

A bill for an act

relating to utilities; enacting Minnesota Public Utilities Holding Company Act; amending Minnesota Statutes 2006, sections 216B.02, subdivision 4; 216B.49, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 216B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 216B.02, subdivision 4, is amended to read:

Subd. 4. **Public utility.** "Public utility" means persons, corporations, holding companies, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service or (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility. Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale. In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility. No person shall be deemed to be a public utility if it furnishes its services only to

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tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a public utility if it furnishes service to occupants of a manufactured home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons.

Sec. 2. Minnesota Statutes 2006, section 216B.49, subdivision 3, is amended to read:

Subd. 3. **Commission approval required.** It shall be unlawful for any public utility ~~organized under the laws of~~ operating in this state to offer or sell any security ~~or, if organized under the laws of any other state or foreign country, to pay a dividend, or to~~ subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness unless the ~~security issuance~~ transaction of the public utility shall first be approved by the commission. Approval by the commission shall be by formal written order.

Sec. 3. **[216B.512] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 216B.512 to 216B.5165, the following terms have the meanings given them in this section.

Subd. 2. **Affiliated interest.** "Affiliated interest" has the meaning given under section 216B.48.

Subd. 3. **Beneficial owner.** (a) "Beneficial owner" means, with respect to a security, any person who in any way has the unconditional power to vote or receive the economic gains or losses of the security.

(b) "Beneficial owner" does not mean any person holding the security for another person, including but not limited to any of the following:

(1) the trustee of a qualified employee plan;

(2) the trustee of a stock purchase plan or a dividend reinvestment plan;

(3) a pledgee;

(4) a nominee;

(5) a broker or an agent; or

(6) an underwriter for the first 40 days following acquisition of securities from an issuer if the securities are held in the underwriter's own account.

Subd. 4. **Commercial building.** "Commercial building" means any building that is used primarily for carrying out any business, including but not limited to a nonprofit business, and any building that is used primarily for manufacturing or producing products, raw materials, or agricultural commodities.

3.1 Subd. 5. **Company.** "Company" means any partnership, corporation, S corporation,
3.2 joint-stock company, limited liability company, limited liability partnership, limited
3.3 partnership, business trust, or organized group of persons, whether incorporated or not,
3.4 and any receiver, trustee, or other liquidator of such an entity or group of persons.
3.5 "Company" does not include a municipality, a cooperative electric association, or other
3.6 political subdivision.

3.7 Subd. 6. **Form a holding company.** "Form a holding company" means any of
3.8 the following:

3.9 (1) as a beneficial owner, to take, hold, or acquire five percent or more of the
3.10 outstanding voting securities of a public utility with the unconditional power to vote
3.11 those securities; or

3.12 (2) to exchange or convert 50 percent or more of the outstanding voting securities of
3.13 (i) a public utility, other than a municipality or other political subdivision or a transmission
3.14 company, for or into the voting securities of a company organized, created, appointed, or
3.15 formed by or at the direction of the public utility or (ii) a subsidiary of such company.

3.16 Subd. 7. **Holding company.** (a) "Holding company" means:

3.17 (1) any person that, in any chain of successive ownership, directly or indirectly
3.18 as a beneficial owner, owns, controls, or holds five percent or more of the outstanding
3.19 voting securities of a public utility affiliate, with the unconditional power to vote such
3.20 securities; or

3.21 (2) any person that the commission determines, after investigation and hearing,
3.22 directly or indirectly exercises, alone or under an arrangement or understanding with one
3.23 or more persons, such a controlling interest over the management or policies of a public
3.24 utility as to make it necessary or appropriate in the public interest or for the protection of
3.25 the utility's consumers or investors that the person be subject to this section.

3.26 (b) "Holding company" does not include a company that owns, operates, manages,
3.27 or controls a telecommunications carrier or telephone company as defined in section
3.28 237.01 unless such company also owns, operates, manages, or controls a public utility.

3.29 Subd. 8. **Holding company system.** "Holding company system" means a holding
3.30 company and any public utility with which the holding company is an affiliated interest
3.31 and all of the holding company's and public utility's affiliated interests.

3.32 Subd. 9. **Generation assets.** "Generation assets" means assets that are classified
3.33 as electric generation assets on the books of account of a public utility, as determined
3.34 by the commission.

3.35 Subd. 10. **Nonutility affiliate.** "Nonutility affiliate" means a company in a holding
3.36 company system that is not a public utility.

Subd. 11. **Person.** "Person" means an individual or company.

Subd. 12. **Public utility affiliate.** "Public utility affiliate" means a company that is in a holding company system and that is a public utility.

Subd. 13. **Public utility affiliate employee.** "Public utility affiliate employee" means any individual who is in the regular employ of a public utility affiliate, except any officer or director and any officer's or director's incidental supporting staff.

Subd. 14. **Securities.** "Securities" has the meaning given it under section 216B.49, subdivision 1.

Subd. 15. **Subsidiary.** "Subsidiary" means a company of which a majority of the assets or a majority of the shares with voting rights are owned, directly or indirectly, by another company.

Subd. 16. **Transmission company.** "Transmission company" has the meaning given in section 216B.02, subdivision 10.

Sec. 4. **[216B.5125] HOLDING COMPANY FORMATION.**

Subdivision 1. **Commission certificate of approval.** No person may form a holding company unless the person has received a certificate of approval from the commission in accordance with this chapter.

Subd. 2. **Information for certificate.** An application for a certificate of approval to form a holding company is complete if it contains all of the following information:

(1) the names and corporate relationships of all companies that will be in the holding company system and the name of the applicant and any parent or subsidiary corporation of the applicant;

(2) a description of how the applicant plans to form the holding company, including if available at the time of application:

(i) copies of the organizational documents associated with the holding company formation, including articles of incorporation or amendments to the articles of incorporation of all companies that will be in the holding company system; and

(ii) copies of any filings, including securities filings, related to the formation of the holding company made with any agency of this state or the federal government;

(3) the costs and fees attributable to the formation of the holding company;

(4) the method by which management, personnel, property, income, losses, costs, and expenses will be allocated within the holding company system between public utility affiliates and nonutility affiliates;

(5) a copy of any proposed agreement between a public utility affiliate and any person with which it will be an affiliated interest at the time the holding company is formed;

(6) an identification of all public utility assets or information in existence at the time of formation of the holding company, such as customer lists, that the applicant plans to transfer to or permit a nonutility affiliate to use, including a description of the proposed terms and conditions under which the assets or information will be transferred or used; and

(7) a copy of a financial forecast showing the capital requirements of every public utility affiliate which will be within the holding company system, including for each public utility affiliate on an annual basis for ten years following the year of application:

(i) projected capital requirements;

(ii) sources of capital;

(iii) an itemization of major capital expenditures;

(iv) projected capital structure;

(v) an estimated amount of retained earnings available for nonutility purposes; and

(vi) the assumptions underlying the information included in the financial forecast required under clause (7).

Subd. 3. **Application sufficiency.** No later than 45 days after the commission receives an application for a certificate of approval to form a holding company, the commission shall determine whether the application is complete as specified under subdivision 2. If the commission determines that the application is complete, the commission shall docket the application for a determination under this section. If the commission determines the application to be incomplete, the commission shall notify the applicant in writing of its determination, identify any part of the application that the commission has determined to be incomplete, and state the reasons for such determination. An applicant may supplement and refile an application that the commission has determined to be incomplete under this subdivision. There is no limit on the number of times an applicant may refile an application under this section prior to a determination under subdivision 5. If the commission fails to make a determination regarding the completeness of an application within 45 days after the application had been filed, the application is deemed to be complete.

Subd. 4. **Hearing.** The commission shall hold a hearing concerning an application for a certificate of approval to form a holding company under this section.

Subd. 5. **Decision.** No later than 120 days after an application has been docketed under subdivision 3, the commission shall issue its findings of fact, conclusions of law, and order approving or rejecting the application. The commission shall issue a certificate of approval to form a holding company unless it finds that the formation of the holding company would materially harm the interests of utility consumers or investors. The commission, in issuing a certificate of approval under this section, may only impose

terms, limitations, or conditions on approval that are consistent with and necessary to satisfy the requirements in section 216B.5135.

Subd. 6. **Modifications.** At any time subsequent to the time the commission approves the formation of a holding company under subdivision 5, the commission may, after notice and opportunity for hearing, modify any term, limitation, or condition imposed under subdivision 5 or add any term, limitation, or condition under subdivision 5. Any term, limitation, or condition modified or added under this subdivision must be consistent with and necessary to satisfy the requirements of section 216B.5135.

Sec. 5. [216B.513] TAKEOVERS AND CAPITAL IMPAIRMENT.

Subdivision 1. **Takeovers.** No person may take, hold, or acquire, directly or indirectly, more than ten percent of the outstanding voting securities of a holding company, unless the commission has determined, after investigation and an opportunity for hearing, that the taking, holding, or acquiring is in the best interests of utility consumers, investors, and the public.

Subd. 2. **Capital impairment.** If the commission finds that the capital of any public utility affiliate will be impaired by the payment of a dividend, the commission may, after an investigation and opportunity for hearing, order the public utility affiliate to limit or cease the payment of dividends to the holding company until the potential for impairment is eliminated.

Sec. 6. [216B.5135] REGULATION OF HOLDING COMPANY SYSTEMS.

Subdivision 1. **Regulatory limitation.** No holding company and no nonutility affiliate is subject to any regulatory power of the commission except under this chapter.

Subd. 2. **Records.** The commission has full access to any book, record, document, or other information relating to a holding company system to the extent that the information is relevant to the performance of the commission's duties under this chapter or any other statute applicable to the public utility affiliate. The commission may require a holding company to keep any record or document that is necessary for the commission to perform its duties under this section and that is consistent with generally accepted accounting and record-keeping practices of the particular type of business involved.

Subd. 3. **Lending prohibited.** No public utility affiliate may lend money to any holding company or to any nonutility affiliate in the holding company system.

Subd. 4. **Obligation guarantees prohibited.** No public utility affiliate may guarantee the obligations of any holding company or any nonutility affiliate in the holding company system.

7.1 Subd. 5. **Subsidization prohibited.** No nonutility activity of any holding company
7.2 or nonutility affiliate may be subsidized materially by the consumers of any public utility
7.3 affiliate in the holding company system. No public utility activity of any holding company
7.4 or public utility affiliate may be subsidized materially by the nonutility activities of the
7.5 holding company or any of its nonutility affiliates.

7.6 Subd. 6. **Impairment of operations prohibited.** No holding company system may
7.7 be operated in any way that materially impairs the credit, the ability to acquire capital on
7.8 reasonable terms, or the ability to provide safe, reasonable, reliable, and adequate utility
7.9 service of any public utility affiliate in the holding company system.

7.10 Subd. 7. **Transfer of confidential information restricted.** No public utility may
7.11 transfer to any nonutility affiliate in the holding company system any confidential public
7.12 utility information, including but not limited to customer lists, that will be transferred or
7.13 used for any nonutility purpose unless the public utility has applied for and received the
7.14 written approval of the commission for the transfer. The commission may not approve
7.15 any transfer that would foster unfair or discriminatory business practices, or that would
7.16 destroy or hamper competition through conduct that violates sections 325D.49 to 325D.66
7.17 or any other applicable state or federal antitrust law. Any commission-approved transfer
7.18 requires the authorization of the customer before it becomes effective.

7.19 Subd. 8. **Separate organization.** Every holding company, and every affiliate within
7.20 a holding company system, must be a separately organized company.

7.21 Subd. 9. **Transfer of real property restricted.** No public utility affiliate may
7.22 transfer, sell, or lease to any nonutility affiliate in a holding company system any real
7.23 property which is held or used for provision of utility service except by public sale or
7.24 offering to the highest qualified bidder.

7.25 Subd. 10. **Dissolution requirements.** No holding company system may take any
7.26 action to terminate its interest in a public utility affiliate without notice to and approval
7.27 of the commission. If the commission grants approval, it may impose conditions with
7.28 respect to the division and allocation of plant, equipment, resources, and any other asset
7.29 necessary to protect the interests of utility consumers and investors and the public. If a
7.30 holding company system terminates its interest under this subdivision in all of its public
7.31 utility affiliates, no company remaining in the holding company system is subject to
7.32 any regulatory power of the commission.

7.33 Subd. 11. **Assets recorded.** The assets of every company in a holding company
7.34 system must be as recorded on the books of accounting record of the company, net of any
7.35 applicable valuation accounts, including but not limited to accumulated depreciation and
7.36 allowance for uncollectible accounts, as of the end of the prior year.

8.1 Subd. 12. **Affiliate employee services regulated.** (a) No public utility affiliate may
8.2 permit the use of any public utility affiliate employee's services by any nonutility affiliate
8.3 in a holding company system except by contract or arrangement. Any such contract or
8.4 arrangement, or amendment thereto, made or entered into for the use of any public utility
8.5 affiliate employee's services by a nonutility affiliate must have prior written approval
8.6 of the commission before it is effective.

8.7 (b) The commission shall approve the contract or arrangement if it is established
8.8 upon investigation that the nonutility affiliate will compensate the public utility affiliate
8.9 for the use of the employee's services at the fair market value of the employee's services
8.10 and that the nonutility affiliate's use of the employee's services will not result in unjust
8.11 discrimination against, or have an anticompetitive impact on, any competitor of the
8.12 nonutility affiliate.

8.13 (c) The commission may not approve the contract or arrangement if it determines
8.14 that the potential burden of administering the contract or arrangement is greater than the
8.15 potential benefits to the public utility affiliate's customers or if it determines that the
8.16 public utility affiliate has not minimized the use of such employees by nonutility affiliates
8.17 in the holding company system.

8.18 Subd. 13. **Property transactions regulated.** (a) In this subdivision, "property"
8.19 means any equipment, facilities, property, or other nonmonetary item of value except real
8.20 property and utility service that is provided by the public utility affiliate on the same terms
8.21 or conditions to all consumers in the same class. No public utility affiliate may sell, lease,
8.22 or transfer to, or exchange with, any nonutility affiliate in a holding company system
8.23 any property, except by contract or arrangement. Any such contract or arrangement,
8.24 or amendment thereto, made or entered into for the sale, use, transfer, or exchange of
8.25 any public utility affiliate's property by a nonutility affiliate must have the prior written
8.26 approval of the commission before it is effective.

8.27 (b) The commission shall approve the contract or arrangement if it establishes upon
8.28 investigation that the nonutility affiliate will compensate the public utility affiliate for
8.29 selling, leasing, or transferring to, or exchanging with, the nonutility affiliate any property
8.30 at the fair market value of the property and that the nonutility affiliate's acquisition or lease
8.31 of the property will not result in unjust discrimination against, or have an anticompetitive
8.32 impact on, any competitor of the nonutility affiliate.

8.33 (c) The commission may not approve the contract or arrangement if it determines
8.34 that:

8.35 (1) the potential burden of administering the contract or arrangement is greater than
8.36 the potential benefits to the public utility affiliate's customers; or

(2) the public utility affiliate has not minimized selling, leasing, or transferring property to, or exchanging property with, nonutility affiliates in the holding company system.

Sec. 7. **[216B.514] LOAN AND INVESTMENT RESTRICTIONS FOR OFFICERS; PENALTY.**

Subdivision 1. Prohibited arrangements with officers and directors. Except under rules prescribed by the commission, no public utility or holding company may lend funds or credit to any of its officers or directors by any of the means described in clauses (1) to (3) and a public utility may not lend funds or credit to any corporation, except a public utility subject to the regulatory powers of the commission, if the corporation holds, directly or indirectly through any chain of ownership, five percent or more of the voting stock of the public utility or renders any managerial, supervising, engineering, legal, accounting, or financial service to the public utility, by any of the following means:

(1) becoming surety, guarantor, or endorser upon any obligations, contingent or otherwise, of the officer, director, or corporation;

(2) loaning funds, securities, or other like assets to the officer, director, or corporation; or

(3) purchasing in the open market, or otherwise, any obligation upon which the officer, director, or corporation may be liable solely or jointly with others.

Subd. 2. Void agreements. Any contract made in violation of this section is void and subject to cancellation and recoupment by action at law. If a contract is made contrary to the provisions of this section, the commission, after notice and hearing, may order the public utility or holding company to take steps within 30 days to recover the funds or assets thus illegally loaned or transferred by action at law or other proceedings that will effectively release the public utility or holding company from the contract as surety, guarantor, or endorser.

Subd. 3. Penalty. Any director, treasurer, or other officer or agent of a public utility or holding company who makes or votes to authorize a transaction in violation of this section may be fined not more than \$10,000.

Subd. 4. Application. The provisions of this section apply and extend to the renewal or extension of existing contracts.

Sec. 8. **[216B.5145] REPORTING REQUIREMENTS.**

(a) No more than ten business days after a holding company forms, organizes, or acquires a nonutility affiliate, the holding company shall notify the commission of

the formation, organization, or acquisition and shall provide the commission with the following information:

(1) the name, identification of officers, and corporate relationship of the nonutility affiliate to the holding company and utility affiliate;

(2) a copy of any proposed agreement or arrangement between the nonutility affiliate and the public utility affiliate;

(3) a brief description of the nature of the business of the nonutility affiliate, including its most recent annual financial statement; and

(4) as of the last day of the calendar year immediately preceding the date of the notification under this section, the total amount of assets held by the nonutility affiliate, the amount of those assets located within this state, the total number of employees, and the total number of employees located within this state.

(b) The holding company shall report the information required under this section to the commission annually no later than March 31. The information must be available to the public upon filing.

Sec. 9. [216B.515] ASSET REQUIREMENTS.

The sum of the assets of all nonutility affiliates in a holding company system may not exceed:

(1) 25 percent of the assets of all public utility affiliates in the holding company system engaged in the generation, transmission, or distribution of electric power;

(2) a percentage of the assets as determined by the commission, which may be more but may not be less than 25 percent, of all public utility affiliates in the holding company system engaged in providing utility service other than the generation, transmission, or distribution of electric power; and

(3) for any public utility affiliate that is in the holding company system and that engages in the provision of more than one type of utility service, a percentage of assets equal to the amount of the public utility affiliate's assets devoted to public utility service, other than the generation, transmission, and distribution of electric power, multiplied by a percentage as determined by the commission, which may be more but may not be less than 25 percent, plus 25 percent of all remaining assets of the public utility affiliate.

Sec. 10. [216B.5155] INVESTIGATIONS.

Subdivision 1. **Investigation initiation, hearing, remedy.** The commission, on its own motion or, at its discretion, upon the complaint of any person, may, after reasonable notice and an opportunity for hearing, conduct an investigation to determine if any practice

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11.1 of a holding company system violates any provision of sections 216B.512 to 216B.5156.
11.2 On finding after investigation, notice, and opportunity for hearing that any practice of any
11.3 company in a holding company in a holding company system violates any provision of
11.4 sections 216B.512 to 216B.5156, the commission, by order or otherwise, shall direct the
11.5 company to modify or cease the practice and order any other appropriate relief.

11.6 Subd. 2. **Protecting interests of utility investors and consumers.** After
11.7 investigation and a hearing, the commission may order a holding company to terminate
11.8 its interest in a public utility affiliate on terms adequate to protect the interests of public
11.9 utility investors and consumers and the public if the commission finds, based upon clear
11.10 and convincing evidence, that termination of the interest is necessary to protect the
11.11 interests of utility investors in a financially healthy utility and consumers in reasonably
11.12 adequate utility service at just and reasonable rates.

11.13 Sec. 11. **[216B.5156] PRIVATE CAUSE OF ACTION.**

11.14 Any company in a holding company system that does, causes, or permits to be done
11.15 any prohibited action under sections 216B.512 to 216B.5155 or fails to comply with any
11.16 term, limitation, or condition imposed under sections 216B.512 to 216B.5155 is liable to
11.17 any person injured thereby in treble the amount of damages sustained in consequence of
11.18 the prohibited action or failure to comply.

11.19 Sec. 12. **[216B.5165] INTERVENOR AUTHORITY.**

11.20 The commission, the department, and the attorney general may intervene in any
11.21 proceeding before any state or federal agency or court before which an application or issue
11.22 related to sections 216B.512 to 216B.5156 is pending.

11.23 Sec. 13. **SHORT TITLE.**

11.24 Minnesota Statutes, sections 216B.512 to 216B.5156, may be cited as the Minnesota
11.25 Public Utilities Holding Company Act.

11.26 Sec. 14. **EFFECTIVE DATE.**

11.27 Sections 1 to 13 are effective the day following final enactment.