

CHAPTER 216B

PUBLIC UTILITIES

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216B.097 COLD WEATHER RULE, COOPERATIVE AND MUNICIPAL UTILITIES.

Subdivision 1. Application; notice to residential customers. (a) A municipal utility or a cooperative electric association must not disconnect the utility service of a residential customer if the disconnection affects the primary heat source for the residential unit when the following conditions are met:

- (1) the disconnection would occur during the period between October 15 and April 15;
- (2) the customer has declared inability to pay on forms provided by the utility;
- (3) the household income of the customer is less than 185 percent of the federal poverty level, as documented by the customer to the utility; and
- (4) the customer's account is current for the billing period immediately prior to October 15 or the customer has entered into a payment schedule and is reasonably current with payments under the schedule.

(b) A municipal utility or a cooperative electric association must, between August 15 and October 15 of each year, notify all residential customers of the provisions of this section.

Subd. 2. Notice to residential customer facing disconnection. Before disconnecting service to a residential customer during the period between October 15 and April 15, a municipal utility or cooperative electric association must provide the following information to a customer:

- (1) a notice of proposed disconnection;
- (2) a statement explaining the customer's rights and responsibilities;
- (3) a list of local energy assistance providers;
- (4) forms on which to declare inability to pay; and
- (5) a statement explaining available time payment plans and other opportunities to secure continued utility service.

Subd. 3. Restrictions if disconnection necessary. (a) If a residential customer must be involuntarily disconnected between October 15 and April 15 for failure to comply with the provisions of subdivision 1, the disconnection must not occur on a Friday or on the day before a holiday. Further, the disconnection must not occur until at least 20 days after the notice required in subdivision 2 has been mailed to the customer or 15 days after the notice has been personally delivered to the customer.

(b) If a customer does not respond to a disconnection notice, the customer must not be disconnected until the utility investigates whether the residential unit is actually occupied. If the unit is found to be occupied, the utility must immediately inform the occupant of the provisions of this section. If the unit is unoccupied, the utility must give seven days' written notice of the proposed disconnection to the local energy assistance provider before making a disconnection.

(c) If, prior to disconnection, a customer appeals a notice of involuntary disconnection, as provided by the utility's established appeal procedure, the utility must not disconnect until the appeal is resolved.

History: 1991 c 235 art 2 s 1

216B.16 RATE CHANGES; PROCEDURE; HEARING.

[For text of subds 1 to 6a, see M.S.1990]

Subd. 6b. Energy conservation improvements. All investments and expenses of a public utility as defined in section 216B.241, subdivision 1, paragraph (d), 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. 6c. Incentive plans for energy conservation improvements. (a) The commission may order public utilities to develop and submit for commission approval incentive plans that describe the method of recovery and accounting for utility conservation expenditures and savings. In developing the incentive plans the commission shall ensure the effective involvement of interested parties.

In approving incentive plans, the commission shall consider:

- (1) whether the plan is likely to increase utility investment in cost-effective energy conservation;
- (2) whether the plan is compatible with the interest of utility ratepayers and other interested parties;
- (3) whether the plan links the incentive to the utility's performance in achieving cost-effective conservation; and
- (4) whether the plan is in conflict with other provisions of this chapter.

(b) The commission may set rates to encourage the vigorous and effective implementation of utility conservation programs. The commission may:

- (1) increase or decrease any otherwise allowed rate of return on net investment based upon the utility's skill, efforts, and success in conserving energy;
- (2) share between ratepayers and utilities the net savings resulting from energy conservation programs to the extent justified by the utility's skill, efforts, and success in conserving energy; and
- (3) compensate the utility for earnings lost as a result of its conservation programs.

[For text of subds 7 to 11, see M.S.1990]

Subd. 12. Exemption. A municipality may file with the commission a resolution of its governing body requesting exemption from the provisions of this section for a public utility that is under a franchise with the municipality to supply natural, manufactured, or mixed gas and that serves 650 or fewer customers in the municipality as long as the public utility serves no more than a total of 2,000 customers. The commission shall grant an exemption from this section for that portion of a public utility's business that is requested by each municipality it serves. However, the commission shall require the utility to adopt the commission's policies and procedures governing disconnection during cold weather. The utility shall annually submit a copy of its municipally approved rates to the commission.

If a municipality files with the commission a resolution of its governing body rescinding the request for exemption, the commission shall regulate the public utility's business in that municipality under this section.

Subd. 13. Economic and community development. The commission may allow a public utility to recover from ratepayers the expenses incurred for economic and community development.

History: 1991 c 147 s 1; 1991 c 184 s 1; 1991 c 235 art 1 s 1; art 6 s 1

216B.164 COGENERATION AND SMALL POWER PRODUCTION.

[For text of subds 1 to 3, see M.S.1990]

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 including the value of environmental costs avoided by the qualifying facility considered appropriate by the commission. To the extent possible, the commission shall quantify and value all environmental costs associated with each method of electricity generation.

(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.

(d) The commission shall set rates for electricity generated by renewable energy.

[For text of subs 5 to 9, see M.S.1990]

History: 1991 c 315 s 1

216B.241 ENERGY CONSERVATION IMPROVEMENTS.

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

(a) "Commission" means the public utilities commission.

(b) "Commissioner" means the commissioner of public service.

(c) "Department" means the department of public service.

(d) "Energy conservation improvement" means the purchase or installation of a device, method, or material that reduces consumption of or increases 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 a device or method that creates, converts, or actively uses energy from renewable sources such as solar, wind, and biomass, provided that the device or method conforms with national or state performance and quality standards whenever applicable.

(e) "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.

Subd. 1a. **Investments, expenditures, and contributions; regulated utilities.** (a) For purposes of this subdivision and subdivision 2, "public utility" has the meaning given it in section 216B.02, subdivision 4. Each public utility shall spend and invest for

energy conservation improvements under this subdivision and subdivision 2 the following amounts:

(1) for a utility that furnishes gas service, .5 percent of its gross operating revenues from service provided in the state; and

(2) for a utility that furnishes electric service, 1.5 percent of its gross operating revenues from service provided in the state.

(b) The commissioner may require investments or spending greater than the amounts required under this subdivision for a public utility whose most recent advance forecast required under section 116C.54 projects a peak demand deficit of 100 megawatts or greater within five years under mid-range forecast assumptions. A public utility may appeal a decision of the commissioner under this paragraph to the commissioner under subdivision 2. In reviewing a decision of the commissioner under this paragraph, the commissioner shall rescind the decision if it finds that the required investments or spending will:

(1) not result in cost-effective programs; or

(2) otherwise not be in the public interest.

(c) Each utility shall determine what portion of the amount it sets aside for conservation improvement will be used for conservation improvements under subdivision 2 and what portion it will contribute to the energy and conservation account established in subdivision 2a. Contributions must be remitted to the commissioner of public service by February 1 of each year. Nothing in this subdivision prohibits a public utility from spending or investing for energy conservation improvement more than required in this subdivision.

Subd. 1b. Conservation improvement; cooperatives; municipalities. (a) This subdivision applies to:

(1) a cooperative electric association that generates and transmits electricity to associations that provide electricity at retail including a cooperative electric association not located in this state that serves associations or others in the state;

(2) a municipality that provides electric service to retail customers; and

(3) a municipality with gross operating revenues in excess of \$5,000,000 from sales of natural gas to retail customers.

(b) Each cooperative electric association and municipality subject to this subdivision shall spend and invest for energy conservation improvements under this subdivision the following amounts:

(1) for a municipality, .5 percent of its gross operating revenues from the sale of gas and one percent of its gross operating revenues from the sale of electricity not purchased from a public utility governed by subdivision 1a or a cooperative electric association governed by this subdivision; and

(2) for a cooperative electric association, 1.5 percent of its gross operating revenues from service provided in the state.

(c) Each municipality and cooperative association subject to this subdivision shall identify and implement energy conservation improvement spending and investments that are appropriate for the municipality or association. Load management may be used to meet the requirements of this subdivision if it reduces the demand for or increases the efficiency of electric services. A generation and transmission cooperative electric association may include as spending and investment required under this subdivision conservation improvement spending and investment by cooperative electric associations that provide electric service at retail to consumers and that are served by the generation and transmission association. By February 1 of each year, each municipality or cooperative shall report to the commissioner its energy conservation improvement spending and investments with a brief analysis of effectiveness in reducing consumption of electricity or gas. The commissioner shall review each report and make recommendations, where appropriate, to the municipality or association to increase the effectiveness of conservation improvement activities.

(d) As part of its spending for conservation improvement, a municipality or association may contribute to the energy and conservation account. Any amount contributed must be remitted to the commissioner of public service by February 1 of each year.

Subd. 2. Programs. The commissioner 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 commissioner 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 and shall give special consideration and encouragement to programs that bring about significant net savings through the use of energy-efficient lighting. The commissioner 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 commissioner may require a utility to make an energy conservation improvement investment or expenditure whenever the commissioner 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 commissioner shall nevertheless ensure that every public utility operate one or more programs under periodic review by the department. Load management may be used to meet the requirements for energy conservation improvements under this section if it results in a demonstrable reduction in consumption of energy. The commissioner 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. No utility may make an energy conservation improvement under this section to a building envelope unless:

- (1) it is the primary supplier of energy used for either space heating or cooling in the building;
- (2) the commissioner determines that special circumstances, which would unduly restrict the availability of conservation programs, warrant otherwise; or
- (3) the utility has been awarded a contract under subdivision 2a.

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 under this section, and the commission may do so if it determines that the program is not cost-effective, has a long-range negative effect on one or more classes of customers, 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.

Subd. 2a. Energy and conservation account. The commissioner shall deposit money contributed under subdivisions 1a and 1b in the energy and conservation account in the general fund. Money in the account is appropriated to the department for programs designed to meet the energy conservation needs of low-income persons and to make energy conservation improvements in areas not adequately served under subdivision 2. Interest on money in the account accrues to the account. Using information collected under section 216C.02, subdivision 1, paragraph (b), the commissioner shall, to the extent possible, allocate enough money to programs for low-income persons to assure that their needs are being adequately addressed. The commissioner shall request the commissioner of finance to transfer money from the account to the commissioner of jobs and training for an energy conservation program for low-income persons. In establishing programs, the commissioner shall consult political subdivisions and nonprofit

and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income persons. At least one program must address the need for energy conservation improvements in areas in which a high percentage of residents use fuel oil or propane to fuel their source of home heating. The commissioner may contract with a political subdivision, a nonprofit or community organization, a public utility, a municipality, or a cooperative electric association to implement its programs.

Subd. 2b. Recovery of expenses; taxes. The commission shall allow a utility to recover expenses resulting from a conservation improvement program required by the department and contributions to the energy and conservation account, unless the recovery would be inconsistent with a financial incentive proposal approved by the commission. In addition, a utility may file annually, or the public utilities commission may require the utility to file, and the commission may approve, rate schedules containing provisions for the automatic adjustment of charges for utility service in direct relation to changes in the expenses of the utility for real and personal property taxes, fees, and permits, the amounts of which the utility cannot control. A public utility is eligible to file for adjustment for real and personal property taxes, fees, and permits under this subdivision only if, in the year previous to the year in which it files for adjustment, it has spent or invested at least 1.75 percent of its gross revenues from provision of electric service and .6 percent of its gross revenues from provision of gas service for that year for energy conservation improvements under this section.

Subd. 3. Ownership of energy conservation improvements. An energy conservation improvement made to or installed in a building in accordance with this section, except systems owned by the utility and designed to turn off, limit, or vary the delivery of energy, are the exclusive property of the owner of the building except to the extent that the improvement is subjected to a security interest in favor of the utility in case of a loan to the building owner. The utility has no liability for loss, damage or injury caused directly or indirectly by an 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 the 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: 1991 c 235 art 1 s 2

216B.243 CERTIFICATE OF NEED.

[For text of subs 1 and 2, see M.S.1990]

Subd. 3. Showing required for construction. No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise 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 under section 216C.18;

(4) Promotional activities that 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 under section 216B.241, that can (i) replace part or all of the energy to be provided by the proposed facility, and (ii) compete with it economically.

Subd. 3a. **Use of renewable resources.** The commission may not issue a certificate of need under this section for a large energy facility that generates electric power by means of a nonrenewable energy source, or that transmits electric power generated by means of a nonrenewable energy source, unless the applicant for the certificate has demonstrated to the commission's satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source. For purposes of this subdivision, "renewable energy source" includes hydro, wind, solar, and geothermal energy and the use of trees or other vegetation as fuel.

[For text of subs 4 to 8, see M.S.1990]

History: 1991 c 235 art 4 s 1; art 6 s 2

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. 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. The fee may include but is not limited to a sum of money based upon gross operating revenues or gross earnings from its operations in the municipality so long as the public utility shall continue to operate in the municipality, unless upon request of the public utility it is expressly released from the obligation at any time by such municipality. Notwithstanding the definition of "public utility" in section 216B.02, subdivision 4, a municipality may require payment of a fee under this section by a cooperative electric association organized under chapter 308A that furnishes utility services within the municipality. 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: 1991 c 291 art 9 s 4

216B.62 REGULATORY EXPENSES.

[For text of subds 2 to 4, see M.S.1990]

Subd. 5. Assessments against cooperatives and municipals. The commission and department may charge cooperative electric associations and municipal electric utilities their proportionate share of the expenses incurred in the adjudication of service area disputes and 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, are also subject to this section. Neither a cooperative electric association nor a municipal electric utility is liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2. A cooperative electric association or municipal electric utility may object to and appeal bills of the commission and department as provided in subdivision 4.

[For text of subd 6, see M.S.1990]

History: 1991 c 234 s 2