

1.1 A bill for an act

1.2 relating to energy; requiring Public Utility Commission's decisions to further  
1.3 goals of state energy efficiency and renewable energy; modifying showings  
1.4 required in certificate of need process; requiring a study; amending Minnesota  
1.5 Statutes 2008, sections 216B.03; 216B.16, subdivision 3; 216B.243, subdivisions  
1.6 3, 3a, by adding a subdivision; proposing coding for new law in Minnesota  
1.7 Statutes, chapter 216B.

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

1.9 Section 1. **TITLE.**

1.10 Sections 2 to 8 may be cited as the Ratepayer Protection Act.

1.11 Sec. 2. Minnesota Statutes 2008, section 216B.03, is amended to read:

1.12 **216B.03 REASONABLE RATE.**

1.13 Every rate made, demanded, or received by any public utility, or by any two or  
1.14 more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably  
1.15 preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable,  
1.16 and consistent in application to a class of consumers. To the maximum reasonable extent,  
1.17 the commission shall set rates to encourage energy conservation and renewable energy use  
1.18 and to further the goals of sections 216B.164, 216B.1691, 216B.241, ~~and~~ 216C.05, and  
1.19 216H.02. Any doubt as to reasonableness should be resolved in favor of the consumer.  
1.20 For rate making purposes a public utility may treat two or more municipalities served by  
1.21 it as a single class wherever the populations are comparable in size or the conditions of  
1.22 service are similar.

1.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.1       Sec. 3. [216B.085] STATE ENERGY GOALS.

2.2             In carrying out its duties under this chapter, the commission shall, to the maximum  
2.3 reasonable extent, encourage energy efficiency, reduce use of fossil fuels, develop  
2.4 renewable energy sources, and reduce emissions of greenhouse gases and shall further the  
2.5 goals of sections 216B.164, 216B.1691, 216B.241, 216C.05, and 216H.02.

2.6             **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.7       Sec. 4. Minnesota Statutes 2008, section 216B.16, subdivision 3, is amended to read:

2.8             Subd. 3. **Interim rate.** (a) Notwithstanding any order of suspension of a proposed  
2.9 increase in rates, the commission shall order an interim rate schedule into effect not later  
2.10 than 60 days after the initial filing date. The commission shall order the interim rate  
2.11 schedule ex parte without a public hearing. Notwithstanding the provisions of sections  
2.12 216.25, 216B.27, and 216B.52, no interim rate schedule ordered by the commission  
2.13 pursuant to this subdivision shall be subject to an application for a rehearing or an appeal  
2.14 to a court until the commission has rendered its final determination.

2.15             (b) Unless the commission finds that exigent circumstances exist, the interim rate  
2.16 schedule shall be calculated using the proposed test year cost of capital, rate base, and  
2.17 expenses, except that it shall include: (1) a rate of return on common equity for the utility  
2.18 equal to that authorized by the commission in the utility's most recent rate proceeding; (2)  
2.19 rate base or expense items the same in nature and kind as those allowed by a currently  
2.20 effective order of the commission in the utility's most recent rate proceeding; and (3) no  
2.21 change in the existing rate design. In the case of a utility which has not been subject to a  
2.22 prior commission determination, the commission shall base the interim rate schedule on  
2.23 its most recent determination concerning a similar utility.

2.24             (c) If, at the time of its final determination, the commission finds that the interim  
2.25 rates are in excess of the rates in the final determination, the commission shall order the  
2.26 utility to refund the excess amount collected under the interim rate schedule, including  
2.27 interest on it which shall be at the rate of interest determined by the commission, provided,  
2.28 however, that if the commission orders final rates that are less than 75 percent of the  
2.29 interim rate level authorized by the commission, it shall order interest that is ... percent  
2.30 higher than the interest rate otherwise required for refunds in Minnesota Rules, chapter  
2.31 7825. The utility shall commence distribution of the refund to its customers within 120  
2.32 days of the final order, not subject to rehearing or appeal. If, at the time of its final  
2.33 determination, the commission finds that the interim rates are less than the rates in the final  
2.34 determination, the commission shall prescribe a method by which the utility will recover  
2.35 the difference in revenues between the date of the final determination and the date the new

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3.1 rate schedules are put into effect. In addition, when an extension is granted for settlement  
3.2 discussions under subdivision 1a, the commission shall allow the utility to also recover the  
3.3 difference in revenues for a length of time equal to the length of the extension.

3.4 (d) If the public utility fails to make refunds within the period of time prescribed  
3.5 by the commission, the commission shall sue therefor and may recover on behalf of all  
3.6 persons entitled to a refund. In addition to the amount of the refund and interest due,  
3.7 the commission shall be entitled to recover reasonable attorney's fees, court costs and  
3.8 estimated cost of administering the distribution of the refund to persons entitled to it. No  
3.9 suit under this subdivision shall be maintained unless instituted within two years after the  
3.10 end of the period of time prescribed by the commission for repayment of refunds.

3.11 (e) The commission shall not order an interim rate schedule in a general rate case  
3.12 into effect as provided by this subdivision until at least four months after it has made a  
3.13 final determination concerning any previously filed change of the rate schedule or the  
3.14 change has otherwise become effective under subdivision 2, unless:

3.15 (1) the commission finds that a four-month delay would unreasonably burden the  
3.16 utility, its customers, or its shareholders and that an earlier imposition of interim rates  
3.17 is therefore necessary; or

3.18 (2) the utility files a second general rate case at least 12 months after it has filed a  
3.19 previous general rate case for which the commission has extended the suspension period  
3.20 under subdivision 2.

3.21 Sec. 5. Minnesota Statutes 2008, section 216B.243, subdivision 3, is amended to read:

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

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

3.29 (2) the effect of existing or possible energy conservation programs under sections  
3.30 216C.05 to 216C.30 and this section or other federal or state legislation on long-term  
3.31 energy demand;

3.32 (3) the relationship of the proposed facility to overall state energy needs, as  
3.33 described in the most recent state energy policy and conservation report prepared under  
3.34 section 216C.18, or, in the case of a high-voltage transmission line, the relationship of the

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4.1 proposed line to regional energy needs, as presented in the transmission plan submitted  
4.2 under section 216B.2425;

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

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

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

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

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

4.16 (9) with respect to a high-voltage transmission line, the benefits of enhanced regional  
4.17 reliability, access, or deliverability to the extent these factors improve the robustness of  
4.18 the transmission system or lower costs for electric consumers in Minnesota;

4.19 (10) whether the applicant or applicants are in compliance with applicable provisions  
4.20 of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a  
4.21 date certain an application for certificate of need under this section or for certification as  
4.22 a priority electric transmission project under section 216B.2425 for any transmission  
4.23 facilities or upgrades identified under section 216B.2425, subdivision 7;

4.24 (11) whether the applicant has made the demonstrations required under subdivision  
4.25 3a; and

4.26 (12) if the applicant is proposing a nonrenewable generating plant, the applicant's  
4.27 assessment of the risk of environmental costs and regulation on that proposed facility  
4.28 over the expected useful life of the plant, including a proposed means of allocating costs  
4.29 associated with that risk.

4.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.31 Sec. 6. Minnesota Statutes 2008, section 216B.243, subdivision 3a, is amended to read:

4.32 Subd. 3a. **Use of renewable resource.** (a) The commission may not issue a  
4.33 certificate of need under this section for a large energy facility that generates electric power  
4.34 by means of a nonrenewable energy source, or that transmits electric power generated  
4.35 by means of a nonrenewable energy source, unless the applicant for the certificate has

5.1 demonstrated to the commission's satisfaction that it has explored the possibility of  
5.2 generating power by means of renewable energy sources and has demonstrated that  
5.3 the alternative selected is less expensive (including environmental costs) than power  
5.4 generated by a renewable energy source. For purposes of this subdivision, "renewable  
5.5 energy source" includes hydro, wind, solar, and geothermal energy and the use of trees or  
5.6 other vegetation as fuel.

5.7 (b) This subdivision applies to an applicant regardless of whether the applicant or  
5.8 any utility that would purchase energy from the proposed facility is subject to, has met, or  
5.9 has exceeded the objectives and requirements of section 216B.1691.

5.10 Sec. 7. Minnesota Statutes 2008, section 216B.243, is amended by adding a  
5.11 subdivision to read:

5.12 Subd. 3c. **Multiple applicants; required showing.** For a facility that is proposed  
5.13 by more than one applicant or from which more than one utility will purchase energy, each  
5.14 applicant and purchasing utility must separately show compliance with subdivisions 3 and  
5.15 3a with respect to that applicant's or purchaser's proposed purchases from the facility.

5.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.17 Sec. 8. **STUDY; ALIGNING UTILITY REGULATION WITH ENERGY**  
5.18 **POLICY.**

5.19 (a) By November 1, 2011, the Public Utilities Commission shall submit a report  
5.20 to the members of the senate and house of representatives committees with primary  
5.21 jurisdiction over energy policy containing recommendations for aligning energy utility  
5.22 regulation with the state's energy policy that gives primary emphasis to energy efficiency  
5.23 and the development of renewable energy sources in meeting future energy needs, while  
5.24 maintaining a sustainable business model for utilities that aggressively pursue those goals.

5.25 (b) The report, which may be done in whole or in part by contractors, must analyze  
5.26 and evaluate, at a minimum, the following regulatory mechanisms:

5.27 (1) financial mechanisms that align a utility's financial interests with energy  
5.28 efficiency measures and renewable energy sources as resource options, including, but  
5.29 not limited to:

5.30 (i) revenue-per-customer decoupling that fully decouples a utility's sales from its  
5.31 nonfuel revenues and mitigates the potential for lost profits from the underrecovery of  
5.32 fixed costs due to reduced retail sales;

5.33 (ii) shared savings incentives that allow a utility to retain a predetermined share of  
5.34 the net benefits realized from energy efficiency and renewable energy investments; and

6.1 (iii) rate-of-return incentives that allow higher returns on equity for investments in  
6.2 energy efficiency and renewable energy; and

6.3 (2) rate design structures that provide incentives to consumers to (i) make  
6.4 cost-effective energy efficiency and renewable energy investments and (ii) shift  
6.5 consumption to times of the day when the costs of energy generation are lower.

6.6 Analysis of the mechanisms under clause (1) must measure the net benefits to ratepayers,  
6.7 utilities, utility shareholders, and society in a way that allows them to be readily compared  
6.8 to one another. The study must evaluate the efficacy of any of the mechanisms in clauses  
6.9 (1) and (2) that have been adopted in other jurisdictions. The commission shall assess  
6.10 public utilities \$500,000 under section 216B.62 for the cost of the study. This assessment  
6.11 may not be recovered from ratepayers.

6.12 (c) For the purposes of this section, "renewable energy" means energy produced by  
6.13 means of wind, solar thermal, or solar photovoltaic resources.

6.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.