CHAPTER 216B

PUBLIC UTILITIES

216B.091 MONTHLY REPORTS.

(a) Each public utility must report the following data on residential customers to the commission monthly, in a format determined by the commission:

(1) number of customers;

(2) number and total amount of accounts past due;

(3) average customer past due amount;

(4) total revenue received from the low-income home energy assistance program and other sources contributing to the bills of low-income persons;

(5) average monthly bill;

(6) total sales revenue;

(7) total write-offs due to uncollectible bills;

(8) number of disconnection notices mailed;

(9) number of accounts disconnected for nonpayment;

(10) number of accounts reconnected to service; and

(11) number of accounts that remain disconnected, grouped by the duration of disconnection, as follows:

(i) 1-30 days;

(ii) 31-60 days; and

(iii) more than 60 days.

(b) Monthly reports for October through April must also include the following data:

(1) number of cold weather protection requests;

(2) number of payment arrangement requests received and granted;

(3) number of right to appeal notices mailed to customers;

(4) number of reconnect request appeals withdrawn;

(5) number of occupied heat-affected accounts disconnected for 24 hours or more for electric and natural gas service separately;

(6) number of occupied non-heat-affected accounts disconnected for 24 hours or more for electric and gas service separately;

(7) number of customers granted cold weather rule protection;

(8) number of customers disconnected who did not request cold weather rule protection; and

(9) number of customers disconnected who requested cold weather rule protection.

(c) The data reported under paragraphs (a) and (b) is presumed to be accurate upon submission and must be made available through the commission's electronic filing system.

History: *2007 c 57 art 2 s 11*

216B.0951 PROPANE PREPURCHASE PROGRAM.

Subdivision 1. **Establishment.** The commissioner of commerce shall operate, or contract to operate, a propane fuel prepurchase fuel program. The commissioner may contract at any time of the year to purchase the lesser of one–third of the liquid propane fuel consumed by low–income home energy assistance program recipients during the previous heating season or the amount that can be purchased with available funds. The propane fuel prepurchase program must be available statewide through each local agency that administers the energy assistance program. The commissioner may decide to limit or not engage in prepurchasing if the commissioner finds that there is a reasonable likelihood that prepurchasing will not provide fuel–cost savings.

Subd. 2. **Hedge account.** The commissioner may establish a hedge account with realized program savings due to prepurchasing. The account must be used to compensate program recipients an amount up to the difference in cost for fuel provided to the recipient if winter–delivered fuel prices are lower than the prepurchase or summer–fill price. No more than ten percent of the aggregate prepurchase program savings may be used to establish the hedge account.

Subd. 3. **Report.** The Department of Commerce shall issue a report by June 30, 2008, made available electronically on its Web site and in print upon request, that contains the following information:

(1) the cost per gallon of prepurchased fuel;

(2) the total gallons of fuel prepurchased;

(3) the average cost of propane each month between October and the following April;

(4) the number of energy assistance program households receiving prepurchased fuel; and

(5) the average savings accruing or benefit increase provided to energy assistance households.

History: *2007 c 57 art 2 s 12*

216B.096 COLD WEATHER RULE; PUBLIC UTILITY.

Subdivision 1. **Scope.** This section applies only to residential customers of a utility.

Subd. 2. **Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "Cold weather period" means the period from October 15 through April 15 of the following year.

(c) "Customer" means a residential customer of a utility.

(d) "Disconnection" means the involuntary loss of utility heating service as a result of a physical act by a utility to discontinue service. Disconnection includes installation of a service or load limiter or any device that limits or interrupts utility service in any way.

(e) "Household income" means the combined income, as defined in section 290A.03, subdivision 3, of all residents of the customer's household, computed on an annual basis. Household income does not include any amount received for energy assistance.

(f) "Reasonably timely payment" means payment within five working days of agreed–upon due dates.

(g) "Reconnection" means the restoration of utility heating service after it has been disconnected.

(h) "Summary of rights and responsibilities" means a commission–approved notice that contains, at a minimum, the following:

(1) an explanation of the provisions of subdivision 5;

(2) an explanation of no–cost and low–cost methods to reduce the consumption of energy;

(3) a third–party notice;

(4) ways to avoid disconnection;

(5) information regarding payment agreements;

(6) an explanation of the customer's right to appeal a determination of income by the utility and the right to appeal if the utility and the customer cannot arrive at a mutually acceptable payment agreement; and

(7) a list of names and telephone numbers for county and local energy assistance and weatherization providers in each county served by the utility.

(i) "Third–party notice" means a commission–approved notice containing, at a minimum, the following information:

(1) a statement that the utility will send a copy of any future notice of proposed disconnection of utility heating service to a third party designated by the residential customer;

(2) instructions on how to request this service; and

(3) a statement that the residential customer should contact the person the customer intends to designate as the third–party contact before providing the utility with the party's name.

(j) "Utility" means a public utility as defined in section 216B.02, and a cooperative electric association electing to be a public utility under section 216B.026. Utility also means a municipally owned gas or electric utility for nonresident consumers of the municipally owned utility and a cooperative electric association when a complaint in connection with utility heating service during the cold weather period is filed under section 216B.17, subdivision 6 or 6a.

(k) "Utility heating service" means natural gas or electricity used as a primary heating source, including electricity service necessary to operate gas heating equipment, for the customer's primary residence.

(l) "Working days" means Mondays through Fridays, excluding legal holidays. The day of receipt of a personally served notice and the day of mailing of a notice shall not be counted in calculating working days.

Subd. 3. **Utility obligations before cold weather period.** Each year, between September 1 and October 15, each utility must provide all customers, personally or by first class mail, a summary of rights and responsibilities. The summary must also be provided to all new residential customers when service is initiated.

Subd. 4. **Notice before disconnection during cold weather period.** Before disconnecting utility heating service during the cold weather period, a utility must provide, personally or by first class mail, a commission–approved notice to a customer, in easy–to–understand language, that contains, at a minimum, the date of the scheduled disconnection, the amount due, and a summary of rights and responsibilities.

Subd. 5. **Cold weather rule.** (a) During the cold weather period, a utility may not disconnect and must reconnect utility heating service of a customer whose household income is at or below 50 percent of the state median income if the customer enters into and makes reasonably timely payments under a mutually acceptable payment agreement with the utility that is based on the financial resources and circumstances of the household; provided that, a utility may not require a customer to pay more than ten percent of the household income toward current and past utility bills for utility heating service.

(b) A utility may accept more than ten percent of the household income as the payment arrangement amount if agreed to by the customer.

(c) The customer or a designated third party may request a modification of the terms of a payment agreement previously entered into if the customer's financial circumstances have changed or the customer is unable to make reasonably timely payments.

(d) The payment agreement terminates at the expiration of the cold weather period unless a longer period is mutually agreed to by the customer and the utility.

Subd. 6. **Verification of income.** (a) In verifying a customer's household income, a utility may:

(1) accept the signed statement of a customer that the customer is income eligible;

(2) obtain income verification from a local energy assistance provider or a government agency;

(3) consider one or more of the following:

(i) the most recent income tax return filed by members of the customer's household;

(ii) for each employed member of the customer's household, paycheck stubs for the last two months or a written statement from the employer reporting wages earned during the preceding two months;

(iii) documentation that the customer receives a pension from the Department of Human Services, the Social Security Administration, the Veteran's Administration, or other pension provider;

(iv) a letter showing the customer's dismissal from a job or other documentation of unemployment; or

(v) other documentation that supports the customer's declaration of income eligibility.

(b) A customer who receives energy assistance benefits under any federal, state, or county government programs in which eligibility is defined as household income at or below 50 percent of state median income is deemed to be automatically eligible for protection under this section and no other verification of income may be required.

Subd. 7. **Prohibitions and requirements.** (a) This subdivision applies during the cold weather period.

(b) A utility may not charge a deposit or delinquency charge to a customer who has entered into a payment agreement or a customer who has appealed to the commission under subdivision 8.

(c) A utility may not disconnect service during the following periods:

(1) during the pendency of any appeal under subdivision 8;

(2) earlier than ten working days after a utility has deposited in first class mail, or seven working days after a utility has personally served, the notice required under subdivision 4 to a customer in an occupied dwelling;

(3) earlier than ten working days after the utility has deposited in first class mail the notice required under subdivision 4 to the recorded billing address of the customer, if the utility has reasonably determined from an on–site inspection that the dwelling is unoccupied;

(4) on a Friday, unless the utility makes personal contact with, and offers a payment agreement consistent with this section to the customer;

(5) on a Saturday, Sunday, holiday, or the day before a holiday;

(6) when utility offices are closed;

(7) when no utility personnel are available to resolve disputes, enter into payment agreements, accept payments, and reconnect service; or

(8) when commission offices are closed.

(d) A utility may not discontinue service until the utility investigates whether the dwelling is actually occupied. At a minimum, the investigation must include one visit by the utility to the dwelling during normal working hours. If no contact is made and there is reason to believe that the dwelling is occupied, the utility must attempt a second contact during nonbusiness hours. If personal contact is made, the utility representative must provide notice required under subdivision 4 and, if the utility representative is not authorized to enter into a payment agreement, the telephone number the customer can call to establish a payment agreement.

(e) Each utility must reconnect utility service if, following disconnection, the dwelling is found to be occupied and the customer agrees to enter into a payment agreement or appeals

to the commission because the customer and the utility are unable to agree on a payment agreement.

Subd. 8. **Disputes; customer appeals.** (a) A utility must provide the customer and any designated third party with a commission–approved written notice of the right to appeal:

(1) a utility determination that the customer's household income is more than 50 percent of state median household income; or

(2) when the utility and customer are unable to agree on the establishment or modification of a payment agreement.

(b) A customer's appeal must be filed with the commission no later than seven working days after the customer's receipt of a personally served appeal notice, or within ten working days after the utility has deposited a first class mail appeal notice.

(c) The commission must determine all customer appeals on an informal basis, within 20 working days of receipt of a customer's written appeal. In making its determination, the commission must consider one or more of the factors in subdivision 6.

(d) Notwithstanding any other law, following an appeals decision adverse to the customer, a utility may not disconnect utility heating service for seven working days after the utility has personally served a disconnection notice, or for ten working days after the utility has deposited a first class mail notice. The notice must contain, in easy–to–understand language, the date on or after which disconnection will occur, the reason for disconnection, and ways to avoid disconnection.

Subd. 9. **Cooperative and municipal disputes.** Complaints in connection with utility heating service during the cold weather period filed against a municipal or a cooperative electric association with the commission under section 216B.17, subdivision 6 or 6a, are governed by section 216B.097.

Subd. 10. **Customers above 50 percent of state median income.** During the cold weather period, a customer whose household income is above 50 percent of state median income:

(1) has the right to a payment agreement that takes into consideration any extenuating circumstances of the household; and

(2) may not be disconnected and must be reconnected if the customer makes timely payments under a payment agreement accepted by a utility.

Subdivision 7, paragraph (b), does not apply to customers whose household income is above 50 percent of state median income.

Subd. 11. **Reporting.** Annually on November 1, a utility must electronically file with the commission a report, in a format specified by the commission, specifying the number of utility heating service customers whose service is disconnected or remains disconnected for nonpayment as of October 1 and October 15. If customers remain disconnected on October 15, a utility must file a report each week between November 1 and the end of the cold weather period specifying:

(1) the number of utility heating service customers that are or remain disconnected from service for nonpayment; and

(2) the number of utility heating service customers that are reconnected to service each week. The utility may discontinue weekly reporting if the number of utility heating service customers that are or remain disconnected reaches zero before the end of the cold weather period.

The data reported under this subdivision are presumed to be accurate upon submission and must be made available through the commission's electronic filing system.

History: *2007 c 57 art 2 s 13*

NOTE: This section as added by Laws 2007, chapter 57, article 2, section 13, is effective September 1, 2008. Laws 2007, chapter 57, article 2, section 43.

216B.097 COLD WEATHER RULE; COOPERATIVE OR MUNICIPAL UTILITY.

Subdivision 1. **Application; notice to residential customer.** (a) A municipal utility or a cooperative electric association must not disconnect and must reconnect the utility service of a residential customer during the period between October 15 and April 15 if the disconnection affects the primary heat source for the residential unit and all of the following conditions are met:

(1) The household income of the customer is at or below 50 percent of the state median household income. A municipal utility or cooperative electric association utility may (i) verify income on forms it provides or (ii) obtain verification of income from the local energy assistance provider. A customer is deemed to meet the income requirements of this clause if the customer receives any form of public assistance, including energy assistance, that uses an income eligibility threshold set at or below 50 percent of the state median household income.

(2) A customer enters into and makes reasonably timely payments under a payment agreement that considers the financial resources of the household.

(3) A customer receives referrals to energy assistance, weatherization, conservation, or other programs likely to reduce the customer's energy bills.

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

[For text of subd 2, see M.S.2006]

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 subdivision 1, the disconnection must not occur:

(1) on a Friday, unless the customer declines to enter into a payment agreement offered that day in person or via personal contact by telephone by a municipal utility or cooperative electric association;

(2) on a weekend, holiday, or the day before a holiday;

(3) when utility offices are closed; or

(4) after the close of business on a day when disconnection is permitted, unless a field representative of a municipal utility or cooperative electric association who is authorized to enter into a payment agreement, accept payment, and continue service, offers a payment agreement to the customer.

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.

[For text of subd 4, see M.S.2006]

History: *2007 c 57 art 2 s 14,15*

216B.098 RESIDENTIAL CUSTOMER PROTECTIONS.

[For text of subds 1 to 3, see M.S.2006]

Subd. 4. **Undercharges.** (a) A utility shall offer a payment agreement to customers who have been undercharged if no culpable conduct by the customer or resident of the customer's

household caused the undercharge. The agreement must cover a period equal to the time over which the undercharge occurred or a different time period that is mutually agreeable to the customer and the utility, except that the duration of a payment agreement offered by a utility to a customer whose household income is at or below 50 percent of state median household income must consider the financial circumstances of the customer's household.

(b) No interest or delinquency fee may be charged as part of an undercharge agreement under this subdivision.

(c) If a customer inquiry or complaint results in the utility's discovery of the undercharge, the utility may bill for undercharges incurred after the date of the inquiry or complaint only if the utility began investigating the inquiry or complaint within a reasonable time after when it was made.

[For text of subds 5 and 6, see M.S.2006]

History: *2007 c 57 art 2 s 16*

216B.16 RATE CHANGE; 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, 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. If the filing utility does not have an approved energy conservation improvement plan on file with the department, it shall also include in its notice an energy conservation plan pursuant to section 216B.241. A filing utility subject to rate regulation under section 216B.026 shall reference in its notice the energy conservation improvement plans of the generation and transmission cooperative providing energy conservation improvement programs to members of the filing utility pursuant to section 216B.241. 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.

[For text of subds 1a to 6a, see M.S.2006]

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 (i), 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) Investments and expenses for energy conservation improvements shall not be included by the commission in the determination of (i) 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 pursuant to section 216B.241, subdivision 1a, paragraph (b); or (ii) just and reasonable gas rates for large energy facilities.

(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 requirements of section 216B.241. 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 pursuant to section 216B.241, subdivision 1a, paragraph (b), and to reduce the gas rate applicable to a large energy facility by an amount that reflects the elimination of energy conservation improvement investments or expenditures for those facilities. 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, 2007.

(d) Investments and expenses of a public utility shall not include electric utility infrastructure costs as defined in section 216B.1636, subdivision 1, paragraph (b).

[For text of subds 6c to 9, see M.S.2006]

Subd. 10. **Intervenor compensation.** (a) A nonprofit organization or an individual granted formal intervenor status by the commission is eligible to receive compensation.

(b) The commission may order a utility to compensate all or part of an eligible intervenor's reasonable costs of participation in a general rate case that comes before the commission when the commission finds that the intervenor has materially assisted the commission's deliberation and when a lack of compensation would present financial hardship to the intervenor. Compensation may not exceed $50,000 for a single intervenor in any proceeding. For the purpose of this subdivision, "materially assisted" means that the intervenor's participation and presentation was useful and seriously considered, or otherwise substantially contributed to the commission's deliberations in the proceeding.

(c) In determining whether an intervenor has materially assisted the commission's deliberation, the commission must consider, among other factors, whether:

(1) the intervenor represented an interest that would not otherwise have been adequately represented;

(2) the evidence or arguments presented or the positions taken by the intervenor were an important factor in producing a fair decision;

(3) the intervenor's position promoted a public purpose or policy;

(4) the evidence presented, arguments made, issues raised, or positions taken by the intervenor would not have been a part of the record without the intervenor's participation; and

(5) the administrative law judge or the commission adopted, in whole or in part, a position advocated by the intervenor.

(d) In determining whether the absence of compensation would present financial hardship to the intervenor, the commission must consider:

(1) whether the costs presented in the intervenor's claim reflect reasonable fees for attorneys and expert witnesses and other reasonable costs; and

(2) the ratio between the costs of intervention and the intervenor's unrestricted funds.

(e) An intervenor seeking compensation must file a request and an affidavit of service with the commission, and serve a copy of the request on each party to the proceeding. The request must be filed 30 days after the later of (1) the expiration of the period within which a petition for rehearing, amendment, vacation, reconsideration, or reargument must be filed or (2) the date the commission issues an order following rehearing, amendment, vacation, reconsideration, or reargument.

(f) The compensation request must include:

(1) the name and address of the intervenor or representative of the nonprofit organization the intervenor is representing;

(2) proof of the organization's nonprofit, tax–exempt status;

(3) the name and docket number of the proceeding for which compensation is requested;

(4) a list of actual annual revenues and expenses of the organization the intervenor is representing for the preceding year and projected revenues, revenue sources, and expenses for the current year;

(5) the organization's balance sheet for the preceding year and a current monthly balance sheet;

(6) an itemization of intervenor costs and the total compensation request; and

(7) a narrative explaining why additional organizational funds cannot be devoted to the intervention.

(g) Within 30 days after service of the request for compensation, a party may file a response, together with an affidavit of service, with the commission. A copy of the response must be served on the intervenor and all other parties to the proceeding.

(h) Within 15 days after the response is filed, the intervenor may file a reply with the commission. A copy of the reply and an affidavit of service must be served on all other parties to the proceeding.

(i) If additional costs are incurred as a result of additional proceedings following the commission's initial order, the intervenor may file an amended request within 30 days after the commission issues an amended order. Paragraphs (e) to (h) apply to an amended request.

(j) The commission must issue a decision on intervenor compensation within 60 days of a filing by an intervenor.

(k) A party may request reconsideration of the commission's compensation decision within 30 days of the decision.

(l) If the commission issues an order requiring payment of intervenor compensation, the utility that was the subject of the proceeding must pay the compensation to the intervenor, and file with the commission proof of payment, within 30 days after the later of (1) the expiration of the period within which a petition for reconsideration of the commission's compensation decision must be filed or (2) the date the commission issues an order following reconsideration of its order on intervenor compensation.

[For text of subds 11 to 14, see M.S.2006]

Subd. 15. **Low–income affordability programs.** (a) The commission must consider ability to pay as a factor in setting utility rates and may establish affordability programs for low–income residential ratepayers in order to ensure affordable, reliable, and continuous service to low–income utility customers. By September 1, 2007, a public utility serving low–income residential ratepayers who use natural gas for heating must file an affordability program with the commission. For purposes of this subdivision, "low–income residential ratepayers" means ratepayers who receive energy assistance from the low–income home energy assistance program (LIHEAP).

(b) Any affordability program the commission orders a utility to implement must:

(1) lower the percentage of income that participating low–income households devote to energy bills;

(2) increase participating customer payments over time by increasing the frequency of payments;

(3) decrease or eliminate participating customer arrears;

(4) lower the utility costs associated with customer account collection activities; and

(5) coordinate the program with other available low–income bill payment assistance and conservation resources.

(c) In ordering affordability programs, the commission may require public utilities to file program evaluations that measure the effect of the affordability program on:

(1) the percentage of income that participating households devote to energy bills;

(2) service disconnections; and

(3) frequency of customer payments, utility collection costs, arrearages, and bad debt.

(d) The commission must issue orders necessary to implement, administer, and evaluate affordability programs, and to allow a utility to recover program costs, including administrative costs, on a timely basis. The commission may not allow a utility to recover administrative costs, excluding start–up costs, in excess of five percent of total program costs, or program evaluation costs in excess of two percent of total program costs. The commission must permit deferred accounting, with carrying costs, for recovery of program costs incurred during the period between general rate cases.

(e) Public utilities may use information collected or created for the purpose of administering energy assistance to administer affordability programs.

[For text of subd 16, see M.S.2006]

History: *2007 c 57 art 2 s 18,19; 2007 c 136 art 2 s 1,2*

216B.1612 COMMUNITY–BASED ENERGY DEVELOPMENT; TARIFF.

Subdivision 1. **Tariff establishment.** A tariff shall be established to optimize local, regional, and state benefits from renewable energy development and to facilitate widespread development of community–based renewable energy projects throughout Minnesota.

Subd. 2. **Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "C–BED tariff" or "tariff" means a community–based energy development tariff.

(c) "Qualifying owner" means:

(1) a Minnesota resident;

(2) a limited liability company that is organized under chapter 322B and that is made up of members who are Minnesota residents;

(3) a Minnesota nonprofit organization organized under chapter 317A;

(4) a Minnesota cooperative association organized under chapter 308A or 308B, including a rural electric cooperative association or a generation and transmission cooperative on behalf of and at the request of a member distribution utility;

(5) a Minnesota political subdivision or local government including, but not limited to, a municipal electric utility, or a municipal power agency on behalf of and at the request of a member distribution utility, a county, statutory or home rule charter city, town, school district, or public or private higher education institution or any other local or regional governmental organization such as a board, commission, or association; or

(6) a tribal council.

(d) "Net present value rate" means a rate equal to the net present value of the nominal payments to a project divided by the total expected energy production of the project over the life of its power purchase agreement.

(e) "Standard reliability criteria" means:

(1) can be safely integrated into and operated within the utility's grid without causing any adverse or unsafe consequences; and

(2) is consistent with the utility's resource needs as identified in its most recent resource plan submitted under section 216B.2422.

(f) "Renewable" refers to a technology listed in section 216B.1691, subdivision 1, paragraph (a).

(g) "Community–based energy development project" or "C–BED project" means a new renewable energy project that either as a stand–alone project or part of a partnership under subdivision 8:

(1) has no single qualifying owner owning more than 15 percent of a C–BED wind energy project unless: (i) the C–BED wind energy project consists of only one or two turbines; or (ii) the qualifying owner is a public entity listed under paragraph (b), clause (5), that is not a municipal utility;

(2) demonstrates that at least 51 percent of the gross revenues from a power purchase agreement over the life of the project will flow to qualifying owners and other local entities; and

(3) has a resolution of support adopted by the county board of each county in which the project is to be located, or in the case of a project located within the boundaries of a reservation, the tribal council for that reservation.

Subd. 3. **Tariff rate.** (a) The tariff described in subdivision 4 must have a rate schedule that allows for a net present value rate over the 20–year life of the power purchase agreement. The tariff must provide for a rate that is higher in the first ten years of the power purchase

agreement than in the last ten years. The discount rate required to calculate the net present value must be the utility's normal discount rate used for its other business purposes.

(b) The commission shall consider mechanisms to encourage the aggregation of C–BED projects.

(c) The commission shall require that qualifying and nonqualifying owners provide sufficient security to secure performance under the power purchase agreement, and shall prohibit the transfer of the C–BED project to a nonqualifying owner during the initial 20 years of the contract.

Subd. 4. **Utilities to offer tariff.** By December 1, 2007, each public utility providing electric service at retail shall file for commission approval a community–based energy development tariff consistent with subdivision 3. Within 90 days of the first commission approval order under this subdivision, each municipal power agency and generation and transmission cooperative electric association shall adopt a community–based energy development tariff as consistent as possible with subdivision 3.

Subd. 5. **Priority for C–BED projects.** (a) A utility subject to section 216B.1691that needs to construct new generation, or purchase the output from new generation, as part of its plan to satisfy its good faith objective and standard under that section must take reasonable steps to determine if one or more C–BED projects are available that meet the utility's cost and reliability requirements, applying standard reliability criteria, to fulfill some or all of the identified need at minimal impact to customer rates.

Nothing in this section shall be construed to obligate a utility to enter into a power purchase agreement under a C–BED tariff developed under this section.

(b) Each utility shall include in its resource plan submitted under section 216B.2422 a description of its efforts to purchase energy from C–BED projects, including a list of the projects under contract and the amount of C–BED energy purchased.

(c) The commission shall consider the efforts and activities of a utility to purchase energy from C–BED projects when evaluating its good faith effort towards meeting the renewable energy objective under section 216B.1691.

(d) A municipal power agency or generation and transmission cooperative shall, when issuing a request for proposals for C–BED projects to satisfy its standard obligation under section 216B.1691, provide notice to its member distribution utilities that they may propose, in partnership with other qualifying owners, a C–BED project for the consideration of the municipal power agency or generation and transmission cooperative.

[For text of subd 6, see M.S.2006]

Subd. 7. **Other C–BED tariff issues.** (a) A community–based project developer and a utility shall negotiate the rate and power purchase agreement terms consistent with the tariff established under subdivision 4.

(b) At the discretion of the developer, a community–based project developer and a utility may negotiate a power purchase agreement with terms different from the tariff established under subdivision 4.

(c) A qualifying owner, or any combination of qualifying owners, may develop a joint venture project with a nonqualifying renewable energy project developer. However, the terms of the C–BED tariff may only apply to the portion of the energy production of the total project that is directly proportional to the equity share of the project owned by the qualifying owners.

(d) A project that is operating under a power purchase agreement under a C–BED tariff is not eligible for net energy billing under section 216B.164, subdivision 3, or for production incentives under section 216C.41.

(e) A public utility must receive commission approval of a power purchase agreement for a C–BED tariffed project. The commission shall provide the utility's ratepayers an opportunity to address the reasonableness of the proposed power purchase agreement. Unless a party objects to a contract within 30 days of submission of the contract to the commission the contract is deemed approved.

Subd. 8. **Community energy partnerships.** A utility providing electric service to retail or wholesale customers in Minnesota and an independent power producer may, subject to the limits specified in this section, participate in a community–based energy project, including as an owner, equity partner, or provider of technical or financial assistance.

History: *2007 c 136 art 4 s 1–7*

216B.1636 RECOVERY OF ELECTRIC UTILITY INFRASTRUCTURE COSTS.

Subdivision 1. **Definitions.** (a) "Electric utility" means a public utility as defined in section 216B.02, subdivision 4, that furnishes electric service to retail customers.

(b) "Electric utility infrastructure costs" or "EUIC" means costs for electric utility infrastructure projects that were not included in the electric utility's rate base in its most recent general rate case.

(c) "Electric utility infrastructure projects" means projects owned by an electric utility that:

(1) replace or modify existing electric utility infrastructure, including utility–owned buildings, if the replacement or modification is shown to conserve energy or use energy more efficiently, consistent with section 216B.241, subdivision 1c; or

(2) conserve energy or use energy more efficiently by using waste heat recovery converted into electricity as defined in section 216B.241, subdivision 1, paragraph (n).

Subd. 2. **Filing.** (a) The commission may approve an electric utility's petition for a rate schedule to recover EUIC under this section. An electric utility may petition the commission to recover a rate of return, income taxes on the rate of return, incremental property taxes, if any, plus incremental depreciation expense associated with EUIC.

(b) The filing is subject to the following:

(1) an electric utility may submit a filing under this section no more than once per year; and

(2) an electric utility must file sufficient information to satisfy the commission regarding the proposed EUIC or be subject to denial by the commission. The information includes, but is not limited to:

(i) the location, description, and costs associated with the project;

(ii) evidence that the electric utility infrastructure project will conserve energy or use energy more efficiently than similar utility facilities currently used by the electric utility;

(iii) the proposed schedule for implementation;

(iv) a description of the costs, and salvage value, if any, associated with the existing infrastructure replaced or modified as a result of the project;

(v) the proposed rate design and an explanation of why the proposed rate design is in the public interest;

(vi) the magnitude and timing of any known future electric utility projects that the utility may seek to recover under this section;

(vii) the magnitude of EUIC in relation to the electric utility's base revenue as approved by the commission in the electric utility's most recent general rate case, exclusive of fuel cost adjustments;

(viii) the magnitude of EUIC in relation to the electric utility's capital expenditures since its most recent general rate case;

(ix) the amount of time since the utility last filed a general rate case and the utility's reasons for seeking recovery outside of a general rate case;

(x) documentation supporting the calculation of the EUIC; and

(xi) a cost and benefit analysis showing that the electric utility infrastructure project is in the public interest.

(c) Upon approval of the proposed projects and associated EUIC rate schedule, the utility may implement the electric utility infrastructure projects.

Subd. 3. **Commission authority; orders.** The commission may issue orders necessary to implement and administer this section.

History: *2007 c 136 art 2 s 3*

216B.1637 RECOVERY OF CERTAIN LIMITED UTILITY GREENHOUSE GAS INFRASTRUCTURE COSTS.

A public utility that owns a nuclear power plant and a public utility furnishing gas service may file for recovery of investments and expenses associated with the replacement of cast iron natural gas distribution and service lines owned by the utility and to replace breakers that contain sodium hexafluoride in order to reduce the risk of greenhouse gases being released into the atmosphere. Upon a finding that the projects are consistent with the public interest and do not impose excessive costs on customers, the commission shall provide timely recovery of the utility's investment and expenses on any approved projects through a rate adjustment mechanism similar to that provided for transmission projects under section 216B.16, subdivision 7b, paragraphs (b) to (d).

History: *2007 c 57 art 2 s 20*

216B.1645 POWER PURCHASE CONTRACT OR INVESTMENT.

[For text of subds 1 and 2, see M.S.2006]

Subd. 2a. **Cost recovery for owned renewable facilities.** (a) A utility may petition the commission to approve a rate schedule that provides for the automatic adjustment of charges to recover prudently incurred investments, expenses, or costs associated with facilities constructed, owned, or operated by a utility to satisfy the requirements of section 216B.1691, provided those facilities were previously approved by the commission under section 216B.2422 or 216B.243. The commission may approve, or approve as modified, a rate schedule that:

(1) allows a utility to recover directly from customers on a timely basis the costs of qualifying renewable energy projects, including:

(i) return on investment;

(ii) depreciation;

(iii) ongoing operation and maintenance costs;

(iv) taxes; and

(v) costs of transmission and other ancillary expenses directly allocable to transmitting electricity generated from a project meeting the specifications of this paragraph;

(2) provides a current return on construction work in progress, provided that recovery of these costs from Minnesota ratepayers is not sought through any other mechanism;

(3) allows recovery of other expenses incurred that are directly related to a renewable energy project, provided that the utility demonstrates to the commission's satisfaction that the expenses improve project economics, ensure project implementation, or facilitate coordination with the development of transmission necessary to transport energy produced by the project to market;

(4) allocates recoverable costs appropriately between wholesale and retail customers;

(5) terminates recovery when costs have been fully recovered or have otherwise been reflected in a utility's rates.

(b) A petition filed under this subdivision must include:

(1) a description of the facilities for which costs are to be recovered;

(2) an implementation schedule for the facilities;

(3) the utility's costs for the facilities;

(4) a description of the utility's efforts to ensure that costs of the facilities are reasonable and were prudently incurred; and

(5) a description of the benefits of the project in promoting the development of renewable energy in a manner consistent with this chapter.

[For text of subds 3 and 4, see M.S.2006]

History: *2007 c 136 art 4 s 8*

216B.165 [Repealed, 2007 c 136 art 3 s 7]

216B.1681 CURTAILMENT PAYMENTS.

The commission shall conduct a study of curtailment payments for wind energy projects to assess whether utilities are unduly discriminating among project ownership structures in regard to the contractual availability of curtailment payments. The commission shall submit the study to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy policy by January 15, 2008.

History: *2007 c 136 art 4 s 9*

216B.1691 RENEWABLE ENERGY OBJECTIVES.

Subdivision 1. **Definitions.** (a) Unless otherwise specified in law, "eligible energy technology" means an energy technology that generates electricity from the following renewable energy sources: (1) solar; (2) wind; (3) hydroelectric with a capacity of less than 100 megawatts; (4) hydrogen, provided that after January 1, 2010, the hydrogen must be generated from the resources listed in this clause; or (5) biomass, which includes, without limitation, landfill gas, an anaerobic digester system, and an energy recovery facility used to capture the heat value of mixed municipal solid waste or refuse–derived fuel from mixed municipal solid waste as a primary fuel.

(b) "Electric utility" means a public utility providing electric service, a generation and transmission cooperative electric association, a municipal power agency, or a power district.

(c) "Total retail electric sales" means the kilowatt–hours of electricity sold in a year by an electric utility to retail customers of the electric utility or to a distribution utility for distribution to the retail customers of the distribution utility.

Subd. 2. **Eligible energy objectives.** Each electric utility shall make a good faith effort to generate or procure sufficient electricity generated by an eligible energy technology to provide its retail consumers, or the retail customers of a distribution utility to which the electric utility provides wholesale electric service, so that commencing in 2005, at least one percent of the electric utility's total retail electric sales to retail customers in Minnesota is generated by eligible energy technologies and seven percent of the electric utility's total retail electric sales to retail customers in Minnesota by 2010 is generated by eligible energy technologies.

Subd. 2a. **Eligible energy technology standard.** (a) Except as provided in paragraph (b), each electric utility shall generate or procure sufficient electricity generated by an eligible energy technology to provide its retail customers in Minnesota, or the retail customers of a distribution utility to which the electric utility provides wholesale electric service, so that at least the following standard percentages of the electric utility's total retail electric sales to retail customers in Minnesota are generated by eligible energy technologies by the end of the year indicated:

(1)	2012	12 percent
(2)	2016	17 percent
(3)	2020	20 percent
(4)	2025	25 percent.

(b) An electric utility that owned a nuclear generating facility as of January 1, 2007, must meet the requirements of this paragraph rather than paragraph (a). An electric utility subject to this paragraph must generate or procure sufficient electricity generated by an eligi-

ble energy technology to provide its retail customers in Minnesota or the retail customer of a distribution utility to which the electric utility provides wholesale electric service so that at least the following percentages of the electric utility's total retail electric sales to retail customers in Minnesota are generated by eligible energy technologies by the end of the year indicated:

(1)	2010	15 percent
(2)	2012	18 percent
(3)	2016	25 percent
(4)	2020	30 percent.

Of the 30 percent in 2020, at least 25 percent must be generated by wind energy conversion systems and the remaining five percent by other eligible energy technology.

Subd. 2b. **Modification or delay of standard.** (a) The commission shall modify or delay the implementation of a standard obligation, in whole or in part, if the commission determines it is in the public interest to do so. The commission, when requested to modify or delay implementation of a standard, must consider:

(1) the impact of implementing the standard on its customers' utility costs, including the economic and competitive pressure on the utility's customers;

(2) the effects of implementing the standard on the reliability of the electric system;

(3) technical advances or technical concerns;

(4) delays in acquiring sites or routes due to rejection or delays of necessary siting or other permitting approvals;

(5) delays, cancellations, or nondelivery of necessary equipment for construction or commercial operation of an eligible energy technology facility;

(6) transmission constraints preventing delivery of service; and

(7) other statutory obligations imposed on the commission or a utility.

The commission may modify or delay implementation of a standard obligation under clauses (1) to (3) only if it finds implementation would cause significant rate impact, requires significant measures to address reliability, or raises significant technical issues. The commission may modify or delay implementation of a standard obligation under clauses (4) to (6) only if it finds that the circumstances described in those clauses were due to circumstances beyond an electric utility's control and make compliance not feasible.

(b) When considering whether to delay or modify implementation of a standard obligation, the commission must give due consideration to a preference for electric generation through use of eligible energy technology and to the achievement of the standards set by this section.

(c) An electric utility requesting a modification or delay in the implementation of a standard must file a plan to comply with its standard obligation in the same proceeding that it is requesting the delay.

Subd. 2c. **Use of integrated resource planning process.** The commission may exercise its authority under subdivision 2b to modify or delay implementation of a standard obligation as part of an integrated resource planning proceeding under section 216B.2422. The commission's authority must be exercised according to subdivision 2b. The order to delay or modify shall not be considered advisory with respect to any electric utility. This subdivision is in addition to and does not limit the commission's authority to modify or delay implementation of a standard obligation in other proceedings before the commission.

Subd. 2d. **Commission order.** The commission shall issue necessary orders detailing the criteria and standards by which it will measure an electric utility's efforts to meet the renewable energy objectives of subdivision 2 to determine whether the utility is making the required good faith effort. In this order, the commission shall include criteria and standards that protect against undesirable impacts on the reliability of the utility's system and economic impacts on the utility's ratepayers and that consider technical feasibility.

Subd. 3. **Utility plans filed with commission.** (a) Each electric utility shall report on its plans, activities, and progress with regard to the objectives and standards of this section in its filings under section 216B.2422 or in a separate report submitted to the commission every two years, whichever is more frequent, demonstrating to the commission the utility's effort to comply with this section. In its resource plan or a separate report, each electric utility shall provide a description of:

(1) the status of the utility's renewable energy mix relative to the objective and standards;

(2) efforts taken to meet the objective and standards;

(3) any obstacles encountered or anticipated in meeting the objective or standards; and

(4) potential solutions to the obstacles.

(b) The commissioner shall compile the information provided to the commission under paragraph (a), and report to the chairs of the house of representatives and senate committees with jurisdiction over energy and environment policy issues as to the progress of utilities in the state, including the progress of each individual electric utility, in increasing the amount of renewable energy provided to retail customers, with any recommendations for regulatory or legislative action, by January 15 of each odd–numbered year.

Subd. 4. **Renewable energy credits.** (a) To facilitate compliance with this section, the commission, by rule or order, shall establish by January 1, 2008, a program for tradable renewable energy credits for electricity generated by eligible energy technology. The credits must represent energy produced by an eligible energy technology, as defined in subdivision 1. Each kilowatt–hour of renewable energy credits must be treated the same as a kilowatt–hour of eligible energy technology generated or procured by an electric utility if it is produced by an eligible energy technology. The program must permit a credit to be used only once. The program must treat all eligible energy technology equally and shall not give more or less credit to energy based on the state where the energy was generated or the technology with which the energy was generated. The commission must determine the period in which the credits may be used for purposes of the program.

(b) In lieu of generating or procuring energy directly to satisfy the eligible energy technology objective or standard of this section, an electric utility may utilize renewable energy credits allowed under the program to satisfy the objective or standard.

(c) The commission shall facilitate the trading of renewable energy credits between states.

(d) The commission shall require all electric utilities to participate in a commission–approved credit–tracking system or systems. Once a credit–tracking system is in operation, the commission shall issue an order establishing protocols for trading credits.

(e) An electric utility subject to subdivision 2a, paragraph (b), may not sell renewable energy credits to an electric utility subject to subdivision 2a, paragraph (a), until 2021.

Subd. 5. **Technology based on fuel combustion.** (a) Electricity produced by fuel combustion through fuel blending or co–firing under paragraph (b) may only count toward a utility's objectives or standards if the generation facility:

(1) was constructed in compliance with new source performance standards promulgated under the federal Clean Air Act for a generation facility of that type; or

(2) employs the maximum achievable or best available control technology available for a generation facility of that type.

(b) An eligible energy technology may blend or co–fire a fuel listed in subdivision 1, paragraph (a), clause (5), with other fuels in the generation facility, but only the percentage of electricity that is attributable to a fuel listed in that clause can be counted toward an electric utility's renewable energy objectives.

Subd. 6. [Repealed by amendment, 2007 c 3 s 1]

Subd. 7. **Compliance.** The commission must regularly investigate whether an electric utility is in compliance with its good–faith objective under subdivision 2 and standard ob-

ligation under subdivision 2a. If the commission finds noncompliance, it may order the electric utility to construct facilities, purchase energy generated by eligible energy technology, purchase renewable energy credits, or engage in other activities to achieve compliance. If an electric utility fails to comply with an order under this subdivision, the commission may impose a financial penalty on the electric utility in an amount not to exceed the estimated cost of the electric utility to achieve compliance. The penalty may not exceed the lesser of the cost of constructing facilities or purchasing credits. The commission must deposit financial penalties imposed under this subdivision in the energy and conservation account established in the special revenue fund under section 216B.241, subdivision 2a. This subdivision is in addition to and does not limit any other authority of the commission to enforce this section.

Subd. 8. **Relation to other law.** This section does not limit the authority of the commission under any other law, including, without limitation, sections 216B.2422 and 216B.243.

Subd. 9. **Local benefits.** The commission shall take all reasonable actions within its statutory authority to ensure this section is implemented to maximize benefits to Minnesota citizens, balancing factors such as local ownership of or participation in energy production, development and ownership of eligible energy technology facilities by independent power producers, Minnesota utility ownership of eligible energy technology facilities, the costs of energy generation to satisfy the renewable standard, and the reliability of electric service to Minnesotans.

Subd. 10. **Utility acquisition of resources.** A competitive resource acquisition process established by the commission prior to June 1, 2007, shall not apply to a utility for the construction, ownership, and operation of generation facilities used to satisfy the requirements of this section unless, upon a finding that it is in the public interest, the commission issues an order on or after June 1, 2007, that requires compliance by a utility with a competitive resource acquisition process. A utility that owns a nuclear generation facility and intends to construct, own, or operate facilities under this section shall file with the commission on or before March 1, 2008, a renewable energy plan setting forth the manner in which the utility proposes to meet the requirements of this section, including a proposed schedule for purchasing renewable energy from C–BED and non–C–BED projects. The utility shall update the plan as necessary in its filing under section 216B.2422. The commission shall approve the plan unless it determines, after public hearing and comment, that the plan is not in the public interest. As part of its determination of public interest, the commission shall consider the plan's allocation of projects among C–BED, non–C–BED, and utility–owned projects, balancing the state's interest in:

(1) promoting the policy of economic development in rural areas through the development of renewable energy projects, as expressed in subdivision 9;

(2) maintaining the reliability of the state's electric power grid; and

(3) minimizing cost impacts on ratepayers.

History: *2007 c 3 s 1; 2007 c 136 art 4 s 10; art 6 s 1,2*

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 must be made personally, by electronic service as provided in section 216.17, or by mail as the commission may direct.

History: *2007 c 10 s 4*

216B.2401 ENERGY CONSERVATION POLICY GOAL.

It is the energy policy of the state of Minnesota to achieve annual energy savings equal to 1.5 percent of annual retail energy sales of electricity and natural gas directly through energy conservation improvement programs and rate design, and indirectly through energy codes and appliance standards, programs designed to transform the market or change consumer be-

havior, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

History: *2007 c 136 art 2 s 4*

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 commerce.

(c) "Customer facility" means all buildings, structures, equipment, and installations at a single site.

(d) "Department" means the Department of Commerce.

(e) "Energy conservation" means demand–side management of energy supplies resulting in a net reduction in energy use. Load management that reduces overall energy use is energy conservation.

(f) "Energy conservation improvement" means a project that results in energy efficiency or energy conservation. Energy conservation improvement may include waste heat recovery converted into electricity but does not include electric utility infrastructure projects approved by the commission under section 216B.1636.

(g) "Energy efficiency" means measures or programs, including energy conservation measures or programs, that target consumer behavior, equipment, processes, or devices designed to produce either an absolute decrease in consumption of electric energy or natural gas or a decrease in consumption of electric energy or natural gas on a per unit of production basis without a reduction in the quality or level of service provided to the energy consumer.

(h) "Gross annual retail energy sales" means annual electric sales to all retail customers in a utility's or association's Minnesota service territory or natural gas throughput to all retail customers, including natural gas transportation customers, on a utility's distribution system in Minnesota. For purposes of this section, gross annual retail energy sales exclude gas sales to a large energy facility and gas and electric sales to a large electric customer facility exempted by the commissioner under subdivision 1a, paragraph (b).

(i) "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.

(j) "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.

(k) "Large energy facility" has the meaning given it in section 216B.2421, subdivision 2, clause (1).

(l) "Load management" means an activity, service, or technology to change the timing or the efficiency of a customer's use of energy that allows a utility or a customer to respond to wholesale market fluctuations or to reduce peak demand for energy or capacity.

(m) "Low–income programs" means energy conservation improvement programs that directly serve the needs of low–income persons, including low–income renters.

(n) "Waste heat recovery converted into electricity" means an energy recovery process that converts otherwise lost energy from the heat of exhaust stacks or pipes used for engines

or manufacturing or industrial processes, or the reduction of high pressure in water or gas pipelines.

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 under paragraph (b).

(b) The owner of a large electric customer facility may petition the commissioner 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 the customer is not continuing to make reasonable efforts to identify, evaluate, and implement energy conservation improvements at the large electric customer facility. 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 midrange 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.

Subd. 1b. **Conservation improvement by cooperative association or municipality.** (a) This subdivision applies to:

(1) a cooperative electric association that provides retail service to its members;

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

(3) a municipality with more than 1,000,000,000 cubic feet in annual throughput sales to 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 1.5 percent of its gross operating revenues from the sale of electricity, 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 electric 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 energy facility or a large electric customer facility for which the commissioner has issued an exemption under subdivision 1a, paragraph (b).

(d) Each municipality and cooperative electric association subject to this subdivision may spend and invest annually up to ten 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.

(e) Load–management activities may be used to meet 50 percent of the conservation investment and spending requirements of this subdivision.

(f) A generation and transmission cooperative electric association that provides energy services to cooperative electric associations that provide electric service at retail to consumers may invest in energy conservation improvements on behalf of the associations it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis. A municipal power agency or other not–for–profit entity that provides energy service to municipal utilities that provide electric service at retail may invest in energy conservation improvements on behalf of the municipal utilities it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis, under an agreement between the municipal power agency or not–for–profit entity and each municipal utility for funding the investments.

(g) Each municipality or cooperative shall file energy conservation improvement plans by June 1 on a schedule determined by order of the commissioner, but at least every three years. Plans received by June 1 must be approved or approved as modified by the commissioner by December 1 of the same year. The municipality or cooperative shall provide an evaluation to the commissioner detailing its energy conservation improvement spending and investments for the previous period. The evaluation must briefly describe each conservation program and must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility or association that is the result of the spending and investments. The evaluation must analyze the cost–effectiveness of the utility's or association's conservation programs, using a list of baseline energy and capacity savings assumptions developed in consultation with the department. The commissioner shall review each evaluation and make recommendations, where appropriate, to the municipality or association to increase the effectiveness of conservation improvement activities.

(h) A municipality may spend up to 50 percent of its required spending under this section to refurbish an existing district heating or cooling system until July 1, 2007. From July 1, 2007, through June 30, 2011, expenditures made to refurbish a district heating or cooling system are considered to be load–management activities under paragraph (e). This paragraph expires July 1, 2011.

(i) The commissioner shall consider and may require a utility, association, or other entity providing energy efficiency and conservation services under this section to undertake a program suggested by an outside source, including a political subdivision, nonprofit corporation, or community organization.

Subd. 1c. **Energy–saving goals.** (a) The commissioner shall establish energy–saving goals for energy conservation improvement expenditures and shall evaluate an energy conservation improvement program on how well it meets the goals set.

(b) Each individual utility and association shall have an annual energy–savings goal equivalent to 1.5 percent of gross annual retail energy sales unless modified by the commissioner under paragraph (d). The savings goals must be calculated based on the most recent three–year weather normalized average.

(c) The commissioner must adopt a filing schedule that is designed to have all utilities and associations operating under an energy savings plan by calendar year 2010.

(d) In its energy conservation improvement plan filing, a utility or association may request the commissioner to adjust its annual energy savings percentage goal based on its historical conservation investment experience, customer class makeup, load growth, a conservation potential study, or other factors the commissioner determines warrants an adjustment. The commissioner may not approve a plan that provides for an annual energy savings goal of less than one percent of gross annual retail energy sales from energy conservation improvements. A utility or association may include in its energy conservation plan energy savings from electric utility infrastructure projects approved by the commission under section 216B.1636 or waste heat recovery converted into electricity projects that may count as energy savings in addition to the minimum energy savings goal of at least one percent for energy conservation improvements. Electric utility infrastructure projects must result in increased energy efficiency greater than that which would have occurred through normal maintenance activity.

(e) An energy savings goal is not satisfied by attaining the revenue expenditure requirements of subdivisions 1a and 1b, but can only be satisfied by meeting the energy savings goal established in this subdivision.

(f) An association or utility is not required to make energy conservation investments to attain the energy savings goals of this subdivision that are not cost–effective even if the investment is necessary to attain the energy savings goals. For the purpose of this paragraph, in determining cost–effectiveness, the commissioner shall consider the costs and benefits to ratepayers, the utility, participants, and society. In addition, the commissioner shall consider the rate at which an association or municipal utility is increasing its energy savings and its expenditures on energy conservation.

(g) On an annual basis, the commissioner shall produce and make publicly available a report on the annual energy savings and estimated carbon dioxide reductions achieved by the energy conservation improvement programs for the two most recent years for which data is available. The commissioner shall report on program performance both in the aggregate and for each entity filing an energy conservation improvement plan for approval or review by the commissioner.

(h) By January 15, 2010, the commissioner shall report to the legislature whether the spending requirements under subdivisions 1a and 1b are necessary to achieve the energy savings goals established in this subdivision.

Subd. 1d. **Technical assistance.** The commissioner shall evaluate energy conservation improvement programs on the basis of cost–effectiveness and the reliability of the technologies employed. The commissioner shall, by order, establish, maintain, and update energy savings assumptions that must be used when filing energy conservation improvement programs. The commissioner shall establish an inventory of the most effective energy conservation programs, techniques, and technologies, and encourage all Minnesota utilities to implement them, where appropriate, in their service territories. The commissioner shall describe these programs in sufficient detail to provide a utility reasonable guidance concerning implementation. The commissioner shall prioritize the opportunities in order of potential energy savings and in order of cost–effectiveness. The commissioner may contract with a third party to carry out any of the commissioner's duties under this subdivision, and to obtain technical assistance to evaluate the effectiveness of any conservation improvement program. The commissioner may assess up to $800,000 annually until June 30, 2009, and $450,000 annual-

ly thereafter for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 1e. **Applied research and development grants.** The commissioner may, by order, approve and make grants for applied research and development projects of general applicability that identify new technologies or strategies to maximize energy savings, improve the effectiveness of energy conservation programs, or document the carbon dioxide reductions from energy conservation programs. When approving projects, the commissioner shall consider proposals and comments from utilities and other interested parties. The commissioner may assess up to $3,600,000 annually for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 1f. **Facilities energy efficiency.** (a) The commissioner of administration and the commissioner of commerce shall maintain and, as needed, revise the sustainable building design guidelines developed under section 16B.325.

(b) The commissioner of administration and the commissioner of commerce shall maintain and update the benchmarking tool developed under Laws 2001, chapter 212, article 1, section 3, so that all public buildings can use the benchmarking tool to maintain energy use information for the purposes of establishing energy efficiency benchmarks, tracking building performance, and measuring the results of energy efficiency and conservation improvements.

(c) The commissioner shall require that utilities include in their conservation improvement plans programs that facilitate professional engineering verification to qualify a building as Energy Star–labeled, Leadership in Energy and Environmental Design (LEED) certified, or Green Globes–certified. The state goal is to achieve certification of 1,000 commercial buildings as Energy Star–labeled, and 100 commercial buildings as LEED–certified or Green Globes–certified by December 31, 2010.

(d) The commissioner may assess up to $500,000 annually for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 1g. **Manner of filing and service.** (a) A public utility, generation and transmission cooperative electric association, municipal power agency, cooperative electric association, and municipal utility shall submit filings to the department via the department's electronic filing system. The commissioner may approve an exemption from this requirement in the event an affected utility or association is unable to submit filings via the department's electronic filing system. All other interested parties shall submit filings to the department via the department's electronic filing system whenever practicable but may also file by personal delivery or by mail.

(b) Submission of a document to the department's electronic filing system constitutes service on the department. Where department rule requires service of a notice, order, or other document by the department, utility, association, or interested party upon persons on a service list maintained by the department, service may be made by personal delivery, mail, or electronic service, except that electronic service may only be made upon persons on the service list who have previously agreed in writing to accept electronic service at an electronic address provided to the department for electronic service purposes.

Subd. 2. **Programs.** (a) The commissioner may 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 no more than a three–year period. Public utilities shall file conservation improvement plans by June 1, on a schedule determined by order of the

commissioner, but at least every three years. Plans received by a public utility by June 1 must be approved or approved as modified by the commissioner by December 1 of that same year. The commissioner shall evaluate the program on the basis of cost–effectiveness and the reliability of technologies employed. The commissioner's order 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.

(c) Each public utility subject to subdivision 1a may spend and invest annually up to ten 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.

(d) A public utility may not spend for or invest in energy conservation improvements that directly benefit a large energy facility or 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, a nonprofit corporation, or community organization.

(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 commission shall reject a petition that, on its face, fails to make a reasonable argument that a program is not in the public interest.

(f) The commissioner may order a public utility to include, with the filing of the utility's proposed conservation improvement plan under paragraph (a), the results of an independent audit of the utility's conservation improvement programs and expenditures performed by the department or an auditor with experience in the provision of energy conservation and energy efficiency services approved by the commissioner and chosen by the utility. The audit must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility that is the result of the spending and investments. The audit must evaluate the cost–effectiveness of the utility's conservation programs.

Subd. 2a. **Energy and conservation account.** The energy and conservation account is established in the special revenue fund in the state treasury. The commissioner must deposit money assessed or contributed under subdivisions 1d, 1e, 1f, and 7 in the state treasury and credit it to the energy and conservation account in the special revenue fund. Money in the account is appropriated to the commissioner for the purposes of subdivisions 1d, 1e, 1f, and 7. Interest on money in the account accrues to the account.

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 and assessments to the energy and conservation account, unless the recovery

would be inconsistent with a financial incentive proposal approved by the commission. The commission shall allow a cooperative electric association subject to rate regulation under section 216B.026, to recover expenses resulting from energy conservation improvement programs, load management programs, and assessments 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 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 has issued an exemption under subdivision 1a, paragraph (b), for that year for energy conservation improvements under this section.

Subd. 2c. **Performance incentives.** By December 31, 2008, the commission shall review any incentive plan for energy conservation improvement it has approved under section 216B.16, subdivision 6c, and adjust the utility performance incentives to recognize making progress toward and meeting the energy savings goals established in subdivision 1c.

Subd. 3. **Ownership of energy conservation improvement.** 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.

Subd. 5. **Efficient lighting program.** (a) Each public utility, cooperative electric association, and municipal utility that provides electric service to retail customers shall include as part of its conservation improvement activities a program to strongly encourage the use of fluorescent and high–intensity discharge lamps. The program must include at least a public information campaign to encourage use of the lamps and proper management of spent lamps by all customer classifications.

(b) A public utility that provides electric service at retail to 200,000 or more customers shall establish, either directly or through contracts with other persons, including lamp manufacturers, distributors, wholesalers, and retailers and local government units, a system to collect for delivery to a reclamation or recycling facility spent fluorescent and high–intensity discharge lamps from households and from small businesses as defined in section 645.445 that generate an average of fewer than ten spent lamps per year.

(c) A collection system must include establishing reasonably convenient locations for collecting spent lamps from households and financial incentives sufficient to encourage spent lamp generators to take the lamps to the collection locations. Financial incentives may include coupons for purchase of new fluorescent or high–intensity discharge lamps, a cash back system, or any other financial incentive or group of incentives designed to collect the

maximum number of spent lamps from households and small businesses that is reasonably feasible.

(d) A public utility that provides electric service at retail to fewer than 200,000 customers, a cooperative electric association, or a municipal utility that provides electric service at retail to customers may establish a collection system under paragraphs (b) and (c) as part of conservation improvement activities required under this section.

(e) The commissioner of the Pollution Control Agency may not, unless clearly required by federal law, require a public utility, cooperative electric association, or municipality that establishes a household fluorescent and high–intensity discharge lamp collection system under this section to manage the lamps as hazardous waste as long as the lamps are managed to avoid breakage and are delivered to a recycling or reclamation facility that removes mercury and other toxic materials contained in the lamps prior to placement of the lamps in solid waste.

(f) If a public utility, cooperative electric association, or municipal utility contracts with a local government unit to provide a collection system under this subdivision, the contract must provide for payment to the local government unit of all the unit's incremental costs of collecting and managing spent lamps.

(g) All the costs incurred by a public utility, cooperative electric association, or municipal utility for promotion and collection of fluorescent and high–intensity discharge lamps under this subdivision are conservation improvement spending under this section.

Subd. 6. **Renewable energy research.** (a) A public utility that owns a nuclear generation facility in the state shall spend five percent of the total amount that utility is required to spend under this section to support basic and applied research and demonstration activities at the University of Minnesota Initiative for Renewable Energy and the Environment for the development of renewable energy sources and technologies. The utility shall transfer the required amount to the University of Minnesota on or before July 1 of each year and that annual amount shall be deducted from the amount of money the utility is required to spend under this section. The University of Minnesota shall transfer at least ten percent of these funds to at least one rural campus or experiment station.

(b) Activities funded under this subdivision may include, but are not limited to:

(1) environmentally sound production of energy from a renewable energy source including biomass;

(2) environmentally sound production of hydrogen from biomass and any other renewable energy source for energy storage and energy utilization;

(3) development of energy conservation and efficient energy utilization technologies;

(4) energy storage technologies; and

(5) analysis of policy options to facilitate adoption of technologies that use or produce low–carbon renewable energy.

(c) Notwithstanding other law to the contrary, the utility may, but is not required to, spend more than two percent of its gross operating revenues from service provided in this state under this section or section 216B.2411.

(d) For the purposes of this subdivision:

(1) "renewable energy source" means hydro, wind, solar, biomass and geothermal energy, and microorganisms used as an energy source; and

(2) "biomass" means plant and animal material, agricultural and forest residues, mixed municipal solid waste, and sludge from wastewater treatment.

(e) This subdivision expires June 30, 2010.

Subd. 7. **Low–income programs.** (a) The commissioner shall ensure that each utility and association provides low–income programs. When approving spending and energy savings goals for low–income programs, the commissioner shall consider historic spending and participation levels, energy savings for low–income programs, and the number of low–income persons residing in the utility's service territory. A utility that furnishes gas service

must spend at least 0.2 percent of its gross operating revenue from residential customers in the state on low–income programs. A utility or association that furnishes electric service must spend at least 0.1 percent of its gross operating revenue from residential customers in the state on low–income programs. For a generation and transmission cooperative association, this requirement shall apply to each association's members' aggregate gross operating revenue from sale of electricity to residential customers in the state. Beginning in 2010, a utility or association that furnishes electric service must spend 0.2 percent of its gross operating revenue from residential customers in the state on low–income programs.

(b) To meet the requirements of paragraph (a), a utility or association may contribute money to the energy and conservation account. An energy conservation improvement plan must state the amount, if any, of low–income energy conservation improvement funds the utility or association will contribute to the energy and conservation account. Contributions must be remitted to the commissioner by February 1 of each year.

(c) The commissioner shall establish low–income programs to utilize money contributed to the energy and conservation account under paragraph (b). In establishing low–income programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low–income persons. Money contributed to the energy and conservation account under paragraph (b) must provide programs for low–income persons, including low–income renters, in the service territory of the utility or association providing the money. The commissioner shall record and report expenditures and energy savings achieved as a result of low–income programs funded through the energy and conservation account in the report required under subdivision 1c, paragraph (g). The commissioner may contract with a political subdivision, nonprofit or community organization, public utility, municipality, or cooperative electric association to implement low–income programs funded through the energy and conservation account.

(d) A utility or association may petition the commissioner to modify its required spending under paragraph (a) if the utility or association and the commissioner have been unable to expend the amount required under paragraph (a) for three consecutive years.

Subd. 8. **Assessment.** The commission or department may assess utilities subject to this section in proportion to their respective gross operating revenue from sales of gas or electric service within the state during the last calendar year to carry out the purposes of subdivisions 1d, 1e, and 1f. Those assessments are not subject to the cap on assessments provided by section 216B.62, or any other law.

History: *2007 c 10 s 5; 2007 c 57 art 2 s 21; 2007 c 136 art 2 s 5*

216B.2411 DISTRIBUTED ENERGY RESOURCES.

Subdivision 1. **Generation projects.** (a) Any municipality or rural electric association providing electric service and subject to section 216B.241 that is meeting the objectives under section 216B.1691 may, and each public utility may, use five percent of the total amount to be spent on energy conservation improvements under section 216B.241, on:

(1) projects in Minnesota to construct an electric generating facility that utilizes eligible renewable energy sources as defined in subdivision 2, such as methane or other combustible gases derived from the processing of plant or animal wastes, biomass fuels such as short–rotation woody or fibrous agricultural crops, or other renewable fuel, as its primary fuel source; or

(2) projects in Minnesota to install a distributed generation facility of ten megawatts or less of interconnected capacity that is fueled by natural gas, renewable fuels, or another similarly clean fuel.

(b) For public utilities, as defined under section 216B.02, subdivision 4, projects under this section must be considered energy conservation improvements as defined in section 216B.241. For cooperative electric associations and municipal utilities, projects under this section must be considered load–management activities described in section 216B.241, subdivision 1.

[For text of subds 2 and 3, see M.S.2006]

History: *2007 c 136 art 2 s 8*

216B.2412 DECOUPLING OF ENERGY SALES FROM REVENUES.

Subdivision 1. **Definition and purpose.** For the purpose of this section, "decoupling" means a regulatory tool designed to separate a utility's revenue from changes in energy sales. The purpose of decoupling is to reduce a utility's disincentive to promote energy efficiency.

Subd. 2. **Decoupling criteria.** The commission shall, by order, establish criteria and standards for decoupling. The commission shall design the criteria and standards to mitigate the impact on public utilities of the energy savings goals under section 216B.241 without adversely affecting utility ratepayers. In designing the criteria, the commission shall consider energy efficiency, weather, and cost of capital, among other factors.

Subd. 3. **Pilot programs.** The commission shall allow one or more rate–regulated utilities to participate in a pilot program to assess the merits of a rate–decoupling strategy to promote energy efficiency and conservation. Each pilot program must utilize the criteria and standards established in subdivision 2 and be designed to determine whether a rate–decoupling strategy achieves energy savings. On or before a date established by the commission, the commission shall require electric and gas utilities that intend to implement a decoupling program to file a decoupling pilot plan, which shall be approved or approved as modified by the commission. A pilot program may not exceed three years in length. Any extension beyond three years can only be approved in a general rate case, unless that decoupling program was previously approved as part of a general rate case. The commission shall report on the programs annually to the chairs of the house of representatives and senate committees with primary jurisdiction over energy policy.

History: *2007 c 136 art 2 s 6*

216B.26 ORDER; EFFECTIVE DATE.

Every decision made by the commission constituting an order or determination is in force and effective 20 days after it has been filed and has been served by personal delivery, electronic service as provided in section 216.17, 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 specifies a different date upon which the order becomes effective.

History: *2007 c 10 s 6*

216B.33 COMMISSION RULING WRITTEN, FILED, AND CERTIFIED.

Every order, finding, authorization, or certificate issued or approved by the commission under this chapter must be in writing and retained in the commission's official record system. A certificate under the seal of the commission that any order, finding, authorization, or certificate has not been modified, stayed, suspended, or revoked, must be received in any proceeding as evidence as to the facts therein stated.

History: *2007 c 10 s 7*

216B.62 REGULATORY EXPENSES.

[For text of subd 2, see M.S.2006]

Subd. 3. **Assessing all public utilities.** 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 (1) public utilities under section 216A.085, sections 216B.01 to 216B.67, other than amounts chargeable to public utilities under subdivision 2 or 6, and (2) alternative energy engineering activity under section 216C.261. The remainder, except the amount assessed against cooperatives and municipalities for alternative energy engineering activity under subdivision 5, shall be assessed by the commission and depart-

ment 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 transmitted via mail, personal delivery, or electronic service 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-sixth 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 third 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. **Objections.** Within 30 days after the date of the transmittal 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.

[For text of subds 5 and 5a, see M.S.2006]

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 transmitted 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: *2007 c 10 s 8–10*

216B.63 INTEREST ON ASSESSMENT.

The amounts assessed against any public utility not paid after 30 days after the transmittal of a notice advising the public utility of the amount assessed against it, 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: *2007 c 10 s 11*

216B.812 FOSTERING USE OF HYDROGEN ENERGY.

Subdivision 1. **Early purchase and deployment of renewable hydrogen, fuel cells, and related technologies by the state.** (a) The Department of Commerce, in coordination with the Department of Administration and the Pollution Control Agency, shall identify opportunities for deploying renewable hydrogen, fuel cells, and related technologies within state-owned facilities, vehicle fleets, and operations in ways that demonstrate their commercial performance and economics.

(b) The Department of Commerce shall recommend to the Department of Administration the purchase and deployment of hydrogen, fuel cells, and related technologies, when feasible, in ways that strategically contribute to realizing Minnesota's hydrogen economy goal as set forth in section 216B.8109, and which contribute to the following nonexclusive list of objectives:

(1) provide needed performance data to the marketplace;

(2) identify code and regulatory issues to be resolved;

(3) foster economic development and job creation in the state;

(4) raise public awareness of renewable hydrogen, fuel cells, and related technologies; or

(5) reduce emissions of carbon dioxide and other pollutants.

(c) The Department of Commerce and the Pollution Control Agency shall also recommend to the Department of Administration changes to the state's procurement guidelines and contracts in order to facilitate the purchase and deployment of cost–effective renewable hydrogen, fuel cells, and related technologies by all levels of government.

Subd. 2. **Pilot projects.** (a) In consultation with appropriate representatives from state agencies, local governments, universities, businesses, and other interested parties, the Department of Commerce shall report back to the legislature by November 1, 2005, and every two years thereafter, with a slate of proposed pilot projects that contribute to realizing Minnesota's hydrogen economy goal as set forth in section 216B.8109. The Department of Commerce must consider the following nonexclusive list of priorities in developing the proposed slate of pilot projects:

(1) deploy "bridge" technologies such as hybrid–electric, off–road, and fleet vehicles running on hydrogen or fuels blended with hydrogen;

(2) lead to cost–competitive, on–site renewable hydrogen production technologies;

(3) demonstrate nonvehicle applications for hydrogen;

(4) improve the cost and efficiency of hydrogen from renewable energy sources; and

(5) improve the cost and efficiency of hydrogen production using direct solar energy without electricity generation as an intermediate step.

(b) For deployment projects that do not involve a demonstration component, individual system components of the technology should, if feasible, meet commercial performance standards and systems modeling must be completed to predict commercial performance, risk, and synergies. In addition, the proposed pilots should meet as many of the following criteria as possible:

(1) advance energy security;

(2) capitalize on the state's native resources;

(3) result in economically competitive infrastructure being put in place;

(4) be located where it will link well with existing and related projects and be accessible to the public, now or in the future;

(5) demonstrate multiple, integrated aspects of renewable hydrogen infrastructure;

(6) include an explicit public education and awareness component;

(7) be scalable to respond to changing circumstances and market demands;

(8) draw on firms and expertise within the state where possible;

(9) include an assessment of its economic, environmental, and social impact; and

(10) serve other needs beyond hydrogen development.

[For text of subd 3, see M.S.2006]

History: *2007 c 57 art 2 s 17,22*

216B.813 MINNESOTA RENEWABLE HYDROGEN INITIATIVE.

Subdivision 1. **Road map.** The Department of Commerce shall coordinate and administer directly or by contract the Minnesota renewable hydrogen initiative. If the department decides to contract for its duties under this section, it must contract with a nonpartisan, nonprofit organization within the state to develop the road map. The initiative may be run as a public–private partnership representing business, academic, governmental, and nongovernmental organizations. The initiative must oversee the development and implementation of a renewable hydrogen road map, including appropriate technology deployments, that achieve the hydrogen goal of section 216B.013. The road map should be compatible with the United States Department of Energy's National Hydrogen Energy Roadmap and be based on an assessment of marketplace economics and the state's opportunities in hydrogen, fuel cells, and related technologies, so as to capitalize on strengths. The road map should establish a vision,

goals, general timeline, strategies for working with industry, and measurable milestones for achieving the state's renewable hydrogen goal. The road map should describe how renewable hydrogen and fuel cells fit in Minnesota's overall energy system, and should help foster a consistent, predictable, and prudent investment environment. The department must report to the legislature on the progress in implementing the road map by November 1 of each odd–numbered year.

Subd. 2. **Grants.** (a) The commissioner of commerce shall operate a competitive grant program for projects to assist the state in attaining its renewable hydrogen energy goals. The commissioner of commerce shall assemble an advisory committee made up of industry, university, government, and nongovernment organizations to:

(1) help identify the most promising technology deployment projects for public investment;

(2) advise on the technical specifications for those projects; and

(3) make recommendations on project grants.

(b) The commissioner shall give preference to project concepts included in the department's most recent biennial report: Strategic Demonstration Projects to Accelerate the Commercialization of Renewable Hydrogen and Related Technologies in Minnesota. Projects eligible for funding must combine one or more of the hydrogen production options listed in the department's report with an end use that has significant commercial potential, preferably high visibility, and relies on fuel cells or related technologies. Each funded technology deployment must include an explicit education and awareness–raising component, be compatible with the renewable hydrogen deployment criteria defined in section 216B.812, and receive 50 percent of its total cost from nonstate sources. The 50 percent requirement does not apply for recipients that are public institutions.

History: *2007 c 57 art 2 s 23*