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Background

Minnesota Session Law Chapter 94, Article 10, Section 10-12 amending Statute Section 216B.241 was signed into law May 30, 2017. Contained in this law was a provision modifying the applicability of §216B.241 to certain municipal and electric cooperative utilities. The new provisions establish exempt status to municipal and electric cooperative utilities below a certain threshold. Specifically, §216B.241, Subdivision 1b, which establishes spending requirements for the Conservation Improvement Program (CIP), was amended as follows:

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 more than 5,000 members;

   (2) A municipality that provides electric service to more than 1,000 retail customers; and

   (3) A municipality with more than 1,000,000,000 cubic feet in annual throughput sales to natural gas retail customers.

Further modifications were made to additional sections of the statute consistent with the changes to Subd. 1b. Section 216B.241, Subd. 1c was amended to include an additional paragraph clarifying applicability of the CIP energy savings goal to utilities meeting the same thresholds. As follows:

Subd. 1c. Energy-savings goals.

This subdivision does not apply to:

   (1) A cooperative electric association with fewer than 5,000 members;

   (2) A municipal utility with fewer than 1,000 retail electric customers; or

   (3) A municipal utility with less than 1,000,000,000 cubic feet in annual throughput sales to retail natural gas customers.

Additional modifications were made to various subdivisions of §216B.241 to reflect that only the utilities that are subject to §216B.241, Subd. 1c are required to meet the provisions of those subdivisions, including: Subd. 2. Programs; Subd. 5. Efficient lighting program; Subd. 5d. On-bill repayment programs; and Subd. 7. Low-income programs. All provisions modified became effective the day following final enactment.

The Commissioner of the Minnesota Department of Commerce (Department), through delegation to the Deputy Commissioner of the Division of Energy Resources, has the authority to ensure that utilities subject to Minnesota Statute §216B.241 are meeting their CIP investment requirements and energy savings goals and are following subsequent provisions within the statute. As such, given the recent changes in statute, the Deputy Commissioner provides the following guidance to the impacted utilities.

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1 2017 Minnesota Session Laws Chapter 94 Senate File 1457 https://www.revisor.mn.gov/laws/?id=94&year=2017&type=0
In this guidance document, the Department provides an analysis of the modifications to §216B.241, definitions of new terms, and information about impacts on reporting and additional matters.

Analysis

Determination of exempt utilities

The modifications to §216B.241 effectively exempt some utilities from CIP requirements. Municipal gas utilities with less than 1,000,000,000 cubic feet in annual throughput sales to natural gas retail customers had already been exempt from CIP requirements via the existing text of Subd. 1b. The new modifications now establish exemption thresholds for municipal and cooperative electric utilities based on number of retail customers and members respectively.

There are no definitions in §216B.241 for municipal utility "retail customers" or cooperative utility “members.” There is also no process described in statute for reporting and verifying utility exemption from CIP. In order for the Department to fulfill its responsibilities related to CIP, the Department needs to provide a means for determining which utilities are exempt and provide guidance for future reporting.

Impact on reported information

Required investments and energy savings goals are determined individually for each utility based on a formula that includes the utility’s revenues and energy sales. Utilities are required to report on past investments and energy savings achievements and to provide plans for future budgets and energy savings goals. Specifically, §216B.241 1b(g) requires that:

Each municipality or cooperative shall file energy conservation improvement plans by June 1
on a schedule determined by order of the commissioner, but at least every three years. Plans
received by June 1 must be approved or approved as modified by the commissioner by
December 1 of the same year.

Currently the Commissioner, through delegation to the Deputy Commissioner, requires each utility to file by June 1 a reporting of investments and accomplishments for the previous calendar year and planned budgets and energy savings for the forthcoming calendar year. Prior to May 31, 2017, the date the modifications to the statute took effect, many utilities had submitted their reports for 2016 and their planned budgets and energy savings goals for 2018.

Additionally, Subd. 1b(f) allows that:

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.
To date, for 2017 reporting, 9 associations and power authorities (aggregators) have reported on behalf of 113 retail utilities. Only 43 utilities reported individually. Reporting by aggregators on behalf of utilities approaching the requirements of §216B.241 on an aggregate basis will need to be updated for calendar years 2017 and 2018 to reflect that some of the members of their respective groups are now exempt from §216B.241. With the now exempt utilities removed, the group’s aggregate investments, goals, and achievements will change. The Department, utilities, and aggregators will need time to determine which utilities are exempt, calculate revised requirements, and update plans for 2018.

Definitions

The quantity of members and retail customers for each cooperative and municipal utility is necessary in order to determine whether a utility is exempt from §216B.241. Utilities have historically reported number of retail customers in their CIP reporting. While not required to determine compliance with §216B.241, this information can be useful to better understand the characteristics of a utility’s customer population and its relative size within the entire population of retail energy utilities that operate in the state of Minnesota. The Department did not provide a specific definition of retail customers for utilities to use when reporting, so no distinction was made between members in the case of cooperative utilities and retail customers for municipal utilities, meaning different utilities very likely used different definitions to determine the number of retail customers. The reporting of the number of retail customers within the context of CIP did not need to be vetted because no requirements in §216B.241 were determined based on that information. The modifications to the statute now require that number of members and retail customers be precisely understood since determination of which utilities are exempt from §216B.241 will be determined based on this information.

The number of electric utility meters installed in a utility’s service territory does not necessarily equal the number of retail customers. For instance, a single family residence typically has a single meter; however, it is possible that a residence may have multiple meters, or that a single customer occupies a residence with multiple units each with an electric meter. At commercial and industrial properties, it is common for a single customer to have multiple utility meters installed at their facility. The same individual may also own multiple properties such as a residence and a business site or multiple business sites. For the purposes of delivering electric utility service, such retail customers would have multiple account numbers, and may be described as a single retail customer or multiple retail customers informally depending on the context. For cooperative utilities, which are governed by their voting members, the difference between the number of meters, accounts, and retail customers, and the number of members has historically been a necessary distinction.

Cooperative utility members

The modifications to statute use the term “member” for cooperative utilities and “retail customer” for municipal utilities. Minnesota Statute Chapter 308B concerns cooperative associations and §308B.005 Subd. 15 provides the following definition for member:

"Member" means a person or entity reflected on the books of the cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members.
This definition is similar to the instructions given by the Rural Utility Service (RUS) for filing the Financial and Statistical Report (Form 7) filed by distribution utility borrowers. According to Form 7 instructions for filling cell 2 of Part M:\(^3\):

Total Number of Members

The number of members in the cooperative that are eligible to vote is to be reported in this block. This number is to be determined on the basis of one vote to one member. It will customarily be less than the number of billed consumers as usually some members are billed for more than one account. If exact figures are not available, enter best estimate and use asterisk (*) to show the figure is an estimate.

The Department has concluded that the definition of member in §308B.005 is the appropriate definition to determine whether a cooperative utility is exempt from §216B.241.

**Municipal utility retail customers**

The Department considered the definitions of member discussed previously and additional definitions for customer that are used elsewhere in energy reporting in order to determine an appropriate definition for retail customers when determining whether a municipal utility is exempt from §216B.241.

The Energy Information Administration’s Annual Electric Power Industry Report (Form 861) instructions\(^4\) state the following:

For number of customers, enter the average of the 12 close-of-month customer accounts.

... 

Count each meter as a separate customer in cases where commercial franchise or residential customer-buying groups have been aggregated under one buyer representative. The customer counts for public-street and highway lighting should be one customer per community.

Please do not count each pole as a separate customer even if billing is by a flat rate per pole per month.

Sections 216C.17 and 216C.18 authorize forecasting, statistical, and informational reporting requirements for utilities. Pursuant to Minnesota Rules parts 7610.0100 to 7610.1130, that implement §216C.17 and 216C.18, electric utilities file an Electric Utility Annual Report with the Minnesota Department of Commerce. The instructions\(^5\) for reporting “number of customers at year end” for “Electricity Delivered to Ultimate Consumers” instructs utilities to “Report number of farms, residences, commercial establishments, etc., and not the number of meters where different”.

While the legislature used different terms for the different utility types, there is no indication that the legislature intended for the overall approach to be different for the two. Therefore, when considering the

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\(^4\) [https://elecidc12c.eia.doe.gov/2017%20EIA-861%20Instructions.pdf](https://elecidc12c.eia.doe.gov/2017%20EIA-861%20Instructions.pdf)

definitions for member and for retail customers, the approach for both should be similar. Also, CIP is based on utilities promoting energy savings opportunities to energy consumers and is not particularly focused on the number of existing utility meters. Therefore, EIA's instruction on reporting customers does not serve the need of providing a definition of retail customers for municipal utilities.

The Department has concluded that the definition of customer in the Electric Utility Annual Report instructions is the appropriate definition to use in determining whether a municipal utility is exempt from §216B.241.

**Summary of definitions**

For cooperative utilities, members has the meaning defined by §308B.005 Subd. 15:

"Member" means a person or entity reflected on the books of the cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members.

For practical purposes, the number of members according to this definition is the same as the “total number of members” reported on RUS Form 7.

For municipal utilities, retail customers has the following meaning:

“Retail customer” means a farm, residence, or commercial establishments. It is not necessarily the number of meters.

**Impact on Reporting Requirements**

Prior to the modifications to statute, all electric cooperative and municipal utilities and municipal gas utilities with annual throughput greater than 1,000,000,000 cubic feet were required to report on CIP investment, achievements, budgets, and energy savings goals. Minnesota Statutes section 216B.241, Subd. 1b states these requirements:

(g) Each municipality or cooperative shall file energy conservation improvement plans by June 1 on a schedule determined by order of the commissioner, but at least every three years. Plans received by June 1 must be approved or approved as modified by the commissioner by December 1 of the same year. The municipality or cooperative shall 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.

Typically the Deputy Commissioner reviews the utility CIP reporting and composes a Compliance Review Letter summarizing whether the results and the goals are consistent with the requirements of §216B.241 and stating a determination of whether the Deputy Commissioner accepts the utility’s CIP plan. These letters are then filed on eDockets.
**Independent Utilities**

The modifications to §216B.241, Subd. 1b(a), mean that as of May 31, 2017, the reporting requirements in §216B.241, Subd. 1b(g) are no longer required for utilities exempt from §216B.241. Since the deadline for cooperative and municipal utilities to report on 2016 results and 2018 plans was June 1, 2017, many utilities had completed their 2017 reporting. The modifications to statute will require changes to some of the reporting that was completed prior to June 1, 2017. The modifications will also affect the ability of the Deputy Commissioner to review 2017 filings by December 1.

Utilities that filed individually and are now exempt from §216B.241 are not impacted by the modification to the statute. The Deputy Commissioner will not compose or file Compliance Review Letters for those utilities. Those utilities do not need to report in 2018 on 2017 results and 2019 plans.

**Aggregated Utilities**

Utilities that file on an aggregate basis will need to coordinate with the organization that files on their behalf. Except for cases where the provision discussed in the following section titled “Voluntary participation in CIP” is applied, the Department reviews the filings for aggregated utilities it will include utilities that are exempt from §216B.241 in 2016 results but will not include them in 2017 results and 2018 plans. Removing the contributions of exempt utilities from the reporting will impact the total budgets and energy savings goals of the groups and may result in the aggregated budgets and energy savings goals failing to meet the requirements of §216B.241. Therefore, aggregators may update information for the 2018 plans of the remaining utilities in order to reflect any revisions that the aggregated group of utilities authorizes the organization to make on its behalf. The Department will communicate with aggregators with details about when the reporting tool will be available for making updates and specific instructions concerning the reporting forms.

The Department anticipates that the majority of aggregator organizations will need to work with the utilities they report on behalf of to determine what changes to 2018 plans are appropriate. The Department will work with the affected organizations in order to establish reasonable timelines and the Department, in turn, will need to adjust its timeline for completing the 2017 review. The Department realizes that some utilities may rely on their Compliance Review Letter as part of their business process and regrets that delays may cause some disruption and uncertainty. The Department appreciates flexibility from utilities and their continued good faith efforts in maintaining the continuity of their CIP programs while the Department determines appropriate adjustments due to the modifications to statute.

**Outstanding Questions**

**Voluntary participation in CIP**

The modification to §216B.241 leave an outstanding issue regarding the treatment of energy conservation programs administered by utilities exempt from §216B.241. At least one aggregator organization has communicated that some retail utilities that are now exempt from §216B.241 may continue to provide conservation programs and retain the aggregator organization’s services. Such a decision on the part of a retail utility exemplifies the business case for energy efficiency. Energy savings achieved by members or retail customers can lead to a reduction in the total energy that the retail utility needs to purchase and in the demand charges that it incurs. Such reductions in costs ultimately benefit the members in the case of
cooperative utilities and residents and constituents in the case of municipal utilities and allows communities to use those financial resources for other purposes. However, the aggregator organization has asked whether the accomplishments of exempt utilities that voluntarily deliver energy efficiency programs can be counted towards accomplishments of the remaining group of utilities working in aggregate. Section 216B.241 is silent on this matter.

However, the Department notes that Minnesota’s energy conservation policy goal codified in §216B.2401 remains:

The legislature finds that energy savings are an energy resource, and that cost-effective energy savings are preferred over all other energy resources. The legislature further finds that cost-effective energy savings should be procured systematically and aggressively in order to reduce utility costs for businesses and residents, improve the competitiveness and profitability of businesses, create more energy-related jobs, reduce the economic burden of fuel imports, and reduce pollution and emissions that cause climate change. Therefore, it is the energy policy of the state of Minnesota to achieve annual energy savings equal to at least 1.5 percent of annual retail energy sales of electricity and natural gas through cost-effective energy conservation improvement programs and rate design, energy efficiency achieved by energy consumers without direct utility involvement, energy codes and appliance standards, programs designed to transform the market or change consumer behavior, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

The Department and the State of Minnesota have a compelling interest in encouraging the voluntary continuation of energy conservation programs and in tracking the associated results that utilities wish to report or otherwise publicize. Therefore, utilities may continue to report their conservation programs through the CIP reporting process. The Department will continue to determine CIP spending and energy savings goals and to review and track the activities of exempt utilities that continue to offer conservation programs and report them through the CIP reporting process in accordance with CIP policies and procedures. This decision applies to all utilities regardless of whether they report individually or on an aggregate basis. For aggregators, the spending and energy savings goals and accomplishments for the group will be based on the historical sales and revenues of all participating members.

Assessment of utilities

All utilities have been billed for CIP assessments through June 30, 2017. The Department will work with individual exempt utilities to reimburse them over the next few months. Exempt utilities that continue to offer conservation programs and report them through the CIP reporting process will not be billed for CIP assessments going forward.

Future reporting

The modifications to statute will most likely require some changes to the CIP reporting tool in order to maintain historical data and to facilitate future reporting. The Department will work with its vendor and with utilities and aggregators as this process proceeds, will provide information in annual reporting instructions, and will generally be available for any additional questions that arise.
Next Steps

The Department is currently in the process of finalizing the CIP Compliance Letters for 2016 results and 2018 plans. Through these letters the Department will notify utilities whether they are exempt from the CIP requirements outlined in §216B.241 based on the definitions of cooperative utility “member” and municipal utility “retail customer”. The Department will contact aggregators individually to confirm which of their members are exempt and whether any of their members that are exempt utilities plan to continue to offer CIP program in 2018.