

## CHAPTER 216B

### PUBLIC UTILITIES

|  |   |
|--|---|
| <p>216B.16 Rate change; procedure; hearing.</p> <p>216B.1645 Power purchase contract or investment.</p> <p>216B.167 Performance-based gas purchasing plan.</p> | <p>216B.241 Energy conservation improvement.</p> <p>216B.2423 Wind power mandate.</p> |
|--|---|

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

*[For text of subs 1 to 6a, see M.S.1998]*

Subd. 6b. **Energy conservation improvement.** (a) Except as otherwise provided in this subdivision, all investments and expenses of a public utility as defined in section 216B.241, subdivision 1, paragraph (e), 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.

(b) After December 31, 1999, investments and expenses for energy conservation improvements shall not be included by the commission in the determination of just and reasonable electric and gas rates for retail electric and gas service provided to large electric customer facilities that have been exempted by the commissioner of the department of public service pursuant to section 216B.241, subdivision 1a, paragraph (b). However, no public utility shall be prevented from recovering its investment in energy conservation improvements from all customers that were made on or before December 31, 1999, in compliance with the requirements of section 216B.241.

(c) The commission may permit a public utility to file rate schedules providing for annual recovery of the costs of energy conservation improvements. These rate schedules may be applicable to less than all the customers in a class of retail customers if necessary to reflect the differing minimum spending requirements of section 216B.241, subdivision 1a. After December 31, 1999, the commission shall allow a public utility, without requiring a general rate filing under this section, to reduce the electric and gas rates applicable to large electric customer facilities that have been exempted by the commissioner of the department of public service pursuant to section 216B.241, subdivision 1a, paragraph (b), by an amount that reflects the elimination of energy conservation improvement investments or expenditures for those facilities required on or before December 31, 1999. In the event that the commission has set electric or gas rates based on the use of an accounting methodology that results in the cost of conservation improvements being recovered from utility customers over a period of years, the rate reduction may occur in a series of steps to coincide with the recovery of balances due to the utility for conservation improvements made by the utility on or before December 31, 1999.

*[For text of subd 6c, see M.S.1998]*

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 22, 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 22.

*[For text of subs 7 to 16, see M.S.1998]*

**History:** 1999 c 140 s 1

#### **216B.165 POWER PURCHASE CONTRACT OR INVESTMENT.**

Upon the petition of a public utility, the public utilities commission shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.2423 and 216B.2424, or to develop renewable energy sources from the account required in section 116C.779. The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section 116C.779 shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. 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. Nothing in this section shall be construed to determine the manner or extent to which revenues derived from other generation facilities of the utility may be considered in determining the recovery of the approved cost or expenses associated with the mandated contracts, investments, or expenditures in the event there is retail competition for electric energy.

**History:** 1999 c 200 s 2

#### **216B.167 PERFORMANCE-BASED GAS PURCHASING PLAN.**

*[For text of subs 1 to 6, see M.S.1998]*

Subd. 7. [Repealed, 1999 c 21 s 1]

Subd. 8. [Repealed, 1999 c 21 s 1]

#### **216B.241 ENERGY CONSERVATION IMPROVEMENT.**

Subdivision 1. **Definitions.** For purposes of this section and section 216B.16, subdivision 6b, 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) "Customer facility" means all buildings, structures, equipment, and installations at a single site.

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

(e) "Energy conservation improvement" means the purchase or installation of a device, method, material, or project that:

(1) reduces consumption of or increases efficiency in the use of electricity or natural gas, including but not limited to insulation and ventilation, storm or thermal doors or windows, caulking and weatherstripping, furnace efficiency modifications, thermostat or lighting controls, awnings, or systems to turn off or vary the delivery of energy;

(2) 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;

(3) seeks to provide energy savings through reclamation or recycling and that is used as part of the infrastructure of an electric generation, transmission, or distribution system within the state or a natural gas distribution system within the state; or

(4) provides research or development of new means of increasing energy efficiency or conserving energy or research or development of improvement of existing means of increasing energy efficiency or conserving energy.

(f) "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.

(g) "Large electric customer facility" means a customer facility that imposes a peak electrical demand on an electric utility's system of not less than 20,000 kilowatts, measured in the same way as the utility that serves the customer facility measures electrical demand for billing purposes, and for which electric services are provided at retail on a single bill by a utility operating in the state.

Subd. 1a. **Investment, expenditure, and contribution; public utility.** (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, 0.5 percent of its gross operating revenues from service provided in the state;

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

(3) for a utility that furnishes electric service and that operates a nuclear-powered electric generating plant within the state, two percent of its gross operating revenues from service provided in the state.

For purposes of this paragraph (a), "gross operating revenues" do not include revenues from large electric customer facilities exempted by the commissioner of the department of public service pursuant to paragraph (b).

(b) The owner of a large electric customer facility may petition the commissioner of the department of public service to exempt both electric and gas utilities serving the large energy customer facility from the investment and expenditure requirements of paragraph (a) with respect to retail revenues attributable to the facility. At a minimum, the petition must be supported by evidence relating to competitive or economic pressures on the customer and a showing by the customer of reasonable efforts to identify, evaluate, and implement cost-effective conservation improvements at the facility. If a petition is filed on or before October 1 of any year, the order of the commissioner to exempt revenues attributable to the facility can be effective no earlier than January 1 of the following year. The commissioner shall not grant an exemption if the commissioner determines that granting the exemption is contrary to the public interest. The commissioner may, after investigation, rescind any exemption granted under this paragraph upon a determination that cost-effective energy conservation improvements are available at the large electric customer facility. For the purposes of this paragraph, "cost-effective" means that the projected total cost of the energy conservation improvement at the large electric customer facility is less than the projected present value of the energy and demand savings resulting from the energy conservation improvement. For the purposes of investigations by the commissioner under this paragraph, the owner of any large electric customer facility shall, upon request, provide the commissioner with updated information comparable to that originally supplied in or with the owner's original petition under this paragraph.

(c) 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 216B.2422 or 216C.17 projects a peak demand deficit of 100 megawatts or greater within five years under mid-range forecast assumptions.

(d) A public utility or owner of a large electric customer facility may appeal a decision of the commissioner under paragraph (b) or (c), to the commission under subdivision 2. In reviewing a decision of the commissioner under paragraph (b) or (c), the commission shall rescind the decision if it finds that the required investments or spending will:

(1) not result in cost-effective energy conservation improvements; or

(2) otherwise not be in the public interest.

(e) 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. A public utility may propose to the commissioner to designate that all or a portion of funds contributed to the account established in subdivision 2a be used for research and development projects. 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 by cooperative association or municipality.**

(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, 0.5 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, excluding gross operating revenues from electric and gas service provided in the state to large electric customer facilities; and

(2) for a cooperative electric association, 1.5 percent of its gross operating revenues from service provided in the state, excluding gross operating revenues from service provided in the state to large electric customer facilities indirectly through a distribution cooperative electric association.

(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, except that a municipality or association may not spend or invest for energy conservation improvements that directly benefit a large electric customer facility. Each municipality and cooperative electric association subject to this subdivision may spend and invest annually up to 15 percent of the total amount required to be spent and invested on energy conservation improvements under this subdivision on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the municipality or cooperative electric 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.

(d) 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. The commissioner shall also review each report for whether a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons unless an insufficient number of appropriate programs are available. For the purposes of this subdivision and subdivision 2, "low-income" means an income of less than 185 percent of the federal poverty level.

(e) As part of its spending for conservation improvement, a municipality or association may contribute to the energy and conservation account. A municipality or association may propose to the commissioner to designate that all or a portion of funds contributed to the ac-

count be used for research and development projects. Any amount contributed must be remitted to the commissioner of public service by February 1 of each year.

*[For text of subd 1c, see M.S.1998]*

Subd. 2. **Programs.** (a) 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, material, or project 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, or project seller, installer, or contractor is duly licensed, certified, approved, or qualified, including under the residential conservation services program, where applicable.

(b) 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. Each public utility subject to subdivision 1a may spend and invest annually up to 15 percent of the total amount required to be spent and invested on energy conservation improvements under this section by the utility on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the public utility. A public utility may not spend for or invest in energy conservation improvements that directly benefit a large electric customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b). 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.

(c) 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, that would unduly restrict the availability of conservation programs, warrant otherwise; or

(3) the utility has been awarded a contract under subdivision 2a.

(d) The commissioner shall ensure that a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons unless an insufficient number of appropriate programs are available.

(e) A utility, a political subdivision, or a nonprofit or community organization that has suggested a program, the attorney general acting on behalf of consumers and small business interests, or a utility customer that has suggested a program and is not represented by the attorney general under section 8.33 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, does not adequately address the residential conservation improvement needs of low-income persons, 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 must 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, including research and development projects included in the definition of energy conservation improvement in subdivision 1. Interest on money in the account accrues to the account. Using information collected under section 216C.02, subdivision 1, paragraph (b), the commissioner must, to the extent possible, allocate enough money to programs for low-income persons to assure that their needs are being adequately addressed. The commissioner must request the commissioner of finance to transfer money from the account to the commissioner of children, families, and learning for an energy conservation program for low-income persons. In establishing programs, the commissioner must 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. The commissioner may provide grants to any person to conduct research and development projects in accordance with this section.

Subd. 2b. **Recovery of expenses.** 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, excluding gross operating revenues from electric service provided in the state to large electric customer facilities for which the commissioner of public service has issued an exemption under subdivision 1a, paragraph (b), and 0.6 percent of its gross revenues from provision of gas service, excluding gross operating revenues from gas services provided in the state to large electric customer facilities for which the commissioner of public service has issued an exemption under subdivision 1a, paragraph (b), for that year for energy conservation improvements under this section.

*[For text of subs 3 to 5, see M.S.1998]*

**History:** 1999 c 140 s.2-7

## 216B.2423 WIND POWER MANDATE.

*[For text of subs 1 and 2, see M.S.1998]*

Subd. 2a. **Site preference.** The public utilities commission shall ensure that a utility subject to the requirements of subdivision 1, clause (2), shall implement that clause with a preference for wind energy conversion systems within the state. This preference shall not prevent the utility from constructing or contracting to construct wind energy conversion systems outside the state, if the public utilities commission determines that selection of a facility within the state conflicts with the requirements of section 216B.03.

*[For text of subd 3, see M.S.1998]*

**History:** 1999 c.200.s 3