A bill for an act

relating to utilities; clarifying authority of Public Utilities Commission to approve multiyear rate plan that meets specified criteria; consolidating multiple rate riders into single large energy project; amending Minnesota Statutes 2010, sections 216B.16, subdivisions 6b, 7, 7d, by adding a subdivision; 216B.241, subdivisions 1, 1c; proposing coding for new law in Minnesota Statutes, chapter 216B; repealing Minnesota Statutes 2010, sections 216B.16, subdivision 7b; 216B.1636; 216B.1637; 216B.1645, subdivisions 2, 2a.

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

Section 1. Minnesota Statutes 2010, section 216B.16, subdivision 6b, is amended to read:

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 electric utility infrastructure projects that were not included in the electric utility's rate base in its most recent general rate case.

Sec. 2. Minnesota Statutes 2010, section 216B.16, subdivision 7, is amended to read:

Subd. 7. **Energy cost adjustment.** Notwithstanding any other provision of this chapter, the commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in:

(1) federally regulated wholesale rates for energy delivered through interstate facilities;

(2) direct costs for natural gas delivered; ~~or~~

(3) costs for fuel used in generation of electricity or the manufacture of gas; or

(4) prudent costs incurred by a public utility for sorbents, reagents, or chemicals used to control emissions from an electric generation facility, provided that these costs are not recovered elsewhere in rates. The utility must track and report annually the volumes and costs of sorbents, reagents, or chemicals using separate accounts by generating plant.

Sec. 3. Minnesota Statutes 2010, section 216B.16, subdivision 7d, is amended to read:

Subd. 7d. **Central Corridor utility zone cost adjustment.** (a) The Central Corridor utility zone is the area extending from the Union Depot Station in St. Paul to the proposed multimodal station in Minneapolis along the route of the light rail transit project connecting those two points, and an area extending approximately one-quarter mile from that route and including the entire University of Minnesota, Minneapolis campus.

(b) A public utility that provides retail electric service within the Central Corridor utility zone and that is required to replace, relocate, construct, or install new facilities, may apply to the commission for approval of new facilities in the Central Corridor utility zone and facilities outside the zone that the utility demonstrates must be changed as a direct result of changes within the zone. Facilities proposed under this subdivision may include transmission facilities, distribution facilities, generation facilities, advanced technology-assisted efficiency devices, and energy storage facilities not otherwise subject to section 216B.243, or chapter 216E, 216F, or 216G. Upon approval under paragraph (c), the utility may construct and install the facilities.

(c) The commission may approve the construction and installation of facilities in the Central Corridor mass transit utility zone proposed by a utility under paragraph (b) upon a finding:

(1) that the facilities:

(i) are necessary to provide electric service;

(ii) assist future development of renewable energy, conservation, electric vehicles, and advanced technology-assisted efficiency programs and devices; or

(iii) are exploratory, experimental, or research facilities to advance the use of renewable energy, conservation, electric vehicles, and advanced technology-assisted efficiency programs and devices;

(2) that the utility has engaged in a cooperative process with affected local and state government agencies in the design, planning, or construction of the Central Corridor utility zone project and changes to utility facilities;

(3) that the utility and local units of government have made reasonable efforts to seek federal, state, or private funds that may be available to mass transit and energy projects;

(4) that the utility has made reasonable efforts to minimize the project costs and maximize the value of the facilities to customers;

(5) that the utility has a plan to offer a comprehensive array of programs for residential, commercial, and industrial customers located within the mass transit zone;

(6) that the utility directs existing and planned solar energy programs to develop solar energy along the mass transit utility zone; and

(7) that the utility has made reasonable efforts to apply for federal funds to develop technology-assisted efficiency programs and devices within the mass transit utility zone.

(d) Upon request of the commission, the utility shall submit periodic reports to the commission reviewing the cost and benefits of the facilities constructed within the Central Corridor utility zone and their potential applicability to other areas outside the Central Corridor utility zone.

~~(e) Notwithstanding any other provision of this chapter, the commission may approve a tariff mechanism for automatic adjustment of charges for new, replaced, or relocated facilities installed under this subdivision in a manner consistent with this subdivision and the standards and procedures contained in subdivision 7b, except that no approval under section 216B.243 or certification under section 216B.2425 is required unless otherwise required by law. This section does not authorize a city-requested facilities surcharge.~~

~~(f)~~ (e) For the purpose of this subdivision, "technology-assisted efficiency programs and devices" includes, but is not limited to, infrastructure that integrates digital information and controls technology to improve the reliability, security, and efficiency of the electric grid.

Sec. 4. Minnesota Statutes 2010, section 216B.16, is amended by adding a subdivision to read:

Subd. 19. **Multiyear rate plan.** (a) A public utility may propose, and the commission may approve, approve as modified, or reject a multiyear rate plan as provided in this subdivision. The term "multiyear rate plan" refers to a plan establishing the rates the utility may charge for each year of the specified period of years to be covered by the plan. The commission may approve a multiyear rate plan only if it finds that the plan establishes just and reasonable rates for the utility, applying the factors described in subdivision 6.

(b) Rates charged under a multiyear rate plan must be based only upon the utility's reasonable and prudent costs of service over the term of the plan, as determined by the commission. The commission may require that a utility operating under a rate plan approved under this subdivision may only adjust rates as specified in the plan, provided the plan provides opportunities for the timely recovery of costs incurred by the utility equivalent to those provided in rate rider mechanisms authorized in this chapter. Rate adjustments authorized under subdivisions 6b and 7 may continue outside of a plan authorized under this subdivision.

(c) The commission may, by order, establish terms, conditions, and procedures necessary to implement this section. A utility must notify the commission within 30 days of issuance of a commission order approving a plan filed under this subdivision if the utility elects to be regulated under the approved plan. A utility that elects to be regulated under this subdivision may not request a rate adjustment rider under section 216B.1614 until the term of an approved plan expires.

Sec. 5. **[216B.1614] CONSOLIDATED RIDER FOR LARGE ELECTRIC UTILITY PROJECTS.**

Subdivision 1. **Authority.** The commission may approve a rider mechanism for the annual adjustment of charges for utility costs as specified under this section. To be considered eligible for recovery, a public utility must demonstrate that these costs are reasonable and prudent expenditures, are net of associated revenues, were incurred for the Minnesota jurisdiction by the utility but not yet included in the utility's base rates, fit into one of the authorized categories under subdivisions 2 and 3, and otherwise meet the criteria established in this section.

Subd. 2. **Categories.** The following categories of utility costs may be included in a rider mechanism described in subdivision 1:

(1) the expenditures for construction of a large energy facility, as defined under section 216B.2421, subdivision 2, which the commission has reviewed and approved under section 216B.2422, subdivision 5, or 216B.243;

(2) the costs of a power purchase contract, investment, or expenditure, which the commission has reviewed and approved under section 116C.779, subdivision 1, paragraph (c), or 216B.1645, subdivision 1;

(3) a capital investment that the commission finds significant, nonrecurring, and necessary for the implementation of an operating license renewal or extended power uprate application approved by the United States Nuclear Regulatory Commission for a nuclear generation plant in the state; and the incremental operating costs for a nuclear generation plant in the state above the amounts included in the utility's most recent rate case;

(4) the costs of an environmental project for which the commission has issued an advanced determination of prudence under section 216B.1695, or which the commission has approved under section 216B.1692 or 216B.683. Notwithstanding other law to the contrary, rider cost recovery approved under section 216B.1692 or 216B.683 may only be recovered in a rider approved under this section; or

(5) charges related to regionally planned transmission infrastructure that have been allocated to a utility by a Federal Energy Regulatory Commission-approved regional transmission organization under a federally approved tariff. These charges must be offset or reduced by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent these revenues have not been otherwise offset.

Subd. 3. **Commission discretion.** In addition to the categories listed in subdivision 2, a public utility may petition the commission to include costs in the rider mechanism authorized under this section for an electric utility project of the type contemplated under section 216B.243, but not subject to review by the commission under that section due to the project's size, location, or other attribute, or reasonable and prudent operations and maintenance costs incurred by the utility that significantly exceed amounts authorized

in the utility's most recent rate case. The commission may approve a petition if the commission finds approval to be in the public interest.

Subd. 4. **Tariff approval.** (a) Upon filing by a public utility under this section, the commission may approve, reject, or modify, after notice and comment, a tariff that:

(1) allows the utility to recover on a timely basis the reasonable capital and operation and maintenance costs, net of any associated revenues, of the expenditures, investments, costs or charges identified in subdivision 2, or costs authorized by the commission under subdivision 3;

(2) allows a return on investment at the level approved in the utility's last general rate case;

(3) provides a reasonable current return on construction work in progress, provided that recovery from Minnesota retail customers for the allowance for funds used during construction is not sought through any other mechanism;

(4) allows for recovery of other reasonable expenses, net of any associated revenues, if shown to promote a least-cost project option or is otherwise in the public interest;

(5) allocates costs and revenues appropriately between wholesale and retail customers, and recovers costs from retail customer classes using the same method employed to allocate capital costs in the utility's most recent electric rate case; and

(6) terminates recovery once costs have been fully recovered or have otherwise been reflected in the utility's general rates.

(b) The commission may require a tariff filed under this section to include incentives to promote efficiency and cost control, such as competitive bidding and cost-savings sharing mechanisms.

Subd. 5. **Approval.** (a) Once a tariff has been approved under subdivision 4, a public utility may file rate adjustments to be applied to customer bills paid under that tariff. The commission may establish a schedule specifying when a utility may file under this subdivision, at least once per year. In its filing, the public utility shall provide:

(1) a description of and context for costs included for recovery;

(2) a schedule for implementation of applicable capital investments;

(3) the utility's costs and associated revenues for the expenditures, investments, and costs or charges identified in subdivision 1, or authorized by the commission under subdivision 2, along with adequate supporting information identifying how the costs and associated revenues are reasonable;

(4) a description of the utility's efforts to ensure the lowest costs to ratepayers; and

(5) calculations to establish that the rate adjustment is consistent with the terms of the tariff established in subdivision 4.

(b) Upon receiving a filing for a rate adjustment under the tariff established in subdivision 4, the commission may approve the rate adjustments provided that, after notice and comment, the costs included for recovery through the tariff were or are expected to be prudently incurred.

Subd. 6. **General rate case.** (a) The commission may establish, and amend as necessary, a schedule for the filing of general rate cases for a utility that has an approved tariff under this section, after notice and comment from interested parties. A utility subject to a rate case schedule under this subdivision may file an application for a general rate case earlier than the schedule established by the commission upon providing written notice describing the reasons for the earlier filing 60 days in advance of the application.

(b) The commission may require the utility to include costs approved for recovery under this section in the utility's base rates in the utility's next general rate case, or upon a schedule determined by the commission to provide the optimum benefits for the utility's ratepayers.

(c) The commission may, by order, establish terms, conditions, and procedures necessary to implement this section. A utility may not implement a rate adjustment rider under this section concurrently with a multiyear rate plan under section 216B.16, subdivision 19.

Sec. 6. Minnesota Statutes 2010, section 216B.241, subdivision 1, is amended to read:

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~~ owned by an electric utility that (1) replace or modify existing electric utility infrastructure, including utility-owned buildings, in order to conserve energy or use energy more efficiently, consistent with

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

(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.

Sec. 7. Minnesota Statutes 2010, section 216B.241, subdivision 1c, is amended to read:

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. A utility or association may elect to carry forward energy savings in excess of 1.5 percent for a year to the succeeding three calendar years, except that savings from electric utility infrastructure projects allowed under paragraph (d) may be carried forward for five years. A particular energy savings can be used only for one year's goal.

(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 (1) electric utility infrastructure projects ~~approved by the commission under section 216B.1636~~ owned by the utility or association that replace or modify existing infrastructure, including buildings owned by the utility or association, and the replacement or modification is shown to conserve energy or use energy more efficiently, consistent with this subdivision, or (2) 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.

Sec. 8. **RIDER SIMPLIFICATION.**

A public utility may continue to implement a rate rider approved as of August 1, 2010, under a statute referenced in Minnesota Statutes, section 216B.1614, subdivision 2, until either:

(1) the utility files its next general rate case under Minnesota Statutes, section 216B.16, at which time all uncollected costs approved for recovery under Minnesota Statutes, section 216B.16, subdivision 19, are to be included in the utility's base rates; or

(2) the utility files its first filing under Minnesota Statutes, section 216B.1614, at which time all uncollected costs approved for recovery under Minnesota Statutes, section 216B.1614, subdivision 2, are to be recovered under the rate rider established in that section.

Sec. 9. **REPEALER.**

Minnesota Statutes 2010, sections 216B.16, subdivision 7b; 216B.1636; 216B.1637; and 216B.1645, subdivisions 2 and 2a, are repealed.