

return to the position, and to continue to serve in the classified service so long as the employee remains in the position, but not to exceed five years after the employee's return to the position. After the five-year period has expired, the employee shall have all rights granted pursuant to section 43A.07, subdivision 6, to an employee of a newly declassified position. An employee who elects to continue in the classified service shall notify the commissioner of employee relations of this choice within 60 days of the employee's return to the position from the leave of absence.

Sec. 64. [179.7411] LIMITATION ON THE CONTRACTING-OUT OF SERVICES PROVIDED BY MEMBERS OF A STATE OF MINNESOTA OR UNIVERSITY OF MINNESOTA BARGAINING UNIT.

Any contract entered into after the effective date of this section by the state of Minnesota or the University of Minnesota involving services, any part of which, in the absence of the contract, would be performed by members of a unit provided in section 179.741, subdivision 1 or 3, shall be subject to section 16.07 and shall provide for the preferential employment by such a party of members of that unit whose employment with the state of Minnesota or the University of Minnesota is terminated as a result of that contract.

Sec. 65. REPEALER.

Minnesota Statutes 1980, Sections 12.05; 124.615, Subdivision 3; 190.081; and 190.095; and Minnesota Statutes 1981 Supplement, Section 43A.08, Subdivision 2, are repealed. Section 63, subdivisions 3 and 4, are repealed six years and 30 days after the effective date of section 63.

Sec. 66. EFFECTIVE DATE.

Section 10 is effective the day following final enactment. Section 64 is effective the day following final enactment. The remaining sections are effective June 30, 1982.

Approved March 22, 1982

CHAPTER 561 — S.F.No. 1886

An act relating to the public utilities commission; specifying the role of the department of energy, planning and development before the public utilities commission; clarifying and assigning certain public utilities commission responsibilities; defining "district heating systems" for purposes of the program of loans to municipalities for establishing and improving district heating systems; amending Minnesota Statutes 1980, Sections 116H.02, Subdivision 5; 218.021, Subdivision 1; 218.041, Subdivision 4; and 218.071, Subdivision 1; Minnesota Statutes 1981 Supplement, Sections 116H.11, by adding a subdivision; 116H.13, Subdivision 8; 116H.31, Subdivisions 1 and 2; 216B.241, Subdivision 2; 218.031, Subdivision 1; 218.041, Subdivision 2; and 465.74, by adding a subdivision.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

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

Section 1. Minnesota Statutes 1980, Section 116H.02, Subdivision 5, is amended to read:

Subd. 5. "Large energy facility" means:

(a) Any electric power generating plant or combination of plants at a single site with a combined capacity of ~~50,000~~ 80,000 kilowatts or more, or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977 pursuant to Minn. Reg. APC 3(a);

(b) Any high voltage transmission line with a capacity of 200 kilovolts or more and with more than 50 miles of its length in Minnesota; or, any high voltage transmission line with a capacity of 300 kilovolts or more with more than 25 miles of its length in Minnesota;

(c) ~~Any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or their derivatives, unless the facility would be at an existing petroleum storage site and would constitute an increase of less than 20 percent in the storage capacity at that site;~~

(d) Any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil or their derivatives;

~~(d)~~ (d) Any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;

~~(e)~~ (e) Any facility designed for or capable of storing on a single site more than 100,000 gallons of liquified natural gas or synthetic gas;

~~(g)~~ (f) Any underground gas storage facility requiring permit pursuant to section 84.57;

(h) Any facility designed or capable of transferring more than 300 tons of coal per hour or with an annual throughput of more than 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation;

(i) Any facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal;

(j) Any petroleum refinery;

~~(k)~~ (g) Any nuclear fuel processing or nuclear waste storage or disposal facility; and

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(4) (h) Any facility intended to convert any material into any other combustible fuel and having the capacity to process in excess of 25 75 tons of the material per hour.

Sec. 2. Minnesota Statutes 1981 Supplement, Section 116H.13, Subdivision 8, is amended to read:

Subd. 8. This section shall not apply to plants or facilities for the production of ethanol or fuel alcohol nor in any case where the commissioner shall determine after being advised by the attorney general that its application has been preempted by federal law.

Sec. 3. Minnesota Statutes 1981 Supplement, Section 116H.11, is amended by adding a subdivision to read:

Subd. 1a. RATE PLAN. The energy policy and conservation report shall include a section prepared by the public utilities commission. The commission's section shall be prepared in consultation with the commissioner of the department of energy, planning and development and shall include, but not be limited to, all of the following:

(a) A description and analysis of the commission's rate design policy as it pertains to the goals stated in sections 116H.01, 216B.164, and 216B.241; and

(b) Recommendations to the governor and the legislature for administrative and legislative actions to accomplish the purposes of sections 116H.01, 216B.164, and 216B.241.

Sec. 4. Minnesota Statutes 1981 Supplement, Section 216B.241, Subdivision 2, is amended to read:

Subd. 2. **PROGRAMS.** The commission shall initiate a pilot program designed to demonstrate the feasibility of investments and expenses of a public utility in energy conservation improvements. The commission, as part of the pilot program, shall may order at least one public utility utilities to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements shall be offered to the customers. The order of the commission shall provide to the extent practicable for a free choice of contractor, qualified under the residential conservation services program of the energy agency, for consumers participating in the pilot program. The commission shall ~~not~~ may order a utility to make ~~any an~~ energy conservation improvement investment or expenditure ~~unless it first~~ whenever the commission 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. Investments and expenditures made pursuant to an order shall be treated for ratemaking purposes in the manner prescribed in section 216B.16, subdivision 6b. No utility shall make an energy conservation improvement pursuant to this section to a

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residential building envelope unless it is the primary supplier of energy used for either space heating or cooling in the building.

Sec. 5. Minnesota Statutes 1980, Section 218.021, Subdivision 1, is amended as follows:

Subdivision 1. It shall be unlawful for any common carrier:

(1) To charge, demand, collect or receive for any service a greater or a lesser sum than that fixed in its published schedules.

~~(2) To change or discontinue any published rate, charge or classification, minimum weight or rule relating to service without approval of the board.~~

~~(3)~~ (2) To make or give any undue or unreasonable preference or advantage, or any undue or unreasonable prejudice or disadvantage, to any person, company, firm, corporation, transit point or locality or to any particular description of traffic.

(4) (3) By any special rate, rebate, drawback or other device, directly or indirectly, to charge, demand, collect or receive a greater or less compensation for any service rendered in the transportation of any property within this state than the regular established schedule of rates and charges for like and contemporaneous service for any other person, or for the public generally; or, directly or indirectly, to offer or give any shipper, in connection with or as an inducement or reward for receiving any property for transportation, any gift, gratuity or free pass or any rate less than that offered to the public.

~~(5)~~ (4) Except as expressly permitted, to charge a greater rate per ton or per ton mile for a single carload of freight of any kind or class than for a greater number of carloads of the same kind or class, to and from the same points of origin or destination.

~~(6)~~ (5) To charge or receive any greater compensation for the transportation of a quantity of property for a shorter than for a longer distance over the same line, the shorter being included within the longer; but this shall not be so construed as to authorize any carrier to charge or receive as great compensation for a shorter as for a longer distance; or to charge or receive any greater compensation per ton per mile for the contemporaneous transportation of the same class of freight for a longer than for a shorter distance over the same line in the same general direction, or from the same original point of departure or to the same point of arrival; but this shall not be construed so as to authorize any carrier to charge as high a rate per ton per mile for a longer as for a shorter distance.

~~(7)~~ (6) To charge or receive for the transportation of freight of any description for any distance within this state a greater amount than is at the same time charged or received for a like quantity of freight of the same class over a greater distance of the same railway; or to charge or receive at any point upon its

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road a higher rate for receiving, handling or delivering freight of the same class or quantity than it shall at the same time charge or receive to any other point upon the same line; or to charge or receive for freight of any description over its railway a greater amount than at the same time is charged or received for the transportation of a like quantity of freight of the same class being transported over any portion of the same railway of equal distance; or to charge or receive from any person a greater amount than it shall at the same time charge or receive from any other person for the same class and like quantity of freight at the same point upon its railway; or to charge or receive from any person for the transportation of any freight upon its railway a greater amount than it shall at the same time charge or receive from any other person for the transportation of a like quantity of freight of the same class being transported from the same point over an equal distance of the same railway; or to charge or receive from any person for the use and transportation of any railway car upon its railroad for any distance, a greater amount than is at the same time charged or received from any other person for the use and transportation of any railway car of the same class or number for a like purpose being transported over a greater distance of the same railway; or to charge or receive from any person for the use and transportation of any railway car upon its railroad a greater amount in the aggregate than it shall at the same time charge or receive from any other person for the use and transportation of any railway car of the same class for a like purpose being transported from the same original point of an equal distance of the same railway; provided, however, where two or more railroads serve a common point one having a shorter mileage than the other from a given point, the railroad having the longer mileage may be authorized by the board to meet the rate made by the shortest line.

(8) (7) To charge or receive more for transporting a car of freight than is charged or received per car for several cars of a like class of freight over the same railway for the same distance; or to charge or receive more for transporting a ton of freight than is charged or received per ton for more than a ton but less than a carload of like class over the same railway for the same distance; or to charge or receive more for transporting one hundred pounds of freight than is charged or received per hundred pounds above one hundred pounds but less than a ton of like class over the same railway for the same distance.

Sec. 6. Minnesota Statutes 1981 Supplement, Section 218.031, Subdivision 1, is amended to read:

Subdivision 1. Except as otherwise directed or authorized, it shall be the duty of every common carrier:

(1) To prescribe in the first instance, and to publish upon not less than ten 20 days' public notice in the case of new or increased rates or ten days' public notice in the case of reduced rates, in such manner as may be required by the commissioner and law, all schedules of fares, rates and charges and classifications

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thereof, together with the rules governing the same, and minimum weights for transportation of freight articles between points or stations in the state, and terminal and switching charges, ~~provided there shall be but one classification applicable to any one commodity which shall be uniform on all railroads in this state and govern in all state commerce.~~ A new or changed contract rate shall become effective in accordance with the provisions of United States Code, Title 49, Section 10713, as amended through December 31, 1981. The board may, for good cause, reduce the notice period specified in this clause.

(2) To comply with every duly authorized rule, regulation or directive of the commissioner or board except as the same may be stayed, pending appeal therefrom.

(3) To put into effect and observe all schedules of rates, fares and charges and classifications and any amendments or changes therein duly ordered by the board, except as the same may be stayed, pending appeal.

(4) ~~To maintain as may be directed, by the commissioner for public inspection at stations and depots all schedules showing all classifications, rates, fares and charges for transportation of freight currently in force applying from such station. Such schedules shall state the places between which property will be carried and show the classification of freight, the distance tariff, a table of distances between stations, any terminal charges and any rules or regulations in any way affecting the aggregate of such rates, fares and charges.~~

(5) *Upon request of an owner or consignor of freight to the initial company, whenever the initial line does not reach the place of destination, or the distance from the place of origin to destination may be shortened, to transfer such freight to a connecting line without change in cars if in carload lots, except such change be free of charge to the shipper and receiver; and to transfer with or without change in cars of less than carload lots at a reasonable joint through rate agreed upon by the connecting carriers or prescribed by the board, not greater than the maximum rates allowed by law, provided any unloading and reloading which is necessary shall be at cost and the charge for such transfer included in the joint rate.*

(6) To provide the same switching, transfer and handling facilities for local as for interstate traffic.

(7) Upon written demand of the owner, to construct, maintain and operate side tracks and reasonable facilities connecting with any grain warehouse, dock, wharf, mill, coal yard, quarry, brick or lime kiln, sand or gravel pit, crushed rock or concrete plant or manufactory as may be required by the board, and on such terms as may be agreed upon, or, on failure of agreement, as may be prescribed by the board.

(8) To issue receipts or bills of lading covering all property received for transportation from any point in the state to any other point in the state, and to

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respond for any loss, damage or injury to such property caused by it or any carrier to whom such property may be delivered or over whose line it may pass, ~~nor shall any contractual provision whatever exempt it from such liability.~~

(9) To refund all overcharges for freight, baggage or express, and pay for any loss, damage or injury to property while in its possession, within ninety (90) days after the filing of a claim for such over-charge, loss or damage.

(10) To keep its accounts so as to show, as far as practicable, the earnings derived from, and the expenses incurred in, handling intrastate business in such form as the commissioner shall prescribe, including the separation of accounts for each operating division, wholly or partly within the state. Such accounts shall show the total cost of operating through trains and the total cost of operating the local or distributing trains of each operating division, wholly or partly within the state, during the fiscal year to be fixed by the commissioner, the total number of tons of revenue and non-revenue freight, the number of tons of each carried one (1) mile on the through trains and on the local trains, respectively, the number of tons and ton miles of revenue and non-revenue freight carried on through or local trains which are exclusively intrastate, and the gross tons and ton miles made by through and local trains on each division. The accounts shall show the total revenue and non-revenue train and engine miles and the total revenue and non-revenue car miles (the non-revenue car miles to be shown loaded and empty separately) produced by such railroad in the state in each operating division, the number of each of the above train, engine and car mileage produced in handling the through trains and in handling the local trains, the total locomotive miles produced in switching on each division and such further information related to the income or cost of intrastate business as the commissioner may require. The commissioner may require such accounts to be kept with reference to the intrastate passenger business of each carrier and the train, car and engine mileage incurred in such business in this state as he may deem necessary.

(11) During pendency of any litigation, when rates prescribed by the board have not been put into effect, to keep a correct account of every charge made by it for any services to which such rates apply in excess of the rates prescribed, showing in each case the difference between the amount actually charged and the amount allowed to be charged, the date of the transaction, the stations between which the business was carried and the names and addresses of the consignor and consignee, and to report such information in full to the board on its request.

Sec. 7. Minnesota Statutes 1981 Supplement, Section 218.041, Subdivision 2, is amended to read:

Subd. 2. The board shall, upon petition after hearing in accordance with the provisions of United States Code, Title 49, Sections 10101 to 11917, as amended through December 31, 1981:

(1) Exercise the jurisdiction over common carriers vested in the board by law.

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(1) (2) Review and ascertain the reasonableness and equalities of all schedules of rates, fares and charges or any part or classification thereof, including joint through rates, and, if found unreasonable or discriminatory, establish new schedules and prescribe the form and manner of filing, posting and publication thereof.

(2) (3) Order the issuance of any franchises, permits or certificates of convenience and necessity.

(3) Prescribe schedules of reasonable maximum rates or charges for the transportation of freight and cars on each railroad, including the classification of such rates and rules governing the same, and revise the same from time to time.

(4) The board may unite two or more stations or commercial centers into a common rate point and may designate the classes of freight which shall take common rates, and fix the mileage that shall govern between the common rate point and any or all other points in the state. The distance so fixed shall not apply as a measure of the rate for the movement of the same class of freight for similar distances between other points.

(5) Prescribe a schedule of joint through railway rates for freight over two or more connecting lines of railway and revise the same from time to time. In so doing, the board shall consider, among other things, rates established for shipments within this state for like distances over single lines, rates charged by the railway companies operating such connecting lines for joint interstate shipments, and the increased cost, if any, of a joint through shipment as compared with a shipment over a single line for like distances. In establishing rates for shipments in less than carload lots, in cases where connecting railways are not required to have common stations or stopping place for loading or unloading freight at connecting points, the board shall regulate the transportation of such freight from the usual unloading place of one railway to the usual loading place of the other. The share of any railway company of any joint through rates shall not be construed to fix the charge that it may make for a similar distance over any part of its line for any single rate shipment, or the share of any other joint rate. Where the line of a railway company connects the point of shipment with the point of destination but would require a longer haul than a joint haul for which a joint rate has been established, the board may authorize charging the joint rate for the single haul without affecting the charge upon any other part of its line except that the charge for a like kind of property must not be greater for a shorter than for a longer distance upon that railroad, all of the shorter hauls being included within the longer.

(6) Define switching and drayage service to apply to the movement of traffic within and between points and fix reasonable maximum rates for the same, which shall be independent of any rates that may be made for line haul transportation. There shall be but one terminal charge for switching or transferring any car within any one municipality and, If it is necessary that any car in

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such transfer pass over the tracks of more than one railroad within such limits, the company first so transferring such car shall receive the entire charge therefor and be liable to each company doing subsequent switching for its just share of such charge as may be agreed upon among the companies; or, in the event of disagreement, as prescribed by the board.

Sec. 8. Minnesota Statutes 1980, Section 218.041, Subdivision 4, is amended to read:

Subd. 4. The board shall, upon petition:

(1) At all points of intersection and crossings of different railroads, or where two railroads are not more than one-half mile apart, and at all terminals, prescribe ample facilities by track connection, joint use of tracks, freight platforms and depots, warehouses, docks over which general merchandise is handled and forwarded, and other necessary appliances and conveniences for the transfer, forwarding and handling of general merchandise and parcel freight between such railroads and between such railroads and such docks, warehouses and vessels at such docks.

(2) Determine the proportionate share of each company in the cost of providing connecting and transfer facilities in the event the companies fail to agree.

(3) Direct construction, maintenance and operation at any points prescribed by law of all side tracks and reasonable facilities connecting any road with any grain warehouse or mill, dock, wharf, coal yard, quarry, brick or lime kiln, sand or gravel pit, crushed rock or concrete plant, or manufactory adjacent thereto, and prescribe the terms therefor.

(4) Prescribe reasonable regulations for handling property, passenger, baggage, express and mail, partly over privately owned rights-of-way and partly over highways, so that reasonable and adequate accommodations and service may be afforded.

(5) Prescribe the extent to which any designated carrier, upon its petition, may be relieved from the operation of the principles established by section 218.021, subdivision 1, clauses ~~(6)~~ (5), ~~(7)~~ (6) and ~~(8)~~ (7).

(6) Direct the repair, reconstruction or replacement of any inadequate or unsafe trackage, structure or facility.

Upon receipt of a petition for action pursuant to this subdivision the board shall give notice to all persons known to it to have an interest in the matter and publish notice of the petition in the state register. The board may grant the petition 30 days after notice has been fully made. If the board receives a written objection to the petition from any person within 20 days after the notice of filing has been fully made, the exemption shall be granted or denied only after a contested case hearing has been held on the matter. The board may elect to hold

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a contested case hearing if no objections to the petition or application are received. If a timely objection is not received and the board declines to act without hearing, the petitioner may request within 30 days of receiving a notice of denial, and shall be granted, a contested case hearing on the application.

Sec. 9. Minnesota Statutes 1980, Section 218.071, Subdivision 1, is amended to read:

Subdivision 1. The board and commissioner may promulgate rules, orders and directives necessary to carry out the respective duties conferred on them by this chapter. The rules, orders, and directives may not be contrary to United States Code, Title 49, Sections 10101 to 11917, as amended through December 31, 1981. Every duly adopted rule, order or directive of the board or commissioner shall have the full force and effect of law.

Sec. 10. Minnesota Statutes 1981 Supplement, Section 116H.31, Subdivision 1, is amended to read:

Subdivision 1. **POLICIES.** Developing and improving efficient and economical district heating systems is a public purpose for state and local financing and a proper function of state and local government. Climate and geography make a reliable, economic supply of energy essential for industrial, commercial, and residential heating. Imported supplies are increasingly costly, unreliable, and environmentally disadvantageous. District heating systems employing cogeneration techniques and innovative technology offer an important means of increasing the efficiency of Minnesota's energy systems and reducing the state's reliance on imported energy supplies. The combination of the large initial capital cost and investors' lack of familiarity with district heating has made the private market reluctant to provide the necessary capital for district heating projects. As a result, public leadership, cooperation, and aid are needed to demonstrate the feasibility of district heating systems by establishing economically viable municipal district heating systems as demonstration projects. Municipal district heating systems may be financed by loans from the state and from other sources available to municipalities.

Sec. 11. Minnesota Statutes 1981 Supplement, Section 116H.31, Subdivision 2, is amended to read:

Subd. 2. **DEFINITIONS.** In this section:

(a) "Commissioner" means the commissioner of finance.

(b) "Construction costs" means all costs associated with the construction, modification or expansion of a district heating system except for preliminary planning costs and detailed design costs. Construction costs include the cost of debt service from the time a construction loan is made until five years after the beginning of the operation of the district heating system constructed or the part of the system being modified or expanded.

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(c) "Director" means the director of the Minnesota energy agency.

(d) "District heating" means the use of a central energy conversion facility to produce hot water or steam for ~~distribution to homes or businesses~~ a district heating system. District heating facilities may also produce electricity in addition to hot water or steam.

(e) "Municipality" means any county, city, town, municipal power agency, or public utility, as defined in section 452.01, subdivision 3, owned and operated by a city, however organized or nonprofit corporation organized pursuant to the provisions of chapter 317 whose membership is limited to the mayor and governing body of the city in which the district heating system is located.

(f) "District heating system" means any existing or proposed facility for (1) the production, through cogeneration or otherwise, of hot water or steam to be used for district heating, or (2) the transmission and distribution of hot water or steam for district heating either directly to heating consumers or to another facility or facilities for transmission and distribution, or (3) any part or combination of the foregoing facilities.

Sec. 12. Minnesota Statutes 1981 Supplement, Section 465.74, is amended by adding a subdivision to read:

Subd. 6. DEFINITION. For the purposes of this section, and chapters 474 and 475, "district heating system" means any existing or proposed facility for (1) the production, through cogeneration or otherwise, of hot water or steam to be used for district heating, or (2) the transmission and distribution of hot water or steam for district heating either directly to heating consumers or to another facility or facilities for transmission and distribution, or (3) any part or combination of the foregoing facilities.

In keeping with the public purpose of section 116H.31, subdivision 1, to encourage state and local leadership and aid in providing available and economical district heating service, the definition of "district heating system" under this section should be broadly construed to allow municipal government sufficient flexibility and authority to evaluate and undertake such policies and projects as will most efficiently and economically encourage local expansion of district heating service.

Sec. 13. **EFFECTIVE DATE.**

This act is effective the day following final enactment. Until the effective date of Laws 1980, Chapter 534, the jurisdiction conferred on the transportation regulation board by sections 5 to 9 shall be exercised by the public utilities commission.

Approved March 22, 1982

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