are available. For purposes of this section, "low income" means an income less than 185 percent of the federal poverty level. Investments and expenditures made under this subdivision must 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 building envelope unless it is the primary supplier of energy used for either space heating or cooling in the building or unless the department determines that special circumstances, which would unduly restrict the availability of conservation programs, warrant otherwise. A utility, a political subdivision, or a nonprofit or community organization that has suggested a program, or the attorney general acting on behalf of consumers and small business interests, may petition the commission to modify or revoke a department decision to require a program under this subdivision, and the commission may do so if it determines that the program is ineffective, does not adequately address the needs of renters and low-income families and individuals, or is otherwise not in the public interest. The person petitioning for commission review has the burden of proof. The commission shall reject a petition that, on its face, fails to make a reasonable argument that a program is not in the public interest.

The commission shall allow a utility to recover expenses resulting from a conservation improvement program required by the department.

Subd. 3. **Ownership of energy conservation improvements.** Any energy conserva-

tion improvement made to or installed in any building pursuant to this section, except systems owned by the utility and designed to turn off, limit, or vary the delivery of energy, 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; 1981 c 356 s 182,248; 1982 c 561 s 4; 1983 c 179 s 6-8; 1989 c 338 s 2,3*

216B.242 INVERTED RATES.

The commission may initiate a program designed to demonstrate the effect of inverted rates on promoting conservation by the residential customers of natural gas utilities. Any inverted rates ordered by the commission shall present customers with a tailblock price that, to the maximum extent practicable, reflects the replacement cost of gas. Total revenues collected from customers involved in this pilot program may not exceed those that would be collected under a flat rate. The commission may order one public gas utility to implement a pilot program of inverted rates for residential customers and to monitor the effects of these rates on gas consumption, and on costs to residential customers. The program shall include a sufficient number of residential customers to provide statistically significant conclusions regarding the effects and costs of inverted rates. The inverted rate schedules and monitoring plans shall be prepared in consultation with the commissioner of trade and economic development.

History: *1983 c 289 s 115 subd 1; 1983 c 301 s 172; 1987 c 312 art 1 s 26 subd 2*

216B.2421 DEFINITION.

Subdivision 1. **Applicability.** The definition in this section applies to this section and section 216B.243.

Subd. 2. **Large energy facility.** "Large energy facility" means:

(a) any electric power generating plant or combination of plants at a single site with a combined capacity of 80,000 kilowatts or more, or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977 pursuant to Minn. Reg. APC 3(a);

(b) any high voltage transmission line with a capacity of 200 kilovolts or more and with more than 50 miles of its length in Minnesota; or, any high voltage transmission line with a capacity of 300 kilovolts or more with more than 25 miles of its length in Minnesota;

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

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

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

(f) any underground gas storage facility requiring permit pursuant to section 84.57;

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

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

History: *1974 c 307 s 2; 1975 c 170 s 1; 1977 c 381 s 8; Ex1979 c 2 s 11; 1981 c 356 s 248; 1982 c 561 s 1*

216B.243 CERTIFICATE OF NEED.

Subdivision 1. The commission shall, pursuant to chapter 14 and sections 216C.05 to 216C.30 and this section, adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section.

Subd. 2. No large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission pursuant to sections 216C.05 to 216C.30 and this section and consistent with the criteria for assessment of need.

Subd. 3. No proposed large energy facility shall be certified for construction unless the applicant has justified its need. In assessing need, the commission shall evaluate:

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

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

(3) The relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared pursuant to section 216C.18;

(4) Promotional activities which may have given rise to the demand for this facility;

(5) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(6) The effects of the facility in inducing future development;

(7) Possible alternatives for satisfying the energy demand including but not limited to potential for increased efficiency of existing energy generation facilities;

(8) The policies, rules, and regulations of other state and federal agencies and local governments; and

(9) Any feasible combination of energy conservation improvements, required by the commission pursuant to section 216B.241, that can (a) replace part or all of the energy to be provided by the proposed facility, and (b) compete with it economically.

Subd. 4. Any person proposing to construct a large energy facility shall apply for a certificate of need prior to construction of the facility. The application shall be on forms and in a manner established by the commission. In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need. The commission shall designate a commission employee whose duty shall be to facilitate citizen participation in the hearing process.

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

Subd. 6. Any application for a certificate of need shall be accompanied by the fee required pursuant to this subdivision. The maximum fee shall be $50,000, except for an application for an electric power generating plant as defined in section 216B.2421, subdivision 2, clause (a), or a high voltage transmission line as defined in section 216B.2421, subdivision 2, clause (b), for which the maximum fee shall be $100,000. The commission may require an additional fee to recover the costs of any rehearing. The fee for

a rehearing shall not be greater than the actual cost of the rehearing or the maximum fee specified above, whichever is less. The commission shall establish by rule pursuant to chapter 14 and sections 216C.05 to 216C.30 and this section, a schedule of fees based on the output or capacity of the facility and the difficulty of assessment of need. Money collected in this manner shall be credited to the general fund of the state treasury.

Subd. 7. Other state agencies authorized to issue permits for siting, construction or operation of large energy facilities, and those state agencies authorized to participate in matters before the commission involving utility rates and adequacy of utility services, shall present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need. Issuance or denial of certificates of need shall be the sole and exclusive prerogative of the commission and these determinations and certificates shall be binding upon other state departments and agencies, regional, county, and local governments and special purpose government districts except as provided in sections 116C.01 to 116C.08 and 116D.04, subdivision 9.

Subd. 8. This section does not apply to cogeneration or small power production facilities as defined in the Federal Power Act, United States Code, title 16, sections 796(18)(A) and 796(17)(A), and having a combined capacity at a single site of less than 80,000 kilowatts or to plants or facilities for the production of ethanol or fuel alcohol nor in any case where the commission shall determine after being advised by the attorney general that its application has been preempted by federal law.

History: *1974 c 307 s 13; 1975 c 170 s 3,4; 1977 c 381 s 19; Ex1979 c 2 s 32; 1980 c 579 s 10,11; 1980 c 614 s 123; 1981 c 356 s 159,248; 1982 c 424 s 130; 1982 c 561 s 2; 1983 c 289 s 46,115 subd 2; 1984 c 558 art 4 s 10; 1984 c 655 art 1 s 22,23; 1985 c 304 s 1; 1987 c 312 art 1 s 10 subd 1*

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 commis-

sion 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 attendance the fees and mileage now provided for witnesses in civil cases in courts of record.

History: *1974 c 429 s 28; 1986 c 444*

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 the witness 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; 1986 c 444*

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 may tend to incriminate the person or subject the person 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 the person 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 in testimony.

History: *1974 c 429 s 31; 1986 c 444*

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 section 216B.02 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 municipal-

ity. All existing licenses, permits, franchises and other rights acquired by any public utility or municipality prior to April 11, 1974, including the payment of existing franchise fees, shall not be impaired or affected in any respect by the passage of this chapter, except with respect to matters of rate and service regulation, service area assignments, securities and indebtedness that are vested in the jurisdiction of the commission by this chapter. 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 this chapter, 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.016. 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; 1Sp1981 c 1 art 6 s 8; 1982 c 378 s 1*

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 accurately 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 the customer's homestead and the buildings or structures are located within more than one assigned service area, the customer may elect to contract for or purchase the customer's entire electric service requirements from either of the electric utilities providing the customer 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; 1986 c 444*

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 MUNICIPAL SERVICE TERRITORY EXTENSIONS.

Notwithstanding the provisions of sections 216B.38 to 216B.42, whenever a municipality which owns and operates an electric utility (a) extends its corporate boundaries through annexation or consolidation, or (b) determines to extend its service territory within its existing corporate boundaries, the municipality shall thereafter furnish electric service to these areas unless the area is already receiving electric service from an electric utility, in which event, the municipality may purchase the facilities of the electric utility serving the area. The municipality acquiring the facilities shall pay to the electric utility formerly serving the 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 an electric utility located within an area annexed to a municipality which owns and operates an electric utility is proposed to be acquired by the municipality, ratification by the electors is not required.

When property of an electric utility located within the existing corporate boundaries of a municipality that currently operates a municipal electric utility is proposed to be included within the service territory of the municipal electric utility, ratification by the electors is not required.

History: *1974 c 429 s 44; 1983 c 301 s 173*

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.465 VOTER RATIFICATION OF MUNICIPAL PURCHASE, LIMITED APPLICATION.

The provisions of sections 216B.45 and 216B.46 apply only to the purchase of public utility property by a municipality that, prior to the time of the purchase, did not operate a municipal utility providing the type of utility service delivered by the utility property being purchased.

In cases where the municipality operates, prior to the purchase of public utility property, a municipal utility providing the type of utility service delivered by the utility property being purchased, the provisions of section 216B.44 apply and voter ratification is not required.

History: *1983 c 301 s 174*

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 fur-

nishing 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 promulgated pursuant thereto. Notwithstanding any charter or ordinance to the contrary, no city shall have jurisdiction over the securities or indebtedness of a public utility.

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

Subd. 7. When a public utility is engaged in a project pursuant to sections 469.152 to 469.165, notwithstanding the provisions of section 469.155, funds or accounts established in connection with the project or payment of bonds issued for the project may also be invested in investments of the type authorized in section 11A.24, subdivisions 1 to 5.

History: *1974 c 429 s 49; 1982 c 378 s 2; 1983 c 167 s 1; 1985 c 248 s 70; 1987 c 291 s 203*

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. **Appeals.** Any party to a proceeding before the commission or any other person, aggrieved by a decision and order and directly affected by it, may appeal from the decision and order of the commission in accordance with chapter 14.

Subd. 2. [Repealed, 1983 c 247 s 219]

Subd. 3. [Repealed, 1983 c 247 s 219]

Subd. 4. [Repealed, 1983 c 247 s 219]

Subd. 5. [Repealed, 1983 c 247 s 219]

History: *1974 c 429 s 52; 1978 c 674 s 60; 1983 c 247 s 96*

216B.53 SUSPENSION OF COMMISSION ORDERS.

The pendency of proceedings on appeal shall not of itself stay or suspend the opera-

tion 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, pending 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 [Repealed, 1983 c 247 s 219]

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 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; 1986 c 444*

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 under this chapter and section 216A.085, 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, or to intervene before an energy regulatory agency, the public utility shall pay the expenses reasonably attributable to the investigation, appraisal, service, or intervention. 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 quarterly, at least 30 days before the start of each quarter, estimate the total of their expenditures in the performance of their duties relating to public utilities under section 216A.085, and sections 216B.01 to 216B.67, other than amounts chargeable to public utilities under subdivision 2 or 6. 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 the calendar year from retail sales of gas or electric service within the state. The assessment for the second quarter of each fiscal year shall be adjusted to compensate for the amount by which actual expenditures by the commission and department for the preceding fiscal year were more or less than the estimated expenditures previously assessed.

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 and municipal electric utilities 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, practices, and rates. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.026, subdivision 4, shall also be subject to this section.

Subd. 6. **Administrative hearing costs.** Any amounts billed to the commission or the department by the office of administrative hearings for public utility contested case hearings shall be assessed by the commission or the department against the public utility. The assessment shall be paid into the state treasury within 30 days after a bill, which constitutes notice of the assessment and demand for payment of it, has been mailed to the public utility. Money received shall be credited to a special account and is appropriated to the commission or the department for payment to the office of administrative hearings.

History: *1974 c 429 s 62 subds 1-4; 1978 c 674 s 60; 1978 c 795 s 9; 1980 c 614 s 116; 1981 c 357 s 71,72; 1983 c 289 s 105,106; 1990 c 598 s 1*

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. The attorney general shall also bring all actions to collect penalties herein provided.

History: *1974 c 429 s 64; 1980 c 614 s 117; 1986 c 444*

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*