

A bill for an act

relating to energy; permitting certain energy customers to seek exemptions from a utility's conservation investment program; making clarifying changes; amending Minnesota Statutes 2010, sections 216B.02, by adding a subdivision; 216B.16, subdivision 6b; 216B.1636, subdivision 1; 216B.241, subdivisions 1, 1a, 2.

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

Section 1. Minnesota Statutes 2010, section 216B.02, is amended by adding a subdivision to read:

Subd. 1b. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Commerce.

Sec. 2. 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) The commission shall not include investments and expenses for energy conservation improvements ~~shall not be included by the commission in the determination of determining~~ (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 under section 216B.241, subdivision 1a, paragraph (b); or (ii) just and reasonable gas rates for large energy facilities, large gas customer facilities that have been exempted by the commissioner under section 216B.241,

subdivision 1a, paragraph (d), or by the commission under section 216B.241, subdivision 2, or commercial gas customer facilities that are not large gas customer facilities that have been exempted by the commissioner under section 216B.241, subdivision 1a, paragraph (e), or by the commission under section 216B.241, subdivision 2.

(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~~ under section 216B.241, subdivision 1a, paragraph (b), or by the commission under section 216B.241, subdivision 2, and to reduce the gas rate applicable to a large energy facility, a large gas customer facility or commercial gas customer facility that is not a large gas customer facility that has been exempted by the commissioner under section 216B.241, subdivision 1a, paragraph (d) or (e), or by the commission under section 216B.241, subdivision 2, 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).

Sec. 3. Minnesota Statutes 2010, section 216B.1636, subdivision 1, is amended to read:

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)~~ (o).

Sec. 4. 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.

(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:

(1) gas sales to:

(i) a large energy facility;

(ii) a large gas customer facility exempted by the commissioner under subdivision 1a, paragraph (d), or by the commission under section 216B.241, subdivision 2; and

(iii) a commercial gas customer facility exempted by the commissioner under subdivision 1a, paragraph (e), or by the commissioner under section 216B.241, subdivision 2; and

(2) gas and electric sales to a large electric customer facility exempted by the commissioner under subdivision 1a, paragraph (b), or by the commission under subdivision 2.

(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) "Large gas customer facility" means a customer facility that consumes 500 million cubic feet or more of natural gas annually.

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

~~(n)~~ (o) "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. 5. Minnesota Statutes 2010, section 216B.241, subdivision 1a, is amended to read:

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 or large gas 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) The owner of a large gas customer facility may petition the commissioner to exempt a gas utility serving the large gas 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 gas customer facility. For the purposes of investigations by the commissioner under this paragraph, the owner of any large gas 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.

(e) A commercial gas customer facility that is not a large gas customer facility may petition the commissioner to exempt gas utilities serving the commercial gas customer facility from the investment and expenditure requirements of paragraph (a) with respect to retail revenues attributable to the facility. The petition must be supported by evidence demonstrating that the commercial gas customer facility has or can reasonably acquire the capability to bypass use of the utility's gas distribution system by obtaining natural gas directly from a supplier not regulated by the commission.

(f) A public utility or owner of a large electric or large gas customer facility, or of a commercial gas customer facility that is not a large gas customer facility, may appeal a decision of the commissioner under paragraph (b) ~~or~~ (c), (d), or (e) to the commission under subdivision 2. In reviewing a decision of the commissioner under paragraph (b) ~~or~~ (c), (d), or (e), 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.

Sec. 6. Minnesota Statutes 2010, section 216B.241, subdivision 2, is amended to read:

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.

(g) A gas utility may not spend for or invest in energy conservation improvements that directly benefit a large gas customer facility or commercial gas customer facility that is not a large gas customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (d) or (e). 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.

Sec. 7. **EFFECTIVE DATE.**

Sections 1 to 6 are effective the day following final enactment.