

CHAPTER 216B

PUBLIC UTILITIES

<p>216B.05 Filing schedules, rules, and service agreements.</p> <p>216B.16 Rate changes; procedure; hearing.</p> <p>216B.162 Competitive rates for electric utilities.</p> <p>216B.1645 Power purchase contracts or investments.</p>	<p>216B.1675 Performance regulation plan for gas utility services.</p> <p>216B.2422 Resource planning; renewable energy.</p> <p>216B.2423 Wind power mandate.</p>
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216B.05 FILING SCHEDULES, RULES, AND SERVICE AGREEMENTS.

Subdivision 1. **Public rate filings.** 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. **Schedules and rules filings.** Every public utility shall file with and as a part of the filings under subdivision 1, 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; provided that contracts and agreements for electric service must be filed as required by subdivision 2a.

Subd. 2a. **Electric service contracts.** A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval by the commission pursuant to the commission's rules of practice. Contracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes.

Subd. 3. **Public inspection.** Every public utility shall keep copies of the filings under subdivisions 1, 2, and 2a open to public inspection under rules as the commission may prescribe.

History: 1997 c 191 art 1 s 1

216B.16 RATE CHANGES; PROCEDURE; HEARING.

[For text of subs 1 to 6c, see M.S.1996]

Subd. 6d. **Wind energy; property tax.** An owner of a wind energy conversion facility which is required to pay property taxes under section 272.02, subdivision 1, paragraph (21), or a public utility regulated by the public utilities commission which purchases the wind generated electricity may petition the commission to include in any power purchase agreement between the owner of the facility and the public utility the amount of property taxes paid by the owner of the facility. The public utilities commission shall require the public utility to amend the power purchase agreement to include the property taxes paid by the owner of the facility in the price paid by the utility for wind generated electricity if the commission finds:

(a) the owner of the facility has paid the property taxes required by this subdivision;

(b) the power purchase agreement between the public utility and the owner does not already require the utility to pay the amount of property taxes the owner has paid under this subdivision; and

(c) the commission has approved a rate schedule containing provisions for the automatic adjustment of charges for utility service in direct relation to the charges ordered by the commission under section 272.02, subdivision 1, paragraph (21).

[For text of subs 7 to 15, see M.S.1996]

Subd. 16. **Performance regulation plan tariffs.** A public utility providing natural gas services that has a performance regulation plan approved pursuant to section 216B.1675

shall file tariff provisions incorporating the provisions of that plan. Changes in the cost recovery of natural gas supplies must not be included within the plan.

History: 1997 c 25 s 1; 1997 c 231 art 2 s 5

NOTE: Subdivision 16, as added by Laws 1997, chapter 25, section 1, is effective on August 1, 1997, and expires January 1, 2006. Laws 1997, chapter 25, section 3.

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.

(e) "Discretionary rate reduction" means a specific reduction to an existing rate, offered voluntarily by the utility to an individual customer or group of customers and approved by the commission in accordance with subdivisions 10 and 11.

[For text of subs 2 and 3, see M.S.1996]

Subd. 4. **Rates and terms of 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 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;

(4) 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;

(5) 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

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

[For text of subs 5 to 8, see M.S.1996]

Subd. 10. **Discretionary rate reductions permitted.** Notwithstanding sections 216B.03, 216B.06, 216B.07, and 216B.16, a public utility whose rates are regulated under this chapter may, at its discretion, offer a reduced rate for tariffed electric services to eligible customers. The commission may approve a discretionary rate reduction provided that:

(1) the reduction is offered to customers who are located within the exclusive service territory of the public utility that offers discretionary rate reductions or to potential customers who are not customers of a Minnesota electric utility, as defined in section 216B.38, but who propose to be located within the exclusive service territory of the public utility;

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

(3) the reduced rate recovers 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;

(4) in the event the commission has approved unbundled rates, the reduction is not offered for any unbundled service other than generation, unless the unbundled service is available to the customer from a competitive supplier;

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

(6) the reduced rate does not compete with a natural gas service provided by a natural gas utility and regulated by the commission.

Subd. 11. Commission determination. (a) Proposals for discretionary rate reductions offered by utilities must be filed with the commission, with copies of the filing served upon the department of public service and the office of attorney general at the same time it is served upon the commission. The commission shall review the proposals according to procedures developed under section 216B.05, subdivision 2a. The commission shall not approve discretionary rate reductions offered by public utilities that do not have an accepted resource plan on file with the commission. The commission shall not approve discretionary rate reductions unless the utility has made the customer aware of all cost-effective opportunities for energy efficiency improvements offered by the utility.

(b) Public utilities that provide service under discretionary rate reductions shall not, through increased revenue requirements or through prospective rate design changes, recover any revenues foregone due to the discretionary rate reductions, nor shall the commission grant such recovery.

History: 1997 c 191 art 1 s 2-5

216B.1645 POWER PURCHASE CONTRACTS OR INVESTMENTS.

Upon the petition of a public utility, the public utilities commission shall approve or disapprove power purchase contracts or investments entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.2423 and 216B.2424. The expenses incurred in accordance with the contract and the reasonable investments made by a public utility with the approval of the commission shall be included by the commission in its determination of just and reasonable rates. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission.

History: 1997 c 176 s 1

216B.1675 PERFORMANCE REGULATION PLAN FOR GAS UTILITY SERVICES.

Subdivision 1. Purpose. Performance-based regulation plans for public utilities offering natural gas services are authorized in order to provide quality service at rates that can reasonably and reliably be expected to be lower than rates would be under current regulation and to reduce the cost of regulation. Performance-based regulation plans are intended to provide the utility with increased earnings for efficient performance and decreased earnings for inefficient performance.

Subd. 2. Petition. A public utility that furnishes natural gas service may petition and file with the commission for its approval a performance regulation plan pursuant to this section. The plan applies to the utility's rates for providing natural gas distribution service, excluding the portion of the rates recovering the cost of natural gas supplies. If adopted, the plan must apply to all of the utility's customers, except that nothing in this section requires the utility to adjust the rates collected from customers receiving service under tariffs authorized by sections 216B.16, subdivision 15, and 216B.163. A petition may be filed:

(1) as part of a general rate filing pursuant to section 216B.16, in which case the time provided for the commission to suspend rates and make a final determination shall be extended by two months; or

(2) as a miscellaneous tariff filing pursuant to section 216B.16, in which case the commission shall, within 120 days of the date of the filing, determine whether the utility's current

rates are reasonable based on financial information for the most recent calendar year, amended to reflect appropriate regulatory adjustments. If the commission cannot resolve all material issues concerning the reasonableness of the utility's current rates to its satisfaction, it shall dismiss the filing. If the filing is not dismissed, the commission shall issue its decision on the plan within ten months from the date of the filing. The rates at the beginning of the plan shall be the same as the rates on file with the commission prior to the filing.

Subd. 3. Plan contents. The commission may approve a performance regulation plan for natural gas distribution services upon finding that the plan:

(1) contains a benchmark or measure of gas distribution costs that is a reasonable and reliable predictor of the utility's rates for gas distribution service under cost-of-service regulation;

(2) ensures that rates for gas distribution services to customers under the plan will be materially lower than the rates would be under cost-of-service regulation as predicted by the benchmark in clause (1);

(3) links the utility's earnings to its performance by permitting higher utility earnings than under cost-of-service regulation only when the utility's performance is more efficient than the benchmark;

(4) can be reasonably and reliably expected to offer lower administrative costs than would otherwise be experienced under cost-of-service regulation;

(5) contains a reasonable limit on utility earnings;

(6) is compatible with the development of increased competition in the natural gas industry;

(7) has adequate provisions to prevent the degradation of service quality; and

(8) provides for gathering of relevant data and evaluation of the plan's effect on rates, service quality, utility earnings, competition in providing natural gas, and regulatory costs.

Subd. 4. Rate changes. The initial rate adjustment under the plan may not be implemented for a minimum of 18 months following the final determination by the commission on the plan. The plan shall provide a methodology and procedures for changing rates thereafter not more frequently than on an annual basis. The commission may allow the utility to change rates to reflect material changes in cost due to compliance with government mandates provided that the cost is one that the commission would otherwise allow to be recovered in rates. Increases or decreases in revenues under the plan shall be applied on an equal percentage basis to each customer class, excluding the portion of the rate recovering the cost of natural gas supplies. Miscellaneous rate changes may be approved outside the operation of the plan.

Subd. 5. Acceptance of petition for full review. Interested parties have, unless the commission otherwise orders, 45 days from the date a petition containing a proposed plan is filed to submit comments on whether the plan, as proposed, addresses each of the requirements of this section sufficiently to merit further consideration. If the commission does not dismiss the petition proposing a plan as insufficient within 120 days from the date of the filing, the petition shall be deemed accepted for filing. A petition accepted for filing shall not be presumed accepted for final adoption.

Subd. 6. Plan administration. A plan must require the filing of information needed to administer the plan.

Subd. 7. Notice to customers. The petitioning utility must provide notice of the proposed plan to its customers and to the governing body of each municipality and county in the area affected, along with a summary description of the plan provisions and a notice of the dates, times, and locations of any public meetings scheduled by the commission.

Subd. 8. Plan review; hearing; discovery. In reviewing a proposed plan, the commission shall:

(1) conduct public meetings that it considers appropriate; and

(2) grant discovery, as appropriate.

Subd. 9. Commission findings. The commission shall issue findings concerning the appropriateness of the proposed plan. The commission may approve, reject, or modify the plan in a manner which meets the requirements of this section. An approved or modified plan

becomes effective unless the plan is withdrawn by the utility within 30 days of a final appealable order. If the utility withdraws an approved or modified plan, all of the administrative costs related to the plan that are charged by the commission or the department of public service to the utility may not be recovered from ratepayers in current or subsequent rates. A utility that withdraws an approved or modified plan may not file another plan under this section for a period of one year following the withdrawal of the plan.

Subd. 10. Plan term; renewal. The plan shall specify its term, which shall not be less than three years. Not less than six months before the completion of the term of an approved plan, the commission shall, at the request of the utility, commence a review of the plan to determine whether to renew the plan for an additional term. The commission may approve, reject, or modify the renewal plan in a manner that meets the requirements of this section. A plan approved or modified under this subdivision becomes effective unless the plan is withdrawn by the utility within 30 days of a final appealable order.

Subd. 11. Plan termination. On its own motion or upon the petition of any party other than the utility, the commission may initiate an investigation to determine whether to terminate the plan. The commission shall issue findings on the investigation within 120 days. If the commission finds that the plan has failed to meet the requirements of this section and is inconsistent with the public interest, it shall terminate the plan and may order the utility to initiate any proceedings necessary to correct the failure of the plan, including but not limited to, filing a general rate proceeding under section 216B.16. The utility must be allowed at least 120 days after the date of the commission's order to initiate the general rate proceeding.

Subd. 12. 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 and service quality, over time, the impact on utility revenues, and the effectiveness of the plan in meeting the purposes of this section. The evaluation must occur within a reasonable time following the end of the plan.

Subd. 13. General evaluation. The commission shall evaluate the effectiveness of all plans approved under this section and submit its findings to the legislature by January 1, 2005.

History: 1997 c 25 s 2

NOTE: This section, as added by Laws 1997, chapter 25, section 2, is effective on August 1, 1997, and expires January 1, 2006. Laws 1997, chapter 25, section 3.

216B.2422 RESOURCE PLANNING; RENEWABLE ENERGY.

[For text of subs 1 to 4, see M.S.1996]

Subd. 5. Bidding; exemption from certificate of need proceeding. (a) A utility may select resources to meet its projected energy demand through a bidding process approved or established by the commission. A utility shall use the environmental cost estimates determined under subdivision 3 in evaluating bids submitted in a process established under this subdivision.

(b) Notwithstanding any other provision of this section, if an electric power generating plant, as described in section 216B.2421, subdivision 2, paragraph (a), is selected in a bidding process approved or established by the commission, a certificate of need proceeding under section 216B.243 is not required.

(c) A certificate of need proceeding is also not required for an electric power generating plant that has been selected in a bidding process approved or established by the commission, or such other selection process approved by the commission, to satisfy, in whole or in part, the wind power mandate of section 216B.2423 or the biomass mandate of section 216B.2424.

[For text of subd 6, see M.S.1996]

History: 1997 c 176 s 2; 1997 c 198 s 1

216B.2423 WIND POWER MANDATE.

[For text of subs 1 and 2, see M.S.1996]

Subd. 3. Standard contracts for wind energy conversion systems. The public utilities commission shall require a public utility subject to subdivision 1 to develop and file in a form acceptable to the commission by October 1, 1997, a standard form contract for the purchase of electricity from wind conversion systems with installed capacity of two megawatts and less. For purposes of applying the two megawatts limit, the installed capacity sold to the public utility from a single seller or affiliated group of sellers shall be cumulated. The standard contract shall include all the terms and conditions for purchasing wind-generated power by the utility, except for price and any other specific terms necessary to ensure system reliability and safety, which shall be separately negotiable.

History: 1997 c 216 s 123