

**Section 1. ABANDONMENT OF JUDICIAL DITCH NUMBER 37; REDWOOD AND LYON COUNTIES.**

Notwithstanding Minnesota Statutes, section 106A.805 or 106A.811, judicial ditch number 37 in Redwood and Lyon counties from Seaforth to trunk highway number 23 north of Marshall is abandoned and no longer a public drainage system but is part of the Redwood river.

After the effective date of this act, a repair petition for the area abandoned may not be accepted and the responsibility of the drainage authority for the maintenance of the drainage system ends.

This act does not release the area that is abandoned from a drainage lien or assessment filed before the effective date of this act.

**Sec. 2. FARIBAULT COUNTY LOCAL REDEVELOPMENT AGENCY.**

Notwithstanding Minnesota Statutes, section 469.111, subdivision 5, the board of commissioners of the Faribault county local redevelopment agency shall consist of not less than five members nor more than nine members. The county board shall fix their terms so that no more than two expire in any calendar year.

**Sec. 3. EFFECTIVE DATE.**

Section 1 is effective on approval of the Redwood and Lyon county boards as provided in Minnesota Statutes, section 645.023. Section 2 is effective the day after the Faribault county board complies with Minnesota Statutes, section 645.021, subdivision 3.

Presented to the governor March 28, 1990

Signed by the governor March 29, 1990, 9:44 p.m.

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**CHAPTER 370—H.F.No. 951**

*An act relating to utilities; providing for the establishment of pilot area development rates for certain electric utility customers; providing for the establishment of competitive electric utility rates for certain customers subject to effective competition; authorizing public utilities commission to require utility to initiate rate proceeding under limited circumstances; amending Minnesota Statutes 1988, sections 216B.045, subdivision 5; and 216B.17, subdivisions 3, 6, and by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 216B.*

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

**New language is indicated by underline, deletions by ~~strikeout~~.**

Section 1. Minnesota Statutes 1988, section 216B.045, subdivision 5, is amended to read:

Subd. 5. **COMPLAINTS.** Any customer of an intrastate pipeline, any person seeking to become a customer of an intrastate pipeline, the department, or the commission on its own motion, may bring a complaint regarding the rates, contracts, terms, conditions, and types of service provided or proposed to be provided through an intrastate pipeline, including a complaint that a service which can reasonably be demanded is not offered by the owner or operator of the intrastate pipeline. If a complaint involves the question of whether or not an intrastate pipeline has capacity available, the commission shall after hearing make a determination of the available capacity but shall not impair the owner or operator of the intrastate pipeline contractual obligation to provide firm transportation service. If a complaint concerns the use of available capacity by one or more customers of an intrastate pipeline, the commission shall after hearing determine the reasonable use of the available capacity by the customers. The commission shall not require an owner or operator of an intrastate pipeline to expand its available capacity but may require the owner or operator to maintain a reasonable quality of service. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest. Complaints brought under this subdivision shall be governed by section 216B.17; ~~subdivisions 2 to 7.~~

Sec. 2. [216B.161] AREA DEVELOPMENT RATE PLAN.

Subdivision 1. DEFINITIONS. (a) For purposes of this section, the following terms have the meanings given them in this subdivision.

(b) "Area development rate" means a rate schedule established by a utility that provides customers within an area development zone service under a base utility rate schedule, except that monthly demand charges may be reduced from the base rate as agreed upon by the utility and the customer consistent with this section.

(c) "Area development zone" means a contiguous or noncontiguous area designated by an authority or municipality for development or redevelopment and within which one of the following conditions exists:

(1) obsolete buildings not suitable for improvement or conversion or other identified hazards to the health, safety, and general well-being of the community;

(2) buildings in need of substantial rehabilitation or in substandard condition; or

(3) low values and damaged investments.

(d) "Authority" means a rural development financing authority established under sections 469.142 to 469.150; a housing and redevelopment authority

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established under sections 469.001 to 469.047; a port authority established under sections 469.048 to 469.068; an economic development authority established under sections 469.090 to 469.108; a redevelopment agency as defined in sections 469.152 to 469.165; a municipality that is administering a development district created under sections 469.124 to 469.134 or any special law; a municipality that undertakes a project under sections 469.152 to 469.165, except a town located outside the metropolitan area as defined in section 473.121, subdivision 2, or with a population of 5,000 persons or less; or a municipality that exercises the powers of a port authority under any general or special law.

(e) "Municipality" means a city, however organized, and, with respect to a project undertaken under sections 469.152 to 469.165, "municipality" has the meaning given in sections 469.152 to 469.165, and, with respect to a project undertaken under sections 469.142 to 469.151 or a county or multicounty project undertaken under sections 469.004 to 469.008, also includes any county.

Subd. 2. PILOT RATE PLAN PROGRAM. The commission shall order at least one public utility to establish a pilot program that offers an area development rate. The program must be designed to assist industrial revitalization projects located within the service area of the participating utility.

Subd. 3. TERMS AND CONDITIONS OF THE RATE. An area development rate offered under this section must:

(1) be offered for a period of more than two years but no more than five years;

(2) be offered as a supplement to other development incentives offered by the municipality in which the rate is available;

(3) be available only to new or expanding manufacturing or wholesale trade customers;

(4) be designed to recover at least the incremental cost of providing service to the participating customers;

(5) be offered in a fixed number of area development zones; and

(6) include a provision that the utility provide participating customers with an energy audit and inform those customers of all existing energy conservation programs available from the utility.

Recovery of costs under clause (4) may be made only from the class of customers to which the rate is offered and not from residential customers.

Subd. 4. EVALUATION. The commission shall evaluate the impact and effectiveness of the area development plan or plans established under this section. The evaluation must include analysis of information submitted by the utility regarding the plan. Within 60 days after the expiration of a plan, the

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commission shall determine whether the area development rates should be continued, modified, or eliminated. The commission shall submit its findings to the legislature by January 1, 1995.

**Sec. 3. [216B.162] COMPETITIVE RATES FOR ELECTRIC UTILITIES.**

Subdivision 1. DEFINITIONS. (a) The terms used in this section have the meanings given them in this subdivision.

(b) "Effective competition" means a market situation in which an electric utility serves a customer that:

(1) is located within the electric utility's assigned service area determined under section 216B.39; and

(2) has the ability to obtain its energy requirements from an energy supplier that is not regulated by the commission under section 216B.16.

(c) "Competitive rate schedule" means a rate schedule under which an electric utility may set or change the price for its service to an individual customer or group of customers subject to effective competition.

(d) "Competitive rate" means the actual rate offered by the utility, and approved by the commission, to a customer subject to effective competition.

Subd. 2. COMPETITIVE RATE SCHEDULE PERMITTED. Notwithstanding section 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16, the commission shall approve a competitive rate schedule when:

(1) the provision of service to a customer or a class of customers is subject to effective competition; and

(2) the schedule applies only to customers requiring electric service with a connected load of at least 2,000 kilowatts.

The commission may approve a competitive rate schedule that applies to customers subject to effective competition and requiring electric service with a connected load less than 2,000 kilowatts.

The commission shall make a final determination in a proceeding begun under this section within 90 days of a miscellaneous rate filing by the electric utility.

Subd. 3. ESTABLISHING OR CHANGING COMPETITIVE RATE SCHEDULE. The commission shall establish or change a competitive rate schedule through a miscellaneous or general rate filing by the utility.

Subd. 4. RATES AND TERMS OF A COMPETITIVE RATE SCHEDULE. When the commission authorizes a competitive rate schedule for a customer class, it shall set the terms and conditions of service for that schedule, which must include:

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(1) that the minimum rate for the schedule recover at least the incremental cost of providing the service, including the cost of additional capacity that is to be added while the rate is in effect and any applicable on-peak or off-peak differential;

(2) that the maximum possible rate reduction under a competitive rate schedule does not exceed the difference between the electric utility's applicable standard tariff and the cost to the customer of the lowest cost competitive energy supply;

(3) that the term of a contract for a customer who elects to take service under a competitive rate must be no less than one year and no longer than five years;

(4) that the electric utility, within a general rate case, be allowed to seek recovery of the difference between the standard tariff and the competitive rate times the usage level during the test year period;

(5) a determination that a rate within a competitive rate schedule meets the conditions of section 216B.03, for other customers in the same customer class;

(6) that the rate does not compete with district heating or cooling provided by a district heating utility as defined by section 216B.166, subdivision 2, paragraph (c); and

(7) that the rate may not be offered to a customer in which the utility has a financial interest greater than 50 percent.

Subd. 5. COMPETITIVE RATE OFFERED. Within its own assigned service territory, the utility, at its discretion and using its best judgment at the time, may offer a competitive rate to a customer subject to effective competition.

Subd. 6. INTERIM COMPETITIVE RATE. Notwithstanding section 216B.16, subdivision 3, a proposed competitive rate takes effect on an interim basis after filing the proposed rate with the commission and on the date established by the electric utility. While an interim competitive rate is in effect, the difference between rates under the competitive rate and rates under the standard tariff for that class are not subject to recovery or refund. If the commission does not approve the competitive rate, the electric utility may seek to recover the difference in revenues between the interim competitive rate and the standard tariff from the customer that was offered the competitive rate.

Subd. 7. COMMISSION APPROVAL. Except as provided under subdivision 6, competitive rates offered by electric utilities under this section must be filed with the commission and must be approved, modified, or rejected by the commission within 90 days. The utility's filing must include statements of fact demonstrating that the proposed rates meet the standards of this subdivision. The filing must be served on the department of public service and the office of the attorney general at the same time as it is served on the commission. In reviewing a specific rate proposal, the commission shall determine:

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(1) that the rate meets the terms and conditions in subdivision 4, unless the commission determines that waiver of one or more terms and conditions would be in the public interest;

(2) that the consumer can obtain its energy requirements from an energy supplier not rate-regulated by the commission under section 216B.16;

(3) that the customer is not likely to take service from the electric utility seeking to offer the competitive rate if the customer was charged the electric utility's standard tariffed rate; and

(4) that it is in the best interest of all other customers to offer the competitive rate to the customer subject to effective competition.

If the commission approves the competitive rate, it becomes effective as agreed to by the electric utility and the customer. If the competitive rate is modified by the commission, the commission shall issue an order modifying the competitive rate subject to the approval of the electric utility and the customer. Each party has ten days in which to reject the proposed modification. If no party rejects the proposed modification, the commissioner's order becomes final. If either party rejects the commission's proposed modification, the electric utility, on its behalf or on the behalf of the customer, may submit to the commission a modified version of the commission's proposal. The commission shall accept or reject the modified version within 30 days. If the commission rejects the competitive rate, it shall issue an order indicating the reasons for the rejection.

Subd. 8. ENERGY EFFICIENCY MEASURES. If the commission approves a competitive rate or the parties agree to a modified rate, the commission may require the electric utility to provide the customer with an energy audit and assist in implementing cost-effective energy efficiency improvements to assure that the customer's use of electricity is efficient. An investment in cost-effective energy conservation improvements required under this section must be treated as an energy conservation improvement program and included in the department's determination of significant investments under section 216B.241. The utility shall recover energy conservation improvement expenses in a rate proceeding under section 216B.16 or 216B.17 in the same manner as the commission authorizes for the recovery of conservation expenditures made under section 216B.241.

Subd. 9. STUDY AND REPORTING. The department of public service shall review the operation and effects of any rates implemented under this section. The review must include, but is not limited to, an analysis of the electric utilities changing capacity requirements due to approved competitive rates and a comprehensive evaluation of the impact of competitive electric rates on cogeneration and small power production in the state. The department shall submit its findings to the legislature by January 1, 1995.

Sec. 4. Minnesota Statutes 1988, section 216B.17, subdivision 3, is amended to read:

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Subd. 3. The commission shall give the public utility and the complainant; ten days notice of the time and place when and where the hearing will be held and ~~such~~ the matters to be considered and determined. Both the public utility and complainant ~~shall be~~ are entitled to be heard and to be represented by counsel. A hearing under this section is not a contested case under chapter 14.

Sec. 5. Minnesota Statutes 1988, section 216B.17, is amended by adding a subdivision to read:

Subd. 8. If after making an investigation under subdivision 1 and holding a hearing under this section, the commission finds that all significant factual issues raised have not been resolved to its satisfaction:

(1) for investigations concerning the reasonableness of rates of a public utility, if the commission is unable to resolve the complaint with the utility, the commission may order the utility to initiate a rate proceeding under section 216B.16, provided, however, that the utility must be allowed at least 120 days after the date of the commission's order to initiate the proceeding; and

(2) for investigations of other matters, the commission shall order that a contested case proceeding be conducted under chapter 14.

Sec. 6. Minnesota Statutes 1988, section 216B.17, subdivision 6, is amended to read:

Subd. 6. The commission shall have the power to hear, determine and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the nonresident consumers of the municipally owned utility or 25 such nonresident consumers whichever is less. The hearing of the complaints shall be governed by ~~subdivisions 1 to 5~~ this section.

Sec. 7. **REPEALER.**

Sections 2 and 3 are repealed July 1, 1995.

Sec. 8. **EFFECTIVE DATE.**

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

Presented to the governor March 28, 1990

Signed by the governor March 29, 1990, 9:46 p.m.

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