

CHAPTER 414 — H.F.No. 12

An act relating to public utilities; revising the process for approval of rate changes; abolishing "rates under bond"; providing for interim rates; amending Minnesota Statutes 1980, Sections 216B.16, Subdivisions 1, 2, 3, 5, and 7; and 237.075, Subdivisions 1, 2, 3, 5, and 6; and Minnesota Statutes 1981 Supplement, Sections 216B.16, Subdivision 1a; and 237.075, Subdivision 1a.

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

Section 1. Minnesota Statutes 1980, Section 216B.16, Subdivision 1, is amended to read:

Subdivision 1. **NOTICE.** Unless the commission otherwise orders, no public utility shall change any a rate which has been duly established under this chapter, except after 90 upon 60 days notice to the commission, which. The notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and further shall state the change proposed to be made in the rates then in force, and the time when the modified rates will go into effect. 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.

Sec. 2. Minnesota Statutes 1981 Supplement, Section 216B.16, Subdivision 1a, is amended to read:

Subd. 1a. **SETTLEMENT BARRED.** When a public utility proposes changes in general rates that would increase general rates paid by consumers by more than \$500,000 annually, the commission shall not approve the change until after requiring the office of administrative hearings to conduct a contested case hearing on, at a minimum, the appropriate rate base, expense and revenue levels for the test year, and the rate of return. If the formal parties to the contested case choose not to cross-examine the testimony presented, it shall be the duty of the commission and its staff to make inquiry of the witnesses presented to ensure that the testimony is well reasoned and constitutes substantial evidence. After a report of the examiner has been issued, the commission may proceed to take action on the proposed rates consistent with the provisions of this section. The commission shall not accept any stipulation that is not agreed to by all intervening parties.

Sec. 3. Minnesota Statutes 1980, Section 216B.16, Subdivision 2, is amended to read:

Subd. 2. **SUSPENSION OF RATES; HEARING.** Whenever there is filed with the commission any a schedule modifying or resulting in a change in

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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 ~~90 days~~ ten months beyond the ~~time when the schedule of rates would otherwise go into effect~~ initial filing date. 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 administrative division of the department of public service 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 ~~400~~ 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 15, and ~~may further extend the period of suspension for a period not to exceed a total of nine months except as otherwise provided in this section.~~ 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 hearing examiner reports, the issues shall again be joined for consideration and final determination by the commission. All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the department of public service. If the commission does not make a final determination concerning ~~any a~~ schedule of rates within a period of ~~nine~~ ten months ~~beyond the time when the schedule of rates would otherwise go into effect, under subdivision 1~~ initial filing date, the schedule shall be deemed to have been approved by the commission. For the purposes of this ~~subdivision~~ 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 ~~such~~ those petitions.

Sec. 4. Minnesota Statutes 1980, Section 216B.16, Subdivision 3, is amended to read:

Subd. 3. **INTERIM RATES.** Notwithstanding any order of suspension of a proposed increase in rates, the public utility may put the suspended ~~commission shall order an interim rate schedule into effect on the date when it would have become effective if not suspended, or any date subsequent thereto within the suspension period, by filing with the commission a bond in an amount approved by the commission with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission, of the excess in increased rates, including interest thereon which shall be at the current rate of interest as determined by the commission, collected during the period of the suspension if the schedule so put into effect is finally disallowed by the commission. There may be substituted for the bond other arrangements satisfactory to the commission for the protection of persons affected~~ not later

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than 60 days after the initial filing date. The commission shall order the interim rate schedule ex parte without a public hearing. Notwithstanding the provisions of sections 216.24, 216.25, 216B.27 and 216B.52, no interim rate schedule ordered by the commission pursuant to this subdivision shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final determination. Unless the commission finds that exigent circumstances exist, the interim rate schedule shall be calculated using the proposed test year cost of capital, rate base, and expenses, except that it shall include: (1) a rate of return on common equity for the utility equal to that authorized by the commission in the utility's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the utility's most recent rate proceeding; and (3) no change in the existing rate design. In the case of a utility which has not been subject to a prior commission determination, the commission shall base the interim rate schedule on its most recent determination concerning a similar utility.

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest thereon which shall be at the rate of interest determined by the commission. The utility shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method whereby the utility will recover the difference in revenues from the date of the final determination to the date the new rate schedules are put into effect.

If the public utility fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and is authorized to may recover on behalf of all persons entitled to a refund. In addition to the amount of the refund and interest due, the commission shall be entitled to recover reasonable attorney's fees, court costs and estimated cost of administering the distribution of the refund to persons entitled thereto. No suit under this subdivision shall be maintained unless instituted within two years after the end of the period of time prescribed by the commission for repayment of refunds. However, no public utility ~~The commission shall put a suspended not order an interim rate schedule into effect as provided by this subdivision until at least 90 days four months after the commission it has made a final determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2, unless it finds that a four month delay would unreasonably burden the utility, its customers, or its shareholders and that an earlier imposition of interim rates is therefore necessary.~~

Sec. 5. Minnesota Statutes 1980, Section 216B.16, Subdivision 5, is amended to read:

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Subd. 5. **DETERMINATION.** If, after the hearing, the commission finds the rates to be unjust or unreasonable or discriminatory, the commission shall determine the ~~level of~~ rates to be charged or applied by the utility for the service in question and shall ~~fix the same~~ them by order to be served upon the utility; and ~~.~~ The rates ~~are~~ shall thereafter ~~to~~ be observed until changed, as provided by ~~Laws 1974, Chapter 429~~ this chapter. In no event shall the rates exceed the level of rates requested by the public utility, except that individual rates may be adjusted upward or downward. Rate design changes shall be prospective from the effective date of the new rate schedules approved by the commission.

Sec. 6. Minnesota Statutes 1980, Section 216B.16, Subdivision 7, is amended to read:

Subd. 7. **ENERGY COST ADJUSTMENTS.** Notwithstanding any other provision of ~~Laws 1974, Chapter 429~~ this chapter, the commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in federally regulated wholesale rates for energy delivered through interstate facilities or fuel used in generation of electricity or the manufacture of gas.

Sec. 7. Minnesota Statutes 1980, Section 237.075, Subdivision 1, is amended to read:

Subdivision 1. **NOTICE.** Unless the commission otherwise orders, no telephone company shall change ~~any~~ a rate which has been duly established under this chapter, except ~~after 90~~ 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. The filing telephone company 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.

Sec. 8. Minnesota Statutes 1981 Supplement, Section 237.075, Subdivision 1a, is amended to read:

Subd. 1a. **SETTLEMENT BARRED.** When a telephone company proposes changes in general rates that would increase general rates paid by consumers by more than \$500,000 annually, the commission shall not approve the change until after requiring the office of administrative hearings to conduct a contested case hearing on, at a minimum, the appropriate rate base, expense and revenue levels for the test year, and the rate of return. If the formal parties to the contested case choose not to cross-examine the testimony presented, it shall be the duty of the commission and its staff to make inquiry of the witnesses

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presented to ensure that the testimony is well reasoned and constitutes substantial evidence. After a report of the examiner has been issued, the commission may proceed to take action on the proposed rates consistent with the provisions of this section. The commission shall not accept any stipulation that is not agreed to by all intervening parties.

Sec. 9. Minnesota Statutes 1980, Section 237.075, Subdivision 2, is amended to read:

Subd. 2. **SUSPENSION OF RATES; HEARING.** ~~When~~ Whenever there is filed with the commission as provided in subdivision 1 a schedule modifying or resulting in a change in any rate then in force, the commission may suspend the operation of the schedule by filing of with the schedule of rates and delivering to the affected telephone company 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 ~~90 days~~ ten months beyond the ~~time when the schedule of rates would otherwise go into effect~~ initial filing date. 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 administrative division of the department of public service 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 ~~100~~ 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 15, ~~and may further extend the period of suspension, but in no event shall the period of suspension be more than nine months from the date when the schedule of rates would otherwise go into effect~~ except as otherwise provided in this section. 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 telephone company's revenue requirements and (2) determination of the rate design. Upon issuance of both hearing examiner reports, the issues shall again be joined for consideration and final determination by the commission. All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the department of public service. If the commission does not make a final determination ~~on or before the expiration of 12 months from the date the rates were initially filed concerning a schedule of rates within ten months after the initial filing date,~~ the schedule of rates shall be deemed to have been approved by the commission. ~~The overcharge resulting from implementation of the schedule prior to the final determination of the commission shall be refunded to the customers of the telephone company in a manner prescribed by rules of the commission. For the purposes of this subdivision 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 such those petitions.~~

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Sec. 10. Minnesota Statutes 1980, Section 237.075, Subdivision 3, is amended to read:

Subd. 3. **INTERIM RATES.** Notwithstanding any order of suspension of a proposed increase in rates, the telephone company may put the suspended commission shall order an interim rate schedule into effect on the date when it would have become effective if not suspended, or any date subsequent thereto within the suspension period, by filing with the commission a bond in an amount approved by the commission with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission, of the excess in increased rates, including interest thereon which shall be at the current rate of interest as determined by the commission, collected during the period of the suspension if the schedule so put into effect is finally disallowed by the commission. There may be substituted for the bond other arrangements satisfactory to the commission for the protection of persons affected not later than 60 days after the initial filing date. The commission shall order the interim rate schedule ex parte without a public hearing. Notwithstanding the provisions of sections 216.24, 216.25, and 237.25, no interim rate schedule ordered by the commission pursuant to this subdivision shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final determination. Unless the commission finds that exigent circumstances exist, the interim rate schedule shall be calculated using the proposed test year cost of capital, rate base, and expenses, except that it shall include: (1) a rate of return on common equity for the company equal to that authorized by the commission in the company's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the company's most recent rate proceeding; and (3) no change in the existing rate design, except for products and services offered by nonregulated competitors. In the case of a company which has not been subject to a prior commission determination or has not had a general rate adjustment in the preceding three years, the commission shall base the interim rate schedule on its most recent determination concerning a similar company.

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the company to refund the excess amount collected under the interim rate schedule, including interest thereon which shall be at the rate of interest determined by the commission. The company shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method whereby the company will recover the difference in revenues from the date of the final determination to the date the new rate schedules are put into effect.

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If the telephone company fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and is ~~authorized to may~~ recover on behalf of all persons entitled to a refund. In addition to the amount of the refund and interest due, the commission shall be entitled to recover reasonable attorney's fees, court costs and estimated cost of administering the distribution of the refund to persons entitled thereto. No suit under this subdivision shall be maintained unless instituted within two years after the end of the period of time prescribed by the commission for repayment of refunds. ~~However, no telephone company~~ The commission shall put a suspended not order an interim rate schedule into effect as provided by this subdivision until at least 90 days four months after the commission it has made a final determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2, unless it finds that a four month delay would unreasonably burden the company, its customers, or its shareholders and that an earlier imposition of interim rates is therefore necessary.

Sec. 11. Minnesota Statutes 1980, Section 237.075, Subdivision 5, is amended to read:

Subd. 5. **DETERMINATION.** If, after the hearing, the commission finds the rates to be unjust or unreasonable or discriminatory, the commission shall determine the rates to be charged or applied by the telephone company for the service in question and shall fix them by order to be served upon the telephone company. The rates shall thereafter be observed until changed, as provided by this chapter. In no event shall the rates exceed the level ~~or of~~ rates requested by the telephone company, except that individual rates may be adjusted upward or downward. Rate design changes shall be prospective from the effective date of the new rate schedules approved by the commission.

Sec. 12. Minnesota Statutes 1980, Section 237.075, Subdivision 6, is amended to read:

Subd. 6. **FACTORS TO BE CONSIDERED.** The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for telephone companies, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the telephone company for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its telephone company property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in the property. In determining the rate base upon which the telephone company is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the telephone company, less appropriate depreciation on each ~~cost~~, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. To the extent that

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construction work in progress is included in the rate base, the income used in determining the actual return on the telephone company property shall ~~may~~ include an allowance for funds used during construction. For purposes of determining rate base, the commission shall consider the original cost of telephone company property included in the base and shall make no allowance for its estimated current replacement value.

Sec. 13. EFFECTIVE DATE.

This act is effective May 1, 1982, and applies to all applications for general rate changes filed after May 1, 1982.

Approved March 15, 1982

CHAPTER 415 — S.F.No. 860

An act relating to municipal land use planning; permitting municipal fees for administrative actions relating to official controls; amending Minnesota Statutes 1980, Sections 462.353, by adding a subdivision; and 462.358, Subdivision 3b; repealing Minnesota Statutes 1980, Section 462.358, Subdivision 4.

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

Section 1. Minnesota Statutes 1980, Section 462.353, is amended by adding a subdivision to read:

Subd. 4. FEES. A municipality may prescribe fees sufficient to defray the costs incurred by it in reviewing, investigating, and administering an application for an amendment to an official control established pursuant to sections 462.351 to 462.364 or an application for a permit or other approval required under an official control established pursuant to those sections. Fees as prescribed shall be by ordinance.

Sec. 2. Minnesota Statutes 1980, Section 462.358, Subdivision 3b, is amended to read:

Subd. 3b. **REVIEW PROCEDURES.** The regulations shall include provisions regarding the content of applications for proposed subdivisions, the preliminary and final review and approval or disapproval of applications, and the coordination of such reviews with affected political subdivisions and state agencies. The regulations may provide for the consolidation of the preliminary and final review and approval or disapproval of subdivisions. Preliminary or final approval may be granted or denied for parts of subdivision applications. ~~The regulations may prescribe fees sufficient to defray the costs incurred by the municipality in the review and investigation of and actions upon such applications.~~ The regulations may delegate the authority to review proposals to the

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