

## CHAPTER 216B

### PUBLIC UTILITIES

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#### 216B.16 RATE CHANGES; PROCEDURE; HEARING.

*[For text of subs 1 and 1a, see M.S.1994]*

**Subd. 2. Suspension of proposed rates; hearing; final determination defined.** (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 this subdivision or subdivision 1a. 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:

(1) an extension of the procedural schedule has been granted under subdivision 1a, in which case the schedule of rates is deemed to have been approved by the commission on the last day of the extended period of suspension; or

(2) a settlement has been submitted to and rejected by the commission and the commission does not make a final determination concerning the schedule of rates, the schedule of rates is deemed to have been approved 60 days after the initial or, if applicable, the extended period of suspension.

(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 a final determination of another previously filed case 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 a final determination in the previously filed case. 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.

*[For text of subs 3 to 7, see M.S.1994]*

**Subd. 7a. Performance-based gas purchasing adjustments.** The commission may permit a public utility to file rate schedules providing for annual adjustments reflecting rewards or penalties provided for in performance-based gas purchasing plans approved by the commission under section 216B.167.

*[For text of subs 8 to 11, see M.S.1994]*

**Subd. 12. Exemption for small gas utility franchise.** (a) 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.

(b) 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. Furthermore, the commission shall also grant the public utility an exemption from this section for any service provided outside of a municipality's border that is considered by the commission to be incidental. The public utility shall file with the commission and the department all initial and subsequent changes in rates, tariffs, and contracts for service outside the municipality at least 30 days in advance of implementation.

(c) 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.

(d) In all cases covered by this subdivision in which an exemption for service outside of a municipality is granted, the commission may initiate an investigation under section 216B.17, on its own motion or upon complaint from a customer.

(e) 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. 12a. Exemption for small electric utility franchise.** (a) An electric utility, operating as such in a bordering state and having fewer than 200 customers in Minnesota, is exempt from this section if the utility:

(1) charges Minnesota customers the same rates as those charged to customers in the bordering state;

(2) provides 60-day notice to the commission of rate increases for its Minnesota customers;

(3) provides individual, written notice of rate increases to its Minnesota customers;

(4) provides the commission with schedules of rates and tariffs charged in the bordering state and revenues by class under the former and proposed rates; and

(5) maintains an up-to-date tariff book with the department.

(b) The commission may initiate an investigation under section 216B.17, on its own motion or upon customer complaint with respect to the utility's rates and practices in Minnesota.

*[For text of subs 13 to 15, see M.S.1994]*

**History:** 1995 c 17 s 2; 1995 c 125 s 1; 1995 c 224 s 74,75

## **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 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; the iron range resources and rehabilitation board established under section 298.22; 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. Area development rate.** The commission may allow gas or electric public utilities to offer area development rates. 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 rate.** An area development rate offered under this section must:

(1) be offered for a specified length of time to be determined by the commission;

(2) be offered as a supplement to other development incentives offered by the authority or 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) must not be from residential customers. A utility within a general rate case, may seek recovery of the difference in revenue collected under the area development plan rate and what would have been collected under the standard tariff.

**Subd. 4.** [Repealed by amendment, 1995 c 9 s 1]

**History:** 1990 c 370 s 7; 1995 c 9 s 1,2

## 216B.162 COMPETITIVE RATES FOR ELECTRIC UTILITIES.

*[For text of subs 1 to 8, see M.S.1994]*

**Subd. 9.** [Repealed, 1995 c 6 s 2]

**History:** 1990 c 370 s 7; 1995 c 6 s 1

## 216B.167 PERFORMANCE-BASED GAS PURCHASING PLANS.

**Subdivision 1. Performance-based gas purchasing plans.** A public utility that furnishes natural gas may petition the commission for approval of a performance-based gas purchasing plan under this section. The commission may approve a plan if it finds that:

(1) the plan provides incentives for the utility to achieve lower natural gas costs than would have been achieved in the absence of the plan, as measured by the benchmarks established in clause (3), by linking financial rewards and penalties to natural gas costs;

(2) the potential benefits of the plan apply, at a minimum, to each customer class purchasing firm natural gas service from the utility;

(3) the plan establishes one or more benchmarks against which actual natural gas costs will be measured and the benchmarks reflect relevant market conditions and represent reasonable and achievable natural gas costs in Minnesota for the term of the plan; and

(4) the plan provides that the utility cannot curtail or interrupt service to any customer class purchasing firm natural gas service during the term of the plan except for causes outside the reasonable control of the utility or causes not directly related to the gas purchasing practices of the utility.

**Subd. 2. Sharing mechanism.** A plan must include a mechanism through which the utility shares with its customers the difference between actual natural gas costs and the plan's benchmark costs during the term of the plan. A plan must provide details of the sharing mechanism and may include an allowed level of costs above and below the benchmark before any sharing is to take place. The commission must determine an appropriate percentage of the difference between the benchmark and actual natural gas costs to be shared between customers and the utility. The sharing mechanism shall be implemented annually under section 216B.16, subdivision 7a. Financial rewards or penalties under the plan shall not be considered in the determination of the utility's revenue requirements in a general rate case pursuant to section 216B.16.

**Subd. 3. Reliability of service.** A plan must allow for the imposition of penalties if the standard for reliability of service established in subdivision 1, clause (4), is not met.

**Subd. 4. Plan evaluation.** A plan must include an evaluation process and mechanism that is reasonable and capable of supporting a full review of the utility's performance under the plan. The commission shall evaluate the various customer and utility impacts of a plan based on this evaluation process and mechanism, including the impact on customer bills over time, the impact on utility revenues, and the effectiveness of the plan in meeting the purposes contained in subdivision 1. The evaluation must occur within a reasonable time following the end of the plan.

**Subd. 5. Annual reporting.** The utility shall provide an annual report to the commission documenting its performance in meeting the requirements of the plan. Upon review of this report, the commission shall determine and approve rewards or penalties as provided in the plan.

**Subd. 6. Adoption.** A plan may be filed and approved within a miscellaneous tariff filing pursuant to section 216B.16. The commission may approve, reject, or modify the plan in a manner which meets the requirements of this section. An approved plan is effective for a period of not less than two years unless:

(1) the plan is withdrawn by the utility within 30 days of a final appealable order approving the plan; or

(2) the commission, after notice and hearing, rescinds or amends its order approving the plan.

**Subd. 7. General evaluation.** The commission must evaluate the effectiveness of all plans approved under this section and submit its findings to the legislature by January 1, 1999.

**Subd. 8. Expiration.** This section expires January 1, 2000. All plans must expire no later than December 31, 1999.

**History:** 1995 c 17 s 1

## 216B.2424 BIOMASS POWER MANDATE.

A public utility, as defined in section 216B.02, subdivision 4, that operates a nuclear-powered electric generating plant within this state must construct and operate, purchase, or contract to construct and operate (1) by December 31, 1998, 50 megawatts of electric energy installed capacity generated by farm grown closed-loop biomass scheduled to be operational by December 31, 2001; and (2) by December 31, 1998, an additional 75 megawatts of installed capacity so generated scheduled to be operational by December 31, 2002. Of the total 125 megawatts of biomass electric energy installed capacity required under this section, no more than 75 megawatts may be provided by a single project. Of the 75 megawatts of bio-

mass electric energy installed capacity required under clause (2), no more than 25 megawatts of this capacity may be provided by a St. Paul district heating and cooling system cogeneration facility utilizing waste wood as a primary fuel source. The public utility must accept and consider on an equal basis with other proposals a proposal to satisfy the requirements of this section that includes a project that exceeds the megawatt capacity requirements of either clause (1) or (2) and that proposes to sell the excess capacity to the public utility or to other purchasers.

**History:** 1995 c 224 s 76

**216B.27 REHEARINGS; CONDITION PRECEDENT TO JUDICIAL REVIEW.**

*[For text of subs 1 to 3, see M.S.1994]*

Subd. 4. **Deadline to grant application.** Any application for a rehearing not granted within 60 days from the date of filing thereof, shall be deemed denied.

*[For text of subd 5, see M.S.1994]*

**History:** 1995 c 224 s 77