CHAPTER 216B

PUBLIC UTILITIES

216B.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given them.

[For text of subds 2 to 6a, see M.S.2000]

Subd. 7. **Commission.** "Commission" means the public utilities commission.

Subd. 8. **Department.** "Department" means the department of commerce of the state of Minnesota.

[For text of subd 9, see M.S.2000]

History: *1Sp2001 c 4 art 6 s 34-36*

216B.095 DISCONNECTION DURING COLD WEATHER.

The commission shall amend its rules governing disconnection of residential utility customers who are unable to pay for utility service during cold weather to include the following:

(1) coverage of customers whose household income is less than 50 percent of the state median income;

(2) a requirement that a customer who pays the utility at least ten percent of the customer's income or the full amount of the utility bill, whichever is less, in a cold weather month cannot be disconnected during that month. The customer's income means the actual monthly income of the customer or the average monthly income of the customer computed on an annual calendar year, whichever is less, and does not include any amount received for energy assistance;

(3) that the ten percent figure in clause (2) must be prorated between energy providers proportionate to each provider's share of the customer's total energy costs where the customer receives service from more than one provider;

(4) verification of income by the local energy assistance provider or the utility, unless the customer is automatically eligible for protection against disconnection as a recipient of any form of public assistance, including energy assistance, that uses income eligibility in an amount at or below the income eligibility in clause (1);

(5) a requirement that the customer receive referrals to energy assistance, weatherization, conservation, or other programs likely to reduce the customer's energy bills; and

(6) a requirement that customers who have demonstrated an inability to pay on forms provided for that purpose by the utility, and who make reasonably timely payments to the utility under a payment plan that considers the financial resources of the household, cannot be disconnected from utility service from October 15 through

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April 15. A customer who is receiving energy assistance is deemed to have demonstrated an inability to pay.

History: *2001 c 212 art 4 s 1*

216B.097 COLD WEATHER RULE, COOPERATIVE OR MUNICIPAL UTILITY.

Subdivision 1. **Application; notice to residential customer.** (a) A municipal utility or a cooperative electric association must not disconnect the utility service of a residential customer during the period between October 15 and April 15 if the disconnection affects the primary heat source for the residential unit when the following conditions are met:

(1) the customer has declared inability to pay on forms provided by the utility. For the purposes of this clause, a customer that is receiving energy assistance is deemed to have demonstrated an inability to pay;

(2) the household income of the customer is less than 50 percent of the state median income;

(3) verification of income may be conducted by the local energy assistance provider or the utility, unless the customer is automatically eligible for protection against disconnection as a recipient of any form of public assistance, including energy assistance that uses income eligibility in an amount at or below the income eligibility in clause (2);

(4) a customer whose account is current for the billing period immediately prior to October 15 or who, at any time, enters into a payment schedule that considers the financial resources of the household and is reasonably current with payments under the schedule; and

(5) the customer receives referrals to energy assistance programs, weatherization, conservation, or other programs likely to reduce the customer's energy bills.

(b) A municipal utility or a cooperative electric association must, between August 15 and October 15 of each year, notify all residential customers of the provisions of this section.

[For text of subds 2 and 3, see M.S.2000]

History: *2001 c 212 art 4 s 2*

216B.098 RESIDENTIAL CUSTOMER PROTECTIONS.

Subdivision 1. **Applicability.** The provisions of this section apply to residential customers of public utilities, municipal utilities, and cooperative electric associations. Each municipal utility and cooperative electric association may establish terms and conditions for the plans and agreements required under subdivisions 2 and 3.

Subd. 2. **Budget billing plans.** A utility shall offer a customer a budget billing plan for payment of charges for service, including adequate notice to customers prior to changing budget payment amounts. Municipal utilities having 3,000 or fewer customers are exempt from this requirement. Municipal utilities having more than 3,000 customers shall implement this requirement within two years of the effective date of this chapter.

Subd. 3. **Payment agreements.** A utility shall offer a payment agreement for the payment of arrears.

Subd. 4. **Undercharges.** A utility shall offer a payment agreement to customers who have been undercharged if no culpable conduct by the customer or resident of the customer's household caused the undercharge. The agreement must cover a period equal to the time over which the undercharge occurred or a different time period that is mutually agreeable to the customer and the utility. No interest or delinquency fee may be charged under this agreement.

Subd. 5. **Medically necessary equipment.** A utility shall reconnect or continue service to a customer's residence where a medical emergency exists or where medical equipment requiring electricity necessary to sustain life is in use, provided that the

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utility receives from a medical doctor written certification, or initial certification by telephone and written certification within five business days, that failure to reconnect or continue service will impair or threaten the health or safety of a resident of the customer's household. The customer must enter into a payment agreement.

Subd. 6. **Commission authority.** In addition to any other authority, the commission has the authority to resolve customer complaints against a public utility, as defined in section 216B.02, subdivision 4, whether or not the complaint involves a violation of this chapter. The commission may delegate this authority to commission staff as it deems appropriate.

History: *2001 c 212 art 4 s 3*

216B.16 RATE CHANGE; PROCEDURE; HEARING.

Subdivision 1. **Notice.** Unless the commission otherwise orders, no public utility shall change a rate which has been duly established under this chapter, except upon 60 days' notice to the commission. The notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and state the change proposed to be made in the rates then in force and the time when the modified rates will go into effect. If the filing utility does not have an approved conservation improvement plan on file with the department, it shall also include in its notice an energy conservation plan pursuant to section 216B.241. The filing utility shall give written notice, as approved by the commission, of the proposed change to the governing body of each municipality and county in the area affected. All proposed changes shall be shown by filing new schedules or shall be plainly indicated upon schedules on file and in force at the time.

[For text of subd 1a, see M.S.2000]

Subd. 2. **Suspension of proposed rate; hearing; final determination defined.** (a) Whenever there is filed with the commission a schedule modifying or resulting in a change in any rates then in force as provided in subdivision 1, the commission may suspend the operation of the schedule by filing with the schedule of rates and delivering to the affected utility a statement in writing of its reasons for the suspension at any time before the rates become effective. The suspension shall not be for a longer period than ten months beyond the initial filing date except as provided in this subdivision or subdivision 1a.

(b) During the suspension the commission shall determine whether all questions of the reasonableness of the rates requested raised by persons deemed interested or by the department can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition by ten percent of the affected customers or 250 affected customers, whichever is less, it shall refer the matter to the office of administrative hearings with instructions for a public hearing as a contested case pursuant to chapter 14, except as otherwise provided in this section.

(c) The commission may order that the issues presented by the proposed rate changes be bifurcated into two separate hearings as follows: (1) determination of the utility's revenue requirements and (2) determination of the rate design. Upon issuance of both administrative law judge reports, the issues shall again be joined for consideration and final determination by the commission.

(d) All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the department of commerce.

(e) If the commission does not make a final determination concerning a schedule of rates within ten months after the initial filing date, the schedule shall be deemed to have been approved by the commission; except if:

(1) an extension of the procedural schedule has been granted under subdivision 1a, in which case the schedule of rates is deemed to have been approved by the commission on the last day of the extended period of suspension; or

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(2) a settlement has been submitted to and rejected by the commission and the commission does not make a final determination concerning the schedule of rates, the schedule of rates is deemed to have been approved 60 days after the initial or, if applicable, the extended period of suspension.

(f) If the commission finds that it has insufficient time during the suspension period to make a final determination of a case involving changes in general rates because of the need to make a final determination of another previously filed case involving changes in general rates under this section or section 237.075, the commission may extend the suspension period to the extent necessary to allow itself 20 working days to make the final determination after it has made a final determination in the previously filed case. An extension of the suspension period under this paragraph does not alter the setting of interim rates under subdivision 3.

(g) For the purposes of this section, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all those petitions.

[For text of subds 3 to 6a, see M.S.2000]

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 (e), 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) After December 31, 1999, investments and expenses for energy conservation improvements shall not be included by the commission in the determination of 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). However, no public utility shall be prevented from recovering its investment in energy conservation improvements from all customers that were made on or before December 31, 1999, in compliance with the requirements of section 216B.241.

(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 differing minimum spending requirements of section 216B.241, subdivision 1a. After December 31, 1999, 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), by an amount that reflects the elimination of energy conservation improvement investments or expenditures for those facilities required on or before December 31, 1999. 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, 1999.

[For text of subds 6c to 14, see M.S.2000]

Subd. 15. **Low-income programs.** (a) The commission may consider ability to pay as a factor in setting utility rates and may establish programs for low-income residential ratepayers in order to ensure affordable, reliable, and continuous service to low-income utility customers.

(b) The purpose of the low-income programs is to lower the percentage of income that low-income households devote to energy bills, to increase customer payments, and to lower the utility costs associated with customer account collection activities. In

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ordering low-income programs, the commission may require public utilities to file program evaluations, including the coordination of other available low-income bill payment and conservation resources and the effect of the program on:

(1) reducing the percentage of income that participating households devote to energy bills;

(2) service disconnections; and

(3) customer payment behavior, utility collection costs, arrearages, and bad debt.

[For text of subd 16, see M.S.2000]

History: *2001 c 212 art 4 s 4; 1Sp2001 c 4 art 6 s 37-40*

216B.1611 INTERCONNECTION OF ON-SITE DISTRIBUTED GENERATION.

Subdivision 1. **Purpose.** The purpose of this section is to:

(1) establish the terms and conditions that govern the interconnection and parallel operation of on-site distributed generation;

(2) provide cost savings and reliability benefits to customers;

(3) establish technical requirements that will promote the safe and reliable parallel operation of on-site distributed generation resources;

(4) enhance both the reliability of electric service and economic efficiency in the production and consumption of electricity; and

(5) promote the use of distributed resources in order to provide electric system benefits during periods of capacity constraints.

Subd. 2. **Distributed generation; generic proceeding.** (a) The commission shall initiate a proceeding within 30 days of July 1, 2001, to establish, by order, generic standards for utility tariffs for the interconnection and parallel operation of distributed generation fueled by natural gas or a renewable fuel, or another similarly clean fuel or combination of fuels of no more than ten megawatts of interconnected capacity. At a minimum, these tariff standards must:

(1) to the extent possible, be consistent with industry and other federal and state operational and safety standards;

(2) provide for the low-cost, safe, and standardized interconnection of facilities;

(3) take into account differing system requirements and hardware, as well as the overall demand load requirements of individual utilities;

(4) allow for reasonable terms and conditions, consistent with the cost and operating characteristics of the various technologies, so that a utility can reasonably be assured of the reliable, safe, and efficient operation of the interconnected equipment; and

(5) establish (i) a standard interconnection agreement that sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system, and (ii) a standard application for interconnection and parallel operation with the utility system.

(b) The commission may develop financial incentives based on a public utility's performance in encouraging residential and small business customers to participate in on-site generation.

Subd. 3. **Distributed generation tariff.** Within 90 days of the issuance of an order under subdivision 2:

(1) each public utility providing electric service at retail shall file a distributed generation tariff consistent with that order, for commission approval or approval with modification; and

(2) each municipal utility and cooperative electric association shall adopt a distributed generation tariff that addresses the issues included in the commission's order.

Subd. 4. **Reporting requirements.** (a) Each electric utility shall maintain records concerning applications received for interconnection and parallel operation of distribut-

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ed generation. The records must include the date each application is received, documents generated in the course of processing each application, correspondence regarding each application, and the final disposition of each application.

(b) Every electric utility shall file with the commissioner a distributed generation interconnection report for the preceding calendar year that identifies each distributed generation facility interconnected with the utility's distribution system. The report must list the new distributed generation facilities interconnected with the system since the previous year's report, any distributed generation facilities no longer interconnected with the utility's system since the previous report, the capacity of each facility, and the feeder or other point on the company's utility system where the facility is connected. The annual report must also identify all applications for interconnection received during the previous one-year period, and the disposition of the applications.

History: *2001 c 212 art 3 s 1*

216B.162 COMPETITIVE RATE FOR ELECTRIC UTILITY.

[For text of subds 1 to 6, see M.S.2000]

Subd. 7. **Commission determination.** (a) 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 and the office of the attorney general at the same time as it is served on the commission.

(b) In reviewing a specific rate proposal, the commission shall determine:

(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 after consideration of environmental and socioeconomic impacts it is in the best interest of all other customers to offer the competitive rate to the customer subject to effective competition.

(c) 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.

[For text of subds 8 and 10, see M.S.2000]

Subd. 11. **Commission determination.** (a) Proposals for discretionary rate reductions offered by utilities must be filed with the commission, with copies of the filing served upon the department and the office of attorney general at the same time it is served upon the commission. The commission shall review the proposals according to procedures developed under section 216B.05, subdivision 2a. The commission shall not approve discretionary rate reductions offered by public utilities that do not have an accepted resource plan on file with the commission. The commission shall not approve

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discretionary rate reductions unless the utility has made the customer aware of all cost-effective opportunities for energy efficiency improvements offered by the utility.

(b) Public utilities that provide service under discretionary rate reductions shall not, through increased revenue requirements or through prospective rate design changes, recover any revenues foregone due to the discretionary rate reductions, nor shall the commission grant such recovery.

History: *1Sp2001 c 4 art 6 s 41,42*

216B.1645 POWER PURCHASE CONTRACT OR INVESTMENT.

Subdivision 1. **Commission authority.** Upon the petition of a public utility, the public utilities commission shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.169, 216B.2423, and 216B.2424, including reasonable investments and expenditures made to transmit the electricity generated from sources developed under those sections that is ultimately used to provide service to the utility's retail customers, or to develop renewable energy sources from the account required in section 116C.779.

Subd. 2. **Cost recovery.** The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section 116C.779 shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission, which, in the case of transmission expenditures, are limited to the portion of actual transmission costs that are directly allocable to the need to transmit power from the renewable sources of energy. The commission may not approve recovery of the costs for that portion of the power generated from sources governed by this section that the utility sells into the wholesale market.

Subd. 3. **Applicability to recovery of other costs.** Nothing in this section shall be construed to determine the manner or extent to which revenues derived from other generation facilities of the utility may be considered in determining the recovery of the approved cost or expenses associated with the mandated contracts, investments, or expenditures in the event there is retail competition for electric energy.

History: *2001 c 212 art 8 s 1*

216B.1646 RATE REDUCTION; PROPERTY TAX REDUCTION.

(a) The commission shall, by any method the commission finds appropriate, reduce the amounts each electric utility subject to rate regulation by the commission charges its customers to reflect the amount by which each utility's property tax on the personal property of its electric generation, transmission, or distribution system from taxes payable in 2001 to taxes payable in 2002 is reduced. The commission must ensure that, to the extent feasible, each dollar of property tax reduction allocated to Minnesota consumers retroactive to January 1, 2002, results in a dollar of savings to the utility's customers.

(b) By April 10, 2002, each utility shall submit a filing to the commission containing:

(1) certified information regarding the utility's property tax savings allocated to Minnesota retail customers; and

(2) a proposed method of passing these savings on to Minnesota retail customers.

The utility shall provide the information in clause (1) to the commissioner of revenue at the same time. The commissioner shall notify the commission within 30 days as to the accuracy of the property tax data submitted by the utility.

(c) For purposes of this section, "personal property" means tools, implements, and machinery of the generating plant. It does not apply to transformers, transmission lines,

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distribution lines, or any other tools, implements, and machinery that are part of an electric substation, wherever located.

History: *1Sp2001 c 5 art 3 s 11*

216B.1675 PERFORMANCE REGULATION PLAN FOR GAS UTILITY SERVICE.

[For text of subds 1 to 8, see M.S.2000]

Subd. 9. **Commission findings.** The commission shall issue findings concerning the appropriateness of the proposed plan. The commission may approve, reject, or modify the plan in a manner which meets the requirements of this section. An approved or modified plan becomes effective unless the plan is withdrawn by the utility within 30 days of a final appealable order. If the utility withdraws an approved or modified plan, all of the administrative costs related to the plan that are charged by the commission or the department to the utility may not be recovered from ratepayers in current or subsequent rates. A utility that withdraws an approved or modified plan may not file another plan under this section for a period of one year following the withdrawal of the plan.

[For text of subds 10 to 13, see M.S.2000]

History: *1Sp2001 c 4 art 6 s 43*

216B.169 RENEWABLE AND HIGH-EFFICIENCY ENERGY RATE OPTIONS.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them.

(a) "Utility" means a public utility, municipal utility, or cooperative electric association providing electric service at retail to Minnesota consumers.

(b) "Renewable energy" has the meaning given in section 216B.2422, subdivision 1, paragraph (c).

(c) "High-efficiency, low-emissions, distributed generation" means a distributed generation facility of no more than ten megawatts of interconnected capacity that is certified by the commissioner under subdivision 3 as a high-efficiency, low-emissions facility.

Subd. 2. **Renewable and high-efficiency energy rate options.** (a) Each utility shall offer its customers, and shall advertise the offer at least annually, one or more options that allow a customer to determine that a certain amount of the electricity generated or purchased on behalf of the customer is renewable energy or energy generated by high-efficiency, low-emissions, distributed generation such as fuel cells and microturbines fueled by a renewable fuel.

(b) Each public utility shall file an implementation plan within 90 days of July 1, 2001, to implement paragraph (a).

(c) Rates charged to customers must be calculated using the utility's cost of acquiring the energy for the customer and must:

(1) reflect the difference between the cost of generating or purchasing the renewable energy and the cost of generating or purchasing the same amount of nonrenewable energy; and

(2) be distributed on a per kilowatt-hour basis among all customers who choose to participate in the program.

(d) Implementation of these rate options may reflect a reasonable amount of lead time necessary to arrange acquisition of the energy. The utility may acquire the energy demanded by customers, in whole or in part, through procuring or generating the renewable energy directly, or through the purchase of credits from a provider that has received certification of eligible power supply pursuant to subdivision 3. If a utility is not able to arrange an adequate supply of renewable or high-efficiency energy to meet its customers' demand under this section, the utility must file a report with the commission detailing its efforts and reasons for its failure.

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Subd. 3. **Certification and tradeable credits.** (a) The commissioner shall certify a power supply or supplies as eligible to satisfy customer requirements under this section upon finding:

(1) the power supply is renewable energy or energy generated by high-efficiency, low-emissions, distributed generation; and

(2) the sales arrangements of energy from the supplies are such that the power supply is only sold once to retail consumers.

(b) To facilitate compliance with this section, the commission may, by order, establish a program for tradeable credits for eligible power supplies.

History: *2001 c 212 art 8 s 2*

216B.1691 RENEWABLE ENERGY OBJECTIVES.

Subdivision 1. **Definitions.** (a) "Eligible energy technology" means:

(1) an energy technology that generates electricity from the following renewable energy sources: solar, wind, hydroelectric with a capacity of less than 60 megawatts, or biomass; and

(2) was not mandated by state law or commission order.

(b) "Electric utility" means a public utility providing electric service, a generation and transmission cooperative electric association, or a municipal power agency.

Subd. 2. **Eligible energy objectives.** (a) Each electric utility shall make a good faith effort to generate or procure sufficient electricity generated by an eligible energy technology to provide its retail consumers, or the retail members of a distribution utility to which the electric utility provides wholesale electric service, so that:

(1) commencing in 2005, at least one percent of the electric energy provided to those retail customers is generated by eligible energy technologies;

(2) the amount provided under clause (1) is increased by one percent each year until 2015;

(3) ten percent of the electric energy provided to retail customers in Minnesota is generated by eligible energy technologies; and

(4) of the eligible energy technology generation required under clauses (1) and (2), at least 0.5 percent of the energy must be generated by biomass energy technologies by 2010 and one percent by 2015.

(b) Each electric utility shall report on its activities and progress with regard to these objectives in their filings under section 216B.2422.

(c) The commission, in consultation with the commissioner of commerce, shall compile the information provided to the commission under paragraph (b), and report to the chairs of the house of representatives and senate committees with jurisdiction over energy and environment policy issues as to the progress of utilities in the state in increasing the amount of renewable energy provided to retail customers, with any recommendations for regulatory or legislative action, by January 15, 2002.

History: *2001 c 212 art 8 s 3*

216B.1692 EMISSIONS REDUCTION RIDER.

Subdivision 1. **Qualifying projects.** Projects that may be approved for the emissions reduction-rate rider allowed in this section must:

(1) be installed on existing large electric generating power plants, as defined in section 216B.2421, subdivision 2, clause (1), that are located in the state and that are currently not subject to emissions limitations for new power plants under the federal Clean Air Act;

(2) not increase the capacity of the existing electric generating power plant more than ten percent or more than 100 megawatts, whichever is greater; and

(3) result in the existing plant either:

(i) complying with applicable new source review standards under the federal Clean Air Act; or

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(ii) emitting air contaminants at levels substantially lower than allowed for new facilities by the applicable new source performance standards under the federal Clean Air Act; or

(iii) reducing emissions from current levels at a unit to the lowest cost-effective level when, due to the age or condition of the generating unit, the public utility demonstrates that it would not be cost effective to reduce emissions to the levels in item (i) or (ii).

Subd. 2. **Proposal submission.** A public utility that intends to submit a proposal for an emissions reduction rider under this section must submit to the commission, the department, the pollution control agency, and interested parties its plans for emissions reduction projects at its generating facilities. This submission must be made at least 60 days in advance of a petition for a rider and shall include:

(1) the priority order of emissions reduction projects the utility plans to pursue at its generating facilities;

(2) the planned schedule for implementation;

(3) the analysis and considerations relied on by the public utility to develop that priority ranking;

(4) the alternative emissions reduction projects considered, including but not limited to applications of the best available control technology and repowering with natural gas, and reasons for not pursuing them;

(5) the emissions reductions expected to be achieved by the projects and their relation to applicable standards for new facilities under the federal Clean Air Act; and

(6) the general rationale and conclusions of the public utility in determining the priority ranking.

Subd. 3. **Filing petition to recover project costs.** (a) A public utility may petition the commission for approval of an emissions reduction rider to recover the costs of a qualifying emissions reduction project outside of a general rate case proceeding under section 216B.16. In its filing, the public utility shall provide:

(1) a description of the planned emissions reduction project;

(2) the activities involved in the project;

(3) a schedule for implementation;

(4) any analysis provided to the pollution control agency regarding the project;

(5) an assessment of alternatives to the project, including costs, environmental impact, and operational issues;

(6) the proposed method of cost recovery;

(7) any proposed recovery above cost; and

(8) the projected emissions reductions from the project.

(b) Nothing in this section precludes a public utility or interested party from seeking commission guidelines for emissions reduction rider filings; however, commission guidelines are not required as a prerequisite to a public utility-initiated filing.

Subd. 4. **Environmental assessment.** The pollution control agency shall evaluate the public utility's emissions reduction project filing and provide the commission with:

(1) verification that the emissions reduction project qualifies under subdivision 1;

(2) a description of the projected environmental benefits of the proposed project; and

(3) its assessment of the appropriateness of the proposed project.

Subd. 5. **Proposal approval.** (a) After receiving the pollution control agency's environmental assessment, the commission shall allow opportunity for written and oral comment on the proposed emissions reduction rate rider proposal. The commission must assess the costs of an emissions reduction project on a stand-alone basis and may approve, modify, or reject the proposed emissions reduction rider. In making its determination, the commission shall consider whether the project, proposed cost

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recovery, and any proposed recovery above cost appropriately achieves environmental benefits without unreasonable consumer costs.

(b) The commission may approve a rider that:

(1) allows the utility to recover costs of qualifying emissions reduction projects net of revenues attributable to the project;

(2) allows an appropriate return on investment associated with qualifying emissions reduction projects at the level established in the public utility's last general rate case;

(3) allocates project costs appropriately between wholesale and retail customers;

(4) provides a mechanism for recovery above cost, if necessary to improve the overall economics of the qualifying projects to ensure implementation;

(5) recovers costs from retail customer classes in proportion to class energy consumption; and

(6) terminates recovery once the costs of qualifying projects have been fully recovered.

(c) The commission must not approve an emissions reduction project and its associated rate rider if:

(1) the emissions reduction project is needed to comply with new state or federal air quality standards; or

(2) the emissions reduction project is required as a corrective action as part of any state or federal enforcement action.

(d) The commission may not include any costs of a proposed project in the emissions reduction rider that are not directly allocable to reduction of emissions.

Subd. 6. **Implementation.** Within 60 days of a final commission order, the public utility shall notify the commission and the pollution control agency whether it will proceed with the project. Nothing in this section commits a public utility to implementing a proposed emissions reduction project if the proposed project or terms of the emissions reduction rider have been either modified or rejected by the commission. A public utility implementing a project under this section will not be required for a period of eight years after installation to undertake additional investments to comply with a new state requirement regarding pollutants addressed by the project at the project generating facility. This section does not affect requirements of federal law. The term of the rider shall extend for the period approved by the commission regardless of any subsequent state or federal requirement affecting any pollutant addressed by the approved emissions reduction project and regardless of the sunset date in subdivision 8.

Subd. 7. **Evaluation and report.** By January 15, 2005, the commission, in consultation with the commissioner of commerce and commissioner of the pollution control agency, shall report to the legislature:

(1) the number of participating public utilities and qualifying projects proposed and approved under this section;

(2) the total cost of each project and any associated incentives;

(3) the reduction in air emissions achieved;

(4) rate impacts of the cost recovery mechanisms; and

(5) an assessment of the effectiveness of the cost recovery mechanism in accomplishing power plant emissions reductions in excess of those required by law.

Subd. 8. **Sunset.** This section is effective until June 30, 2006.

History: *1Sp2001 c 5 art 3 s 12*

216B.241 ENERGY CONSERVATION IMPROVEMENT.

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.

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(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 conservation.

(g) "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.

(h) "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.

(i) "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 the overall demand for energy or capacity.

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 cost-effective energy conservation improvements are available at the large electric customer facility. For the purposes of this paragraph, "cost-effective" means that the projected

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total cost of the energy conservation improvement at the large electric customer facility is less than the projected present value of the energy and demand savings resulting from the energy conservation improvement. For the purposes of investigations by the commissioner under this paragraph, the owner of any large electric 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 mid-range forecast assumptions.

(d) A public utility or owner of a large electric customer facility may appeal a decision of the commissioner under paragraph (b) or (c) to the commission under subdivision 2. In reviewing a decision of the commissioner under paragraph (b) or (c), 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.

(e) Each utility shall determine what portion of the amount it sets aside for conservation improvement will be used for conservation improvements under subdivision 2 and what portion it will contribute to the energy and conservation account established in subdivision 2a. A public utility may propose to the commissioner to designate that all or a portion of funds contributed to the account established in subdivision 2a be used for research and development projects that can best be implemented on a statewide basis. Contributions must be remitted to the commissioner by February 1 of each year. Nothing in this subdivision prohibits a public utility from spending or investing for energy conservation improvement more than required in this subdivision.

Subd. 1b. **Conservation improvement by cooperative association or municipality.** (a) This subdivision applies to:

(1) a cooperative electric association that provides retail service to its members;

(2) a municipality that provides electric service to retail customers; and

(3) a municipality with gross operating revenues in excess of $5,000,000 from sales of natural gas to retail customers.

(b) Each cooperative electric association and municipality subject to this subdivision shall spend and invest for energy conservation improvements under this subdivision the following amounts:

(1) for a municipality, 0.5 percent of its gross operating revenues from the sale of gas and 1.5 percent of its gross operating revenues from the sale of electricity, excluding gross operating revenues from electric and gas service provided in the state to large electric customer facilities; and

(2) for a cooperative electric association, 1.5 percent of its gross operating revenues from service provided in the state, excluding gross operating revenues from service provided in the state to large electric customer facilities indirectly through a distribution cooperative electric association.

(c) Each municipality and cooperative electric association subject to this subdivision shall identify and implement energy conservation improvement spending and investments that are appropriate for the municipality or association, except that a municipality or association may not spend or invest for energy conservation improvements that directly benefit a large electric customer facility for which the commissioner has issued an exemption under subdivision 1a, paragraph (b).

(d) Each municipality and cooperative electric association subject to this subdivision 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 subdivision on research and development projects that meet the definition of energy conservation

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improvement in subdivision 1 and that are funded directly by the municipality or cooperative electric association.

(e) Load-management activities that do not reduce energy use but that increase the efficiency of the electric system may be used to meet the following percentage of the conservation investment and spending requirements of this subdivision:

(1) 2002 - 90 percent;

(2) 2003 - 80 percent;

(3) 2004 - 65 percent; and

(4) 2005 and thereafter - 50 percent.

(f) A generation and transmission cooperative electric association that provides energy services to cooperative electric associations that provide electric service at retail to consumers may invest in energy conservation improvements on behalf of the associations it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis. A municipal power agency or other not-for-profit entity that provides energy service to municipal utilities that provide electric service at retail may invest in energy conservation improvements on behalf of the municipal utilities it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis, under an agreement between the municipal power agency or not-for-profit entity and each municipal utility for funding the investments.

(g) By June 1, 2002, and every two years thereafter, each municipality or cooperative shall file an overview of its conservation improvement plan with the commissioner. With this overview, the municipality or cooperative shall also provide an evaluation to the commissioner detailing its energy conservation improvement spending and investments for the previous period. The evaluation must briefly describe each conservation program and must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility or association that is the result of the spending and investments. The evaluation must analyze the cost effectiveness of the utility's or association's conservation programs, using a list of baseline energy and capacity savings assumptions developed in consultation with the department.

The commissioner shall review each evaluation and make recommendations, where appropriate, to the municipality or association to increase the effectiveness of conservation improvement activities. Up to three percent of a utility's conservation spending obligation under this section may be used for program pre-evaluation, testing, and monitoring and program evaluation.

(h) The commissioner shall also review each evaluation for whether a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons unless an insufficient number of appropriate programs are available. For the purposes of this subdivision and subdivision 2, "low-income" means an income at or below 50 percent of the state median income.

(i) As part of its spending for conservation improvement, a municipality or association may contribute to the energy and conservation account. A municipality or association may propose to the commissioner to designate that all or a portion of funds contributed to the account be used for research and development projects that can best be implemented on a statewide basis. Any amount contributed must be remitted to the commissioner by February 1 of each year.

[For text of subd 1c, see M.S.2000]

Subd. 1d. **Cooperative conservation investment increase phase-in.** The increase in required conservation improvement expenditures by a cooperative electric association that results from the amendments in Laws 2001, chapter 212, article 8, section 6, to subdivision 1b, paragraph (a), clause (1), must be phased in as follows:

(1) at least 25 percent shall be effective in year 2002;

(2) at least 50 percent shall be effective in year 2003;

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(3) at least 75 percent shall be effective in year 2004; and

(4) all of the increase shall be effective in year 2005 and thereafter.

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 a two-year period. Public utilities shall file conservation improvement plans by June 1, on a schedule determined by order of the commissioner. 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 give special consideration and encouragement to programs that bring about significant net savings through the use of energy-efficient lighting. 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 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 or a nonprofit or community organization.

(e) The commissioner may, by order, establish a list of programs that may be offered as energy conservation improvements by a public utility, municipal utility, cooperative electric association, or other entity providing conservation services pursuant to this section. The list of programs may include rebates for high-efficiency appliances, rebates or subsidies for high-efficiency lamps, small business energy audits, and building recommissioning. The commissioner may, by order, change this list to add or subtract programs as the commissioner determines is necessary to promote efficient and effective conservation programs.

(f) The commissioner shall ensure that a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons, in proportion to the amount the utility has historically spent on such programs based on the most recent three-year average relative to the utility's total conservation spending under this section, unless an insufficient number of appropriate programs are available.

(g) 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-

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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.

(h) 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.

Up to three percent of a utility's conservation spending obligation under this section may be used for program pre-evaluation, testing, and monitoring and program audit and evaluation.

[For text of subd 2a, see M.S.2000]

Subd. 2b. **Recovery of expenses.** The commission shall allow a utility to recover expenses resulting from a conservation improvement program required by the department and contributions to the energy and conservation account, unless the recovery would be inconsistent with a financial incentive proposal approved by the commission. In addition, a utility may file annually, or the public utilities commission may require the utility to file, and the commission may approve, rate schedules containing provisions for the automatic adjustment of charges for utility service in direct relation to changes in the expenses of the utility for real and personal property taxes, fees, and permits, the amounts of which the utility cannot control. A public utility is eligible to file for adjustment for real and personal property taxes, fees, and permits under this subdivision only if, in the year previous to the year in which it files for adjustment, it has spent or invested at least 1.75 percent of its gross revenues from provision of electric service, excluding gross operating revenues from electric service provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), and 0.6 percent of its gross revenues from provision of gas service, excluding gross operating revenues from gas services provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), for that year for energy conservation improvements under this section.

[For text of subds 3 to 5, see M.S.2000]

History: *2001 c 212 art 8 s 4-7,12; 1Sp2001 c 4 art 6 s 44-46,77*

216B.2411 DISTRIBUTED ENERGY RESOURCES.

(a) To the extent that cost-effective projects are available in the service territory of a utility or association providing conservation services under section 216B.241, the utility or association shall use five percent of the total amount to be spent on energy conservation improvements under section 216B.241, on:

(1) projects to construct an electric generating facility that utilizes renewable fuels as defined in section 216B.2422, subdivision 1, such as methane or other combustible gases derived from the processing of plant or animal wastes, biomass fuels such as short-rotation woody or fibrous agricultural crops, or other renewable fuel, as its primary fuel source; or

(2) projects to install a distributed generation facility of ten megawatts or less of interconnected capacity that is fueled by natural gas, renewable fuels, or another similarly clean fuel.

(b) For public utilities, as defined under section 216B.02, subdivision 4, projects under this section must be considered energy conservation improvements as defined in section 216B.241. For cooperative electric associations and municipal utilities, projects

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under this section must be considered load-management activities described in section 216B.241, subdivision 1, paragraph (i).

(c) The commission may provide an alternative recovery mechanism for the expense of continuing existing approved cost-effective projects by a rate-regulated distribution cooperative electric association.

(d) This section expires May 30, 2006.

History: *2001 c 212 art 8 s 13,14*

216B.2421 DEFINITION OF LARGE ENERGY FACILITY.

[For text of subd 1, see M.S.2000]

Subd. 2. **Large energy facility.** "Large energy facility" means:

(1) any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system;

(2) any high-voltage transmission line with a capacity of 200 kilovolts or more;

(3) any high-voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line;

(4) 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;

(5) 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;

(6) any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural gas or synthetic gas;

(7) any underground gas storage facility requiring a permit pursuant to section 103I.681;

(8) any nuclear fuel processing or nuclear waste storage or disposal facility; and

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

Subd. 3. [Repealed, 2001 c 212 art 7 s 36]

History: *2001 c 212 art 7 s 29*

216B.2424 BIOMASS POWER MANDATE.

[For text of subds 1 to 4, see M.S.2000]

Subd. 5. **Mandate.** (a) A public utility, as defined in section 216B.02, subdivision 4, that operates a nuclear-powered electric generating plant within this state must construct and operate, purchase, or contract to construct and operate (1) by December 31, 1998, 50 megawatts of electric energy installed capacity generated by farm-grown closed-loop biomass scheduled to be operational by December 31, 2001; and (2) by December 31, 1998, an additional 75 megawatts of installed capacity so generated scheduled to be operational by December 31, 2002.

(b) Of the 125 megawatts of biomass electricity installed capacity required under this subdivision, no more than 50 megawatts of this capacity may be provided by a facility that uses poultry litter as its primary fuel source and any such facility:

(1) need not use biomass that complies with the definition in subdivision 1;

(2) must enter into a contract with the public utility for such capacity, that has an average purchase price per megawatt hour over the life of the contract that is equal to or less than the average purchase price per megawatt hour over the life of the contract in contracts approved by the public utilities commission before April 1, 2000, to satisfy the mandate of this section, and file that contract with the public utilities commission prior to September 1, 2000; and

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(3) such capacity must be scheduled to be operational by December 31, 2002.

(c) Of the total 125 megawatts of biomass electric energy installed capacity required under this section, no more than 75 megawatts may be provided by a single project.

(d) Of the 75 megawatts of biomass electric energy installed capacity required under paragraph (a), clause (2), no more than 25 megawatts of this capacity may be provided by a St. Paul district heating and cooling system cogeneration facility utilizing waste wood as a primary fuel source. The St. Paul district heating and cooling system cogeneration facility need not use biomass that complies with the definition in subdivision 1.

(e) The public utility must accept and consider on an equal basis with other biomass proposals:

(1) a proposal to satisfy the requirements of this section that includes a project that exceeds the megawatt capacity requirements of either paragraph (a), clause (1) or (2), and that proposes to sell the excess capacity to the public utility or to other purchasers; and

(2) a proposal for a new facility to satisfy more than ten but not more than 20 megawatts of the electrical generation requirements by a small business-sponsored independent power producer facility to be located within the northern quarter of the state, which means the area located north of Constitutional Route No. 8 as described in section 161.114, subdivision 2, and that utilizes biomass residue wood, sawdust, bark, chipped wood, or brush to generate electricity. A facility described in this clause is not required to utilize biomass complying with the definition in subdivision 1, but must have the capacity required by this clause operational by December 31, 2002.

(f) If a public utility files a contract with the commission for electric energy installed capacity that uses poultry litter as its primary fuel source, the commission must do a preliminary review of the contract to determine if it meets the purchase price criteria provided in paragraph (b), clause (2), of this subdivision. The commission shall perform its review and advise the parties of its determination within 30 days of filing of such a contract by a public utility. A public utility may submit by September 1, 2000, a revised contract to address the commission's preliminary determination.

(g) The commission shall finally approve, modify, or disapprove no later than July 1, 2001, all contracts submitted by a public utility as of September 1, 2000, to meet the mandate set forth in this subdivision.

(h) If a public utility subject to this section exercises an option to increase the generating capacity of a project in a contract approved by the commission prior to April 25, 2000, to satisfy the mandate in this subdivision, the public utility must notify the commission by September 1, 2000, that it has exercised the option and include in the notice the amount of additional megawatts to be generated under the option exercised. Any review by the commission of the project after exercise of such an option shall be based on the same criteria used to review the existing contract.

(i) A facility specified in this subdivision qualifies for exemption from property taxation under section 272.02, subdivision 43.

Subd. 6. **Remaining megawatt compliance process.** (a) If there remain megawatts of biomass power generating capacity to fulfill the mandate in subdivision 5 after the commission has taken final action on all contracts filed by September 1, 2000, by a public utility, this subdivision governs final compliance with the biomass energy mandate in subdivision 5 subject to the requirements of subdivisions 7 and 8.

(b) To the extent not inconsistent with this subdivision, the provisions of subdivisions 2, 3, 4, and 5 apply to proposals subject to this subdivision.

(c) A public utility must submit proposals to the commission to complete the biomass mandate. The commission shall require a public utility subject to this section to issue a request for competitive proposals for projects for electric generation utilizing biomass as defined in paragraph (f) of this subdivision to provide the remaining megawatts of the mandate. The commission shall set an expedited schedule for

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submission of proposals to the utility, selection by the utility of proposals or projects, negotiation of contracts, and review by the commission of the contracts or projects submitted by the utility to the commission.

(d) Notwithstanding the provisions of subdivisions 1 to 5 but subject to the provisions of subdivisions 7 and 8, a new or existing facility proposed under this subdivision that is fueled either by biomass or by co-firing biomass with nonbiomass may satisfy the mandate in this section. Such a facility need not use biomass that complies with the definition in subdivision 1 if it uses biomass as defined in paragraph (f) of this subdivision. Generating capacity produced by co-firing of biomass that is operational as of April 25, 2000, does not meet the requirements of the mandate, except that additional co-firing capacity added at an existing facility after April 25, 2000, may be used to satisfy this mandate. Only the number of megawatts of capacity at a facility which co-fires biomass that are directly attributable to the biomass and that become operational after April 25, 2000, count toward meeting the biomass mandate in this section.

(e) Nothing in this subdivision precludes a facility proposed and approved under this subdivision from using fuel sources that are not biomass in compliance with subdivision 3.

(f) Notwithstanding the provisions of subdivision 1, for proposals subject to this subdivision, "biomass" includes farm-grown closed-loop biomass; agricultural wastes, including animal, poultry, and plant wastes; and waste wood, including chipped wood, bark, brush, residue wood, and sawdust.

(g) Nothing in this subdivision affects in any way contracts entered into as of April 25, 2000, to satisfy the mandate in subdivision 5.

(h) Nothing in this subdivision requires a public utility to retrofit its own power plants for the purpose of co-firing biomass fuel, nor is a utility prohibited from retrofitting its own power plants for the purpose of co-firing biomass fuel to meet the requirements of this subdivision.

[For text of subds 7 and 8, see M.S.2000]

History: *2001 c 7 s 46; 1Sp2001 c 5 art 3 s 13*

216B.2425 STATE TRANSMISSION PLAN.

Subdivision 1. **List.** The commission shall maintain a list of certified high-voltage transmission line projects.

Subd. 2. **List development.** (a) By November 1 of each odd-numbered year, each public utility, municipal utility, and cooperative electric association, or the generation and transmission organization that serves each utility or association, that owns or operates electric transmission lines in Minnesota shall jointly or individually submit a transmission projects report to the commission. The report must:

(1) list specific present and reasonably foreseeable future inadequacies in the transmission system in Minnesota;

(2) identify alternative means of addressing each inadequacy listed;

(3) identify general economic, environmental, and social issues associated with each alternative; and

(4) provide a summary of public input the utilities and associations have gathered related to the list of inadequacies and the role of local government officials and other interested persons in assisting to develop the list and analyze alternatives.

(b) To meet the requirements of this subdivision, entities may rely on available information and analysis developed by a regional transmission organization or any subgroup of a regional transmission organization and may develop and include additional information as necessary.

Subd. 3. **Commission approval.** By June 1 of each even-numbered year, the commission shall adopt a state transmission project list and shall certify, certify as modified, or deny certification of the projects proposed under subdivision 2. The

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commission may only certify a project that is a high-voltage transmission line as defined in section 216B.2421, subdivision 2, that the commission finds is:

(1) necessary to maintain or enhance the reliability of electric service to Minnesota consumers;

(2) needed, applying the criteria in section 216B.241, subdivision 3; and

(3) in the public interest, taking into account electric energy system needs and economic, environmental, and social interests affected by the project.

Subd. 4. **List; effect.** Certification of a project as a priority electric transmission project satisfies section 216B.243. A certified project on which construction has not begun more than six years after being placed on the list, must be reapproved by the commission.

Subd. 5. **Transmission inventory.** The department of commerce shall create, maintain, and update annually an inventory of transmission lines in the state.

Subd. 6. **Exclusion.** This section does not apply to any transmission line proposal that has been approved by, or was pending before, a local unit of government, the environmental quality board, or the public utilities commission on August 1, 2001.

History: *2001 c 212 art 7 s 30*

216B.243 CERTIFICATE OF NEED FOR LARGE ENERGY FACILITY.

[For text of subds 1 and 2, see M.S.2000]

Subd. 3. **Showing required for construction.** No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need. In assessing need, the commission shall evaluate:

(1) the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based;

(2) the effect of existing or possible energy conservation programs under sections 216C.05 to 216C.30 and this section or other federal or state legislation on long-term energy demand;

(3) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section 216C.18;

(4) promotional activities that may have given rise to the demand for this facility;

(5) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region;

(6) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load-management programs, and distributed generation;

(7) the policies, rules, and regulations of other state and federal agencies and local governments; and

(8) any feasible combination of energy conservation improvements, required under section 216B.241, that can (i) replace part or all of the energy to be provided by the proposed facility, and (ii) compete with it economically.

[For text of subds 3a and 3b, see M.S.2000]

Subd. 4. **Application for certificate; hearing.** Any person proposing to construct a large energy facility shall apply for a certificate of need prior to applying for a site or route permit under sections 116C.51 to 116C.69 or construction of the facility. The application shall be on forms and in a manner established by the commission. In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public

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hearing shall be to obtain public opinion on the necessity of granting a certificate of need. The commission shall designate a commission employee whose duty shall be to facilitate citizen participation in the hearing process. If the commission and the environmental quality board determine that a joint hearing on siting and need under this subdivision and section 116C.57, subdivision 2d, is feasible, more efficient, and may further the public interest, a joint hearing under those subdivisions may be held.

[For text of subds 5 to 7, see M.S.2000]

Subd. 8. **Exemptions.** This section does not apply to:

(1) cogeneration or small power production facilities as defined in the Federal Power Act, United States Code, title 16, section 796, paragraph (17), subparagraph (A), and paragraph (18), subparagraph (A), and having a combined capacity at a single site of less than 80,000 kilowatts or to plants or facilities for the production of ethanol or fuel alcohol nor in any case where the commission shall determine after being advised by the attorney general that its application has been preempted by federal law;

(2) a high-voltage transmission line proposed primarily to distribute electricity to serve the demand of a single customer at a single location, unless the applicant opts to request that the commission determine need under this section or section 216B.2425;

(3) the upgrade to a higher voltage of an existing transmission line that serves the demand of a single customer that primarily uses existing rights-of-way, unless the applicant opts to request that the commission determine need under this section or section 216B.2425;

(4) conversion of the fuel source of an existing electric generating plant to using natural gas; or

(5) modification of an existing electric generating plant to increase efficiency, as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater.

History: *2001 c 212 art 7 s 31-33*

216B.62 REGULATORY EXPENSES.

[For text of subds 2 to 4, see M.S.2000]

Subd. 5. **Assessing cooperatives and municipals.** The commission and department may charge cooperative electric associations and municipal electric utilities their proportionate share of the expenses incurred in the review and disposition of resource plans, adjudication of service area disputes, proceedings under section 216B.2425, and the costs incurred in the adjudication of complaints over service standards, practices, and rates. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.026, subdivision 4, are also subject to this section. Neither a cooperative electric association nor a municipal electric utility is liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2. A cooperative electric association or municipal electric utility may object to and appeal bills of the commission and department as provided in subdivision 4.

The department shall assess cooperatives and municipalities for the costs of alternative energy engineering activities under section 216C.261. Each cooperative and municipality shall be assessed in proportion that its gross operating revenues for the sale of gas and electric service within the state for the last calendar year bears to the total of those revenues for all public utilities, cooperatives, and municipalities.

[For text of subd 6, see M.S.2000]

History: *2001 c 212 art 7 s 34*

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216B.79 PREVENTATIVE MAINTENANCE.

The commission may order public utilities to make adequate infrastructure investments and undertake sufficient preventative maintenance with regard to generation, transmission, and distribution facilities.

History: *2001 c 212 art 3 s 2*

216B.81 STANDARDS FOR DISTRIBUTION UTILITIES.

Subdivision 1. **Standards.** (a) The commission and each cooperative electric association and municipal utility shall adopt standards for safety, reliability, and service quality for distribution utilities. Standards for cooperative electric associations and municipal utilities should be as consistent as possible with the commission standards.

(b) Reliability standards must be based on the system average interruption frequency index, system average interruption duration index, and customer average interruption duration index measurement indices. Service quality standards must specify, if technically and administratively feasible:

(1) average call center response time;

(2) customer disconnection rate;

(3) meter-reading frequency;

(4) complaint resolution response time;

(5) service extension request response time;

(6) recording of service and circuit interrupter data;

(7) summary reporting;

(8) historical reliability performance reporting;

(9) notices of interruptions of bulk power supply facilities and other interruptions of power; and

(10) customer complaints.

(c) Minimum performance standards developed under this section must treat similarly situated distribution systems similarly and recognize differing characteristics of system design and hardware.

(d) Electric distribution utilities shall comply with all applicable governmental and industry standards required for the safety, design, construction, and operation of electric distribution facilities, including section 326.243.

Subd. 2. **Definitions.** For the purpose of this section, the terms defined in this subdivision have the meanings given them.

(a) The "system average interruption frequency index" is the average number of interruptions per customer per year. It is determined by dividing the total annual number of customer interruptions by the average number of customers served during the year.

(b) The "system average interruption duration index" is the average customer-minutes of interruption per customer. It is determined by dividing the annual sum of customer-minutes of interruption by the average number of customers served during the year.

(c) The "customer average interruption duration index" is the average customer-minutes of interruption per customer interruption. It approximates the average length of time required to complete service restoration. It is determined by dividing the annual sum of all customer-minutes of interruption durations by the annual number of customer interruptions.

History: *2001 c 212 art 6 s 1*

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