



Management
Analysis
& Development

Public Utilities Commission and Department of Commerce Function Transfer Study

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About this Report

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The Department of Administration served as the contracting agency for this study. The department did not conduct research or analysis or develop recommendations.

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Executive summary

Purpose of study

In 2015, the Minnesota Legislature passed legislation requiring a study of functions currently housed in the Department of Commerce and in the Public Utilities Commission (Laws of Minnesota, 2015 First Special Session, chapter 1, article 1, section 8, subdivision 4). Specifically, the legislation required the Department of Administration to contract with Management Analysis & Development (MAD) to conduct a study "... to examine potential cost savings and program efficiencies that may result from transferring certain functions and staff of the division of energy resources in the Department of Commerce to the Public Utilities Commission." (The full text of the legislation is on page 12.)

Scope

Though the legislative requirements for this study suggest an interest in regulated energy utilities, the legislation did not specify which work areas or functions should be considered for transfer, so MAD examined all functions in the Division of Energy Resources.

Given the legislative requirements, MAD examined the possibilities of transferring existing functions from the division to the commission. MAD did not specifically examine alternative organizational arrangements, such as transferring division or commission functions to other parts of state government or transferring functions from the Public Utilities Commission to the Department of Commerce. MAD's research did not include an assessment of functions in other agencies that are involved in energy regulation or energy policy. MAD did not conduct job audits or program evaluations, and MAD assumed that existing legislation and substantive administrative policies would remain in place. Though these important topics were not within scope of this study, this report includes interviewees' perspectives and comments that may be valuable to the Minnesota Legislature.

Data sources and methods

MAD conducted research for this study from late August 2015 to early December 2015. MAD used several data sources and methods to provide responses to the legislative requirements and corresponding research questions:

- Comprehensive interviews with staff and management of the commission and the department, representatives of regulated entities, and other stakeholders. In total, MAD gathered input from over 100 people during this study.
- Review and analysis of information from the PUC and Commerce (such as personnel data, position descriptions, and process descriptions), state statutes and rules, and state budget information.
- Examination of selected states' approaches to organizing utility regulatory functions.
- Focused literature review on topics such as energy regulation and organizational change using research databases, government reports, and public websites.

Answers to research questions

The Minnesota Legislature asked MAD to examine several specific topic areas. MAD framed those requirements in the form of questions to focus research and analysis. MAD's answers to the questions are below.

Functions of the Public Utilities Commission and Division of Energy Resources

Question: What are the functions of the commission and the division?

Answer: MAD examined the functions and roles of both organizations. Detailed information is in the *Organizational Review* section of this report, beginning on page 35. Broadly (with exceptions noted elsewhere):

- For docketed matters: the commission is the decision maker and the division is the analyst, advocate, and enforcer of commission decisions and relevant Minnesota statutes.
- For energy and telecommunications programs and grants: the division is the program administrator.
- For consumer affairs for utility concerns and for most public outreach related to docketed matters: the commission is the responsible actor. The division may provide support and information.

Questions: When staff functions are compared, are there duplications? When management positions are compared, are there redundancies?

Answer: No. MAD's research and analysis indicates that there are areas of similarity and interconnection between the commission and division, but there are substantive distinctions between management roles and organization functions. The PUC and Commerce have already adopted shared administrative and technological services in areas where their functions connect. The eDockets system and shared invoicing are key examples. MAD's detailed analysis is on page 62. Though MAD did not find that there is duplication or redundancy, MAD's research identified several opportunities for improvements, which are outlined below.

Benefits and costs of transferring functions from the division to the commission

Question: If functions and staff were transferred from the division to the commission, would governmental decisions regarding energy be more transparent to the public?

Answer: No. The main decisions regarding energy that involve these two organizations are docketed matters before the PUC. As described on page 23, these processes are currently transparent to the public. Though there are some improvements to be made to facilitate good decision making and public understanding, transferring functions and staff would not lead to more transparency. Indeed, some study participants worried that there would be less transparency with a transfer.

Question: For those activities where the commission has the power to make decisions and the division has the duty to carry out the activities, would moving functions and staff make these connections more clear or functional?

Answer: No. The main activities that seem to be suggested by this legislative requirement are: (1) the division's enforcement of the commission's orders and (2) the environmental review process, where division staff are charged with conducting reviews and providing technical assistance to the commission. MAD did not identify problems associated with the division's enforcement of orders. The commission and division have been and continue to clarify roles and responsibilities, particularly regarding environmental review. Moving functions and staff from Commerce to the PUC would not necessarily—and certainly not automatically—make connections between these organizations clearer or more functional. Existing legal and process requirements would not become simpler or more streamlined through a reorganization alone. Opportunities for improvement related to role clarity are noted below.

Question: If functions transferred, could positions be eliminated without diminishing quantity or quality of work?

Answer: No. MAD's research determined that there were no areas of duplication or redundancy in staff functions or management roles. Many external stakeholders, including regulated entities, said that more staff resources are needed for energy regulatory functions. If functions were transferred and positions eliminated, without significant changes to regulatory requirements, MAD believes that the quantity or quality of work (or both) would suffer as staff attempted to address the challenges of reorganization while doing existing work with fewer staff resources. As MAD examined this question and the existing performance measurement approaches in place at the subject organizations, MAD identified opportunities for improvement, which are described below.

Question: If functions and staff were transferred from the division to the commission and if any redundant positions were eliminated, would there be a reduction in costs to state government?

Answer: No. MAD's research indicates that moving functions and staff from Commerce to the PUC, without significantly changing the regulatory system, would not change the amount of work staff and managers need to do. There would be additional costs to government associated with the transfer itself, such as moving expenses, lost productivity (at least temporarily), and organizational realignment.

Question: If functions and staff were transferred from the division to the commission, would there be a reduction in costs for regulated utilities?

Answer: No. MAD's research indicates that utility-born costs associated with the PUC or Commerce staff are not significant compared with other costs, and these costs are generally distributed across rate-payers. A few utility representatives explained that the costs of the regulatory process that are associated with the PUC and Commerce staff is negligible compared to their overall regulatory costs.

Question: Are there other benefits or costs to transferring functions and staff from the division to the commission?

Answer: Participants in this study identified many implications of transferring functions. The large majority were negative, but some were positive. MAD found that the likely negative implications, such as concerns about fairness and transparency of the regulatory process, communication challenges, and significant change in mission for the PUC, outweigh the possible positive implications.

Other relevant findings

As MAD was answering the identified research questions, other important findings emerged. A complete discussion is on page 85.

- MAD's research into how other states organize these types of functions shows that there are many approaches to organizing energy functions.
- Minnesota has evaluated or attempted several organizational structures to support energy policy and regulation over the past several decades. These studies and the legislative call for *this* study indicate that Minnesota's policymakers are not universally settled on where these functions should be housed.
- Experts on organizational change urge caution in changing an organization's structure. Reorganizations take substantial time and resources, and distract attention from the organization's mission.
- Minnesota statutes require utility regulators to achieve policy objectives that are, at best, in tension with one another. These tensions and the need for procedural fairness have led to a complex regulatory system.
- The Department of Commerce plays a unique role in the Public Utilities Commission's work. It is an intervenor and advocate in docketed matters, a technical advisor, and a builder of the evidentiary record. These connections are established in practice and in statute. Commerce is not an intervenor or party in the same ways that a regulated utility or advocacy group would be.
- Energy policy development and energy industries are in a dynamic state. The energy regulatory environment, however, is changing at a much slower pace. Though there was not uniform agreement about the direction regulation should take (and this was not the subject of MAD's study), interviewees from a variety of sectors argued that significant changes will be necessary in energy regulation as this sector changes.
- The telecommunication industry is changing as well, with the result that fewer companies are regulated under existing laws. If present trends continue, the need for dedicated telecommunication regulatory staff will continue to decrease.

Opportunities for improvement

MAD's research and analysis identified existing challenges and areas of opportunity for the PUC and Commerce.

Role clarification: MAD's research identified needs for clarification of roles and responsibilities in key areas:^{1, 2}

¹ Some participants also called for clarification (or elimination) of the Attorney General's role in utility matters. That office was not a subject of MAD's research, and there is not sufficient information to make a finding on this topic.

² This is not to suggest that either PUC or Commerce is acting outside of their scope or mandate in these areas—clarification of these roles and responsibilities will help staff and external stakeholders understand distinctions and connections.

- The PUC's role in record and recommendation development: Many interviewees (not in the PUC) expressed concerns about how PUC staff present new information or options in briefing papers that were not supplied by parties.
- The environmental review process: The recent memorandum of understanding has been helpful in clarifying roles for technical assistance and environmental review for EERA and the PUC, but there remain areas for further clarification, such as the role of other parts of Commerce and the overall public input process.

Ex parte restrictions and open meeting requirements can be improved or clarified. Significant differences of opinion exist on what counts as prohibited ex parte communication, and there may be opportunities for decision making to be improved with different approaches to ex parte restrictions and open meeting requirements (some of which may require changes in statute or rule).

Performance measurement can be improved. Though both organizations have made efforts to measure and report on their performance, there are opportunities for refinement and improvement. For example, data in the eDockets system could allow agencies to conduct detailed analysis of process flow and identify bottlenecks or other problems. Both agencies have established some performance measurement approaches, but they could benefit from a more comprehensive approach to performance measurement.

Interviewees offered ideas that could streamline or otherwise improve the process for docketed matters, perhaps with relatively small statute, rule, or administrative changes. These ideas warrant continued consideration by the PUC and Commerce:

- Develop a joint website to explain docketed process and participation options
- Establish a streamlined process for handling routine regulatory cases that come before the commission or for making minor changes to existing plans, such as delegating authority to the executive secretary
- Work more closely with Commerce on scheduling proceedings so that Commerce can allocate staff efficiently
- Encourage settlement of cases and consider an external mediation approach for energy and telecom matters
- Involve commissioners earlier in dockets to define scope and limit issues
- Consider what other non-disputed issues could be moved to the consent calendar.

Recommendations

Overall recommendation

MAD recommends that functions not be transferred from the division to the commission.

Long-term recommendation

Instead of moving functions from the division to the commission, MAD recommends taking a phased approach to improvement.

Ultimately, the state should redefine or restate state objectives for energy policy and regulation, ensure that statutes and rules lead to those objectives, and structure state organizations accordingly.

Energy utilities, regulators, and other stakeholders agree that significant changes are needed in Minnesota's energy system and regulatory environment.^{3,4} Applying the principle that form should follow function, MAD recommends that any large organizational changes to the PUC or Commerce (or energy functions in general) be based on agreed-upon strategies to improve the state's energy regulatory system.

To that end, MAD recommends that the PUC and Commerce continue to participate in or lead efforts to make positive changes to the regulatory environment. Since the PUC and Commerce are not independent actors in this work, MAD recommends that the PUC and Commerce, with input from stakeholders, develop and adopt a joint plan to move these issues forward.⁵

Regarding telecommunications, MAD recommends that the organizations not invest in organizational change and strategy development unless they identify changes that will increase workload beyond what is suggested by current trends.⁶ The PUC and Commerce leaders should continue to evaluate the appropriate level of telecommunication staff and adjust the staff and supervisory make-up accordingly.

Near-term recommendations

The recommendation described above is no small task, and could take years to implement. MAD recommends that the PUC and Commerce take steps in the near term that may yield significant improvements with relatively limited effort.

Role clarity: MAD recommends that PUC and Commerce leaders and staff collaborate to develop or revise memoranda of understanding (or other explanatory documents) to provide better clarity in roles in docketed matters, particularly in the role of PUC staff in adding to the case record and for PUC and Commerce in the environmental review process generally. MAD also recommends that the organizations develop plain language versions of the existing MOU and new MOUs or other documents to help stakeholders and the public understand roles.

³ Several interviewees for this study expressed the view that the organizational questions posed by this study were not priorities—the real focus should be on preparing Minnesota for coming transformations in the energy sector.

⁴ In addition to interviews conducted for this study, MAD consulted the e21 report, which offers consensus recommendations on moving towards reform. See this link for more information:

http://www.betterenergy.org/sites/www.betterenergy.org/files/e21_Initiative_Phase_I_Report_2014.pdf

⁵ This could be done through expansion of PUC's current work in generic dockets, through the e21 process, or through some other means.

⁶ Telecommunication employees should be involved in the planning efforts described above. However, the potential for decline in regulatory workload means that strategic or organizational focus on telecom is not warranted at this time.

Ex parte communication: MAD recommends that the PUC and Commerce develop guidance for staff, leadership, and the public on ex parte communication and reevaluate whether applications of this rule have negatively affected PUC and Commerce communication.

Improvement to processes: MAD recommends that the PUC and Commerce examine ways to streamline and improve processes within the existing framework with a minimum amount of effort and statutory change. Some examples include:

- Develop approaches to scheduling cases that will allow Commerce to deploy its analytical staff efficiently
- Consider whether some matters would benefit from early intervention by the PUC in defining critical issues, delegation to a single commissioner for resolution, or encouraging settlement
- Develop policy or rule to allow PUC staff to share information on dockets or topics with commissioners simultaneously and for commissioners to ask questions (but not make decisions). A summary of the session could be entered into the record to ensure transparency. MAD recommends that the PUC evaluate whether there are ways to do this within existing law and policy or whether an exception would be needed.

Performance measurement: MAD recommends that the PUC and Commerce jointly conduct analysis of processes and develop performance measurements that will lead to improvements.

Continue to improve public accessibility and outreach. MAD recommends that the PUC and Commerce jointly develop a one-stop website to explain processes to the public. (MAD notes that both agencies have made recent efforts to improve public access to information on dockets and process.)

Introduction

Purpose of study

In 2015, the Minnesota Legislature passed legislation requiring a study of functions currently housed in the Department of Commerce and in the Public Utilities Commission (Laws of Minnesota, 2015 First Special Session, chapter 1, article 1, section 8, subdivision 4). Specifically, the legislation required the Department of Administration to contract with Management Analysis & Development (MAD) to conduct a study:

(a) ... to examine potential cost savings and program efficiencies that may result from transferring certain functions and staff of the division of energy resources in the Department of Commerce to the Public Utilities Commission. In conducting the study, the Management, Analysis, and Development Division must:

- (1) analyze the functions of the various offices of both the division of energy resources and the commission;
- (2) assess any duplicative functions of staff and redundant management positions;
- (3) assess whether transferring specific functions and staff would result in a clearer and more functional link between authority and responsibility for accomplishing various activities;
- (4) consider whether any such transfers would make governmental decisions regarding energy more transparent to the public;
- (5) determine which specific positions, including administrative support, could be eliminated as a result of the transfer without appreciably diminishing the quantity or quality of work produced;
- (6) calculate the budgetary savings that could be realized as a result of transferring functions and eliminating redundant positions;
- (7) estimate any cost savings that would accrue to regulated utilities as a result of transferring functions;
- (8) assess the benefits and costs of various options with respect to transferring functions and staff;
- (9) assume that any transfer is subject to the provisions of Minnesota Statutes, section 15.039.

(b) The study must, by January 1, 2016, be submitted to the chairs and ranking minority members of the senate and house committees with jurisdiction over energy policy and state government operations.

Research plan and methods

MAD developed a research plan to conduct a study that would provide meaningful information to the Minnesota Legislature. Some of the specific requirements of the legislation are most relevant if functions are transferred—for example, calculations of budgetary savings. MAD aimed to gather

information responsive to all legislative requirements without prejudging the issue of whether or not functions should be transferred.

Research questions

MAD framed the legislative requirements in the form of questions to focus research and analysis:

Functions of the Public Utilities Commission and Division of Energy Resources:

- What are the functions of the commission and the division?
- When staff functions are compared, are there duplications?
- When management positions are compared, are there redundancies?

Benefits and costs of transferring functions from the division to the commission:

- If functions and staff were transferred from the division to the commission, would governmental decisions regarding energy be more transparent to the public?
- For those activities where the commission has the power to make decisions and the division has the duty to carry out the activities, would moving functions and staff make these connections clearer or more functional?
- If functions transferred, could positions be eliminated without diminishing the quantity or quality of work?
- If functions and staff were transferred from the division to the commission and if any redundant positions were eliminated, would there be a reduction in costs to state government?
- If functions and staff were transferred from the division to the commission, would there be a reduction in costs for regulated utilities?
- Are there other benefits or costs to transferring functions and staff from the division to the commission?

Data sources and methods

MAD conducted research for this study from late August 2015 to early December 2015. MAD used several data sources and methods to provide responses to the legislative requirements and corresponding research questions:

- Comprehensive interviews with staff and management of the PUC and Department of Commerce, representatives of regulated entities, and other stakeholders (information on MAD's approach to selecting interviewees is on page 66). In total, MAD gathered input from over 100 people during this study.
- Review and analysis of information from the PUC and Commerce (such as personnel data, position descriptions, program information, and process descriptions), state statutes and rules, and state budget information.
- Examination of selected states' approaches to organizing utility regulatory functions.
- Focused literature review on topics such as energy regulation and organizational change using research databases, government reports, and public websites.

Study scope

The Department of Commerce's Division of Energy Resources includes several broad areas: energy assistance programs, energy regulation and planning, environmental review and analysis, the state energy office (and related programs and policy areas), and telecommunication. The legislative requirements for this study suggest an interest in regulated energy utilities, but the legislation did not specify which work areas or functions should be considered for transfer, so MAD examined all functions in the Division of Energy Resources.

Given the legislative requirements, MAD examined the possibilities of transferring existing functions from the division to the commission. MAD did not specifically examine alternative organizational arrangements, such as transferring division or commission functions to other parts of state government or transferring functions from the Public Utilities Commission to the Department of Commerce. MAD's research did not include an assessment of functions in other agencies that are involved in energy regulation or energy policy, such as the Attorney General's Office (Residential and Small Business Utility Division), the Department of Natural Resources, or the Minnesota Pollution Control Agency. MAD did not conduct job audits or program evaluations, and MAD assumed that existing legislation and substantive administrative policies would remain in place. Though these important topics were not within scope of this study, this report includes interviewees' perspectives and comments that may be valuable to the Minnesota Legislature.

Previous studies of regulatory and related functions in Minnesota

MAD reviewed several studies that focused on questions similar to the ones in this study.

For almost sixty years, Minnesota state government has been studying how to improve how it regulates public utilities. The table below highlights nine state-authored studies or research into the structural arrangement or management of public utility functions.

The overall trend has been to increase the independence and autonomy of the Public Utilities Commission and to create clear divisions of duties and authority between what is now the Department of Commerce's Division of Energy Resources and the Public Utilities Commission. Another clear trend is to attempt to improve the internal organization effectiveness of the Public Utilities Commission and to provide recommendations on how to better structure functions within the commission to achieve greater results.

Table 1: Overview of previous studies of regulatory and related functions

Year Completed	Study	Purpose	Key Findings and/or Recommendations
1957	Commission to Study the Railroad and Warehouse Commission, <i>Report of the Commission to Study the Railroad and Warehouse Commission: Submitted to the Governor and the Minnesota Legislature</i> ⁷	In 1955, a group of legislators began a study of functions, structure, and operations of the then Railroad and Warehouse Commission in order to make recommendations on reform.	The legislative task force recommended changing the Railroad and Warehouse Commission to the Department of Public Service with two separate divisions: the Public Service Commission and the administrative division. The state implemented these reforms in 1967.
1979	Office of the Legislative Auditor (OLA), Program Evaluation Division, <i>Evaluation Report on the Department of Public Service</i> ⁸	In June 1978, the OLA was tasked with analyzing the organizational structure and utility regulation issues of the then Public Service Department.	The OLA recommended removing the Public Service Commission from the Department of Public Service, making it fully independent. In 1980, the legislature enacted these reforms.
1986	Department of Administration, Management Analysis Division, <i>Management Study of the Minnesota Public Utilities Commission</i> ⁹	In 1985, the Minnesota Legislature requested that MAD conduct a study of the purposes, statutory obligations, procedures, and the utilization of the staff of the PUC.	MAD made 19 recommendations, many of which were internal organizational development opportunities, such as training, clarifying commissioner qualifications and terms of service, and internal PUC organizational structure opportunities.

⁷ Minnesota. Commission to Study the Railroad and Warehouse Commission. *Report of the Commission to Study the Railroad and Warehouse Commission: Submitted to the Governor and the Minnesota Legislature*. (St. Paul, MN): State of Minnesota, Railroad and Warehouse Study Commission, 1957.

⁸ Minnesota. Office of the Legislative Auditor. Program Evaluation Division. *Evaluation Report On the Department of Public Service*. (St. Paul, MN): Program Evaluation Division, Office of the Legislative Auditor, 1979.

⁹ Minnesota. Department of Administration, Management Analysis Division. *Management Study of the Minnesota Public Utilities Commission*. (St. Paul, MN): Department of Administration, Management Analysis Division, 1986.

Year Completed	Study	Purpose	Key Findings and/or Recommendations
1993	State of Minnesota, Commission on Reform and Efficiency (CORE), <i>A Minnesota Model: Recommendations for Reorganizing the Executive Branch</i> (Detailed Report), ¹⁰	In 1991, the Minnesota Legislature created the Commission on Reform and Efficiency (CORE) to “recommend long-term actions for improving state government efficiency and effectiveness” ¹¹ ; CORE produced a report in April 1993 that included two recommendations related to utility regulation.	Two key recommendations: 1. Reduce number of commissioners from five to three. 2. Create an executive office of public advocacy housed outside of the Attorney General’s office to consolidate consumer advocacy. The Minnesota Legislature did not enact either recommendation.
1996	Department of Public Service and Public Utilities Commission, <i>Report to the Legislature: Management Study of the Minnesota Public Utilities Commission</i> ¹²	In 1995, the Minnesota Legislature asked that the Commissioner of the Department of Public Service and the Chair of the Public Utilities Commission conduct a joint study in order to determine whether efficiencies might be gained by consolidating.	This joint recommendation report found that consolidating the two agencies would “seriously impair their advocacy, enforcement, regulatory and quasi-judicial functions.”
2000	Department of Administration, Management Analysis Division, <i>An Evaluation of Minnesota’s Energy Assistance Program</i> ¹³	In an effort to plan for possible energy deregulation, the Minnesota Legislature required a study to evaluate energy assistance programs and make recommendations for changes to improve effectiveness.	Although much of this report focused on internal program management opportunities, it devotes significant discussion to the placement within state government of energy assistance programs and recommended that LIHEAP be returned from the Department of Children, Families, and Learning to the Department of Economic Security.

¹⁰ Commission on Reform and Efficiency (Minn.). *A Minnesota Model: Recommendations for Reorganizing the Executive Branch: Detailed Report*. (St. Paul, MN): The Commission, 1993.

¹¹ Minnesota Law 1991, chapter 345, article 1, section 17, subdivision 9.

¹² Joint Recommendation on whether to Merge the Department of Public Service and the Public Utilities Commission, a report in response to the Omnibus Government Reorganization Act

¹³ Minnesota. Department of Administration, Management Analysis Division. *An Evaluation of Minnesota’s Energy Assistance Program*. (St. Paul, MN): Department of Administration, Management Analysis Division, 2000.

Year Completed	Study	Purpose	Key Findings and/or Recommendations
2002	House of Representatives, House Research Department, Mike Bull. <i>The Minnesota Public Utilities Commission and Related Agencies: Structure and Function</i> ¹⁴	In 2002, House Research outlined the relationship between the Public Utilities Commission and the Department of Commerce and provided a summary of proposed alternatives with strategic commentary.	This report outlines the history of structural recommendations both from within and outside of state government to remedy historical issues of friction between the PUC and the Department of Commerce.
2005	Office of the Legislative Auditor, <i>Evaluation Report: Energy Conservation Improvement Program</i> ¹⁵	In 2003, the Minnesota Legislature requested an OLA evaluation of the CIP program due to concerns regarding cost and program effectiveness.	The OLA found that “CIP’s benefits outweigh its costs and the program has the potential to provide cost-effective conservation in the future.” ¹⁶ The OLA recommended that the Department of Commerce should improve its oversight of CIP for low income programs and allow greater internal communication about CIP.
2012	Minnesota Management & Budget, Management Analysis & Development, <i>Public Utilities Commission, Telecom Unit Assessment</i> ¹⁷	In 2012, the chair of the PUC requested MAD to conduct an assessment to better understand Telecom Unit work products and processes.	MAD examined the Telecom Unit and made recommendations for improvement, including that the unit should expand perspectives on industry issues and should continue organizational development.

¹⁴ Bull, Mike. House of Representatives, Research Department. *The Minnesota Public Utilities Commission and Related Agencies: Structure and Functions*. (St. Paul, MN): Research Department, Minnesota House of Representatives, 2002.

¹⁵ Patterson, John (John W.), Dan (Daniel) Jacobson, Joe Touschner, and Minnesota. Legislature, Office of the Legislative Auditor, Program Evaluation Division. *Energy Conservation Improvement Program: Evaluation Report*. (St. Paul, MN): Office of the Legislative Auditor, Program Evaluation Division, 2005.

¹⁶ Ibid

¹⁷ Minnesota Management & Budget, Management Analysis & Development. *Public Utilities Commission, Telecom Unit Assessment*. (St. Paul, MN): Minnesota Management and Budget, Management Analysis and Development, 2012.

Background: Energy policy and regulation

To put the legislative questions into context, MAD conducted focused research on energy policy and regulation, focusing on areas where the PUC and Commerce intersect most closely—i.e., utilities regulation.

History of utilities regulation in Minnesota

As the Regulatory Assistance Project explains, “[u]tility regulation has evolved from historical policies regulating entities that are ‘affected with the public interest’ into a complex system of economic regulation.”¹⁸ Minnesota’s regulatory history reflects that evolution.

The Minnesota Public Utilities Commission, the state’s oldest regulatory agency, traces its history to railroad regulation.¹⁹ In 1871, the Minnesota Legislature created the Minnesota Railroad Commission, an agency charged with the inspection of railways.²⁰ Since its creation, the agency has grown and changed in scope and mission, regulating a seemingly disparate mix of industries, all sharing the need to ensure safe, adequate, and impartial delivery of services. Industries that have at one time or another fallen under the authority of the Public Utilities Commission include railroad, warehousing, grain storage, trucking, and livestock buying.²¹

However, it was not until 1974 that Minnesota began regulating the rates of natural gas and electric utilities, becoming the forty-eighth state to do so.²² With the creation of the (now defunct) Transportation Regulation Board in 1983, regulatory responsibility for railroad, bus, and truck rates was transferred and no longer falls under the authority of the Public Utilities Commission.²³ Change happened again during the Ventura administration, when, in 1999, Governor Ventura issued an executive order merging the Department of Public Service into what became the Department of Commerce.²⁴ In 2005, the Minnesota Legislature transferred the duties of siting and routing, and

¹⁸ The Regulatory Assistance Project. “Electricity Regulation in the US: A Guide,” 7.

¹⁹ Minnesota Public Utilities Commission. “About Us,” accessed December 16, 2015 <http://mn.gov/puc/about-us/index.jsp>.

²⁰ Ibid

²¹ State of Minnesota, Public Utilities Commission. Report to the Minnesota Legislature, March 17, 2005.

²² Bull, Mike. House of Representatives, Research Department. *The Minnesota Public Utilities Commission and Related Agencies: Structure and Functions*. (St. Paul, MN): Research Department, Minnesota House of Representatives, 2002.

²³ State of Minnesota, Public Utilities Commission. “Report to the Minnesota Legislature,” March 17, 2005.

²⁴ Bull, Mike. House of Representatives, Research Department. *The Minnesota Public Utilities Commission and Related Agencies: Structure and Functions*. (St. Paul, MN): Research Department, Minnesota House of Representatives, 2002.

permitting large electric generating plants, wind energy systems, high voltage transmission lines, and certain pipelines from the Environmental Quality Board to the commission.²⁵

Minnesota utility regulatory organization timeline²⁶

1871	The Minnesota Legislature creates the Minnesota Railroad Commission. ²⁷
1885	The Minnesota Legislature broadens the scope of the Railroad Commission and changes the name to the Railroad and Warehouse Commission. ²⁸
1911	The Minnesota Legislature solidifies the composition of the commission, setting the number of commissioners at three (3), each for staggered six (6) year terms. Commissioners are elected. ²⁹
1915	The commission begins regulating Minnesota's growing telephone industry. ³⁰
1967	The Railroad and Warehouse Commission is renamed as the Department of Public Service, an agency that housed both administrative functions as well as the Public Service Commission to assuage concerns of a perceived constitutional conflict. ³¹
1974	The Minnesota Legislature places investor-owned gas and electric companies under state regulation and changes the composition of the commission from three elected commissioners to five commissioners appointed by the governor. ³²

²⁵ Minnesota Public Utilities Commission. "About Us," accessed December 16, 2015 <http://mn.gov/puc/about-us/index.jsp>.

²⁶ This timeline addresses the organizations in a general sense. Other significant changes have occurred within the organizations, such as the role of the reliability administrator.

²⁷ Minnesota Public Utilities Commission. "About Us," accessed December 16, 2015 <http://mn.gov/puc/about-us/index.jsp>.

²⁸ Bull, Mike. House of Representatives, Research Department. *The Minnesota Public Utilities Commission and Related Agencies: Structure and Functions*. (St. Paul, MN): Research Department, Minnesota House of Representatives, 2002.

²⁹ State of Minnesota, Department of Administration, Division of Management Analysis and Development. "Management Study of the Minnesota Public Utilities Commission," January 15, 1986.

³⁰ Minnesota Public Utilities Commission. "About Us," accessed December 16, 2015 <http://mn.gov/puc/about-us/index.jsp>.

³¹ Bull, Mike. House of Representatives, Research Department. *The Minnesota Public Utilities Commission and Related Agencies: Structure and Functions*. (St. Paul, MN): Research Department, Minnesota House of Representatives, 2002.

³² State of Minnesota, Department of Administration, Division of Management Analysis and Development. "Management Study of the Minnesota Public Utilities Commission," January 15, 1986.

- 1979 A Legislative Auditor's report finds that housing all regulatory functions (both the commissioner and the advocacy staff) within the Department of Public Service strained working relationships and created confusion amongst staff and external stakeholders alike. The Legislative Auditor recommends legislative action to separate the Public Service Commission into an independent agency.³³
- 1980 The Minnesota Legislature creates two separate organizations: the Department of Public Service and the Public Utilities Commission.³⁴
- (1) The Public Utilities Commission is created as a quasi-judicial independent state agency with the authority to promulgate rules and regulations governing public utilities.
 - (2) The Department of Public Service assumes responsibility for intervening before the Commission on behalf of the broad public interest on rate cases, and has the authority to intervene or make recommendations on contested and uncontested filings. The Department of Public Service also assumes responsibility for enforcing commission orders, keeping records, and investigating matters subject to the jurisdiction of the Department of Public Service or the Commission.
- 1999 Governor Ventura merges divisions of the Department of Public Service and energy and telecommunications regulatory functions into the Department of Commerce. Functions and operations concerning utility issues were unchanged.³⁵
- 2005 To consolidate permitting and planning requirements for large energy facilities, jurisdiction for power plant, wind farm, and pipeline siting and transmission line routing is transferred from the Minnesota Environmental Quality Board (EQB) to the Public Utilities Commission.³⁶ Siting and routing staff from the EQB are transferred to the Department of Commerce's Division of Energy Resources.

Other contemplated changes

In addition to the organizational changes described above, the Minnesota Legislature has examined functions and contemplated additional changes. In 2007, for example, the Minnesota Legislature considered but did not pass legislation that would have established a Department of Energy. This new department would have included the energy functions currently housed in the Department of Commerce. More recently, a representative introduced a bill that would have restructured public utilities regulation using a similar approach as used in Connecticut, which organizes its energy and

³³ Office of the Legislative Auditor, Program Evaluation Division. "Evaluation Report of the Department of Public Service," April 13, 1979.

³⁴ Bull, Mike. House of Representatives, Research Department. *The Minnesota Public Utilities Commission and Related Agencies: Structure and Functions*. (St. Paul, MN): Research Department, Minnesota House of Representatives, 2002.

³⁵ Ibid

³⁶ Minnesota Public Utilities Commission. "About Us," accessed December 16, 2015 <http://mn.gov/puc/about-us/index.jsp>.

utility regulatory functions in one department (though it is unclear whether organizational structure was a concern of the author of that bill).

Regulating utilities

Minnesota regulates electric, gas, and telecommunication utilities, and companies that hope to build large energy facilities or route electric transmission lines or pipelines must undergo a thorough review process. Other states have elected to deregulate all or some of these utilities. MAD examined the overall rationale for regulating utilities.

An answer to the hypothetical question, “Why should government regulate utilities?” is supplied by the Regulatory Assistance Project:

Because most utility customers cannot “shop around” between multiple providers as a result of the natural utility monopoly, regulation serves the function of ensuring that service is adequate, that companies are responsive to customer needs, and that things like new service orders and billing questions are handled responsibly...Finally, given utilities’ crucial role in the economy and in society’s general welfare, service reliability standards are often imposed as well.³⁷

Another answer to the question is offered by United States Supreme Court Justice Louis Brandeis. In 1923, Justice Louis Brandeis wrote, “His company [Southwestern Bell] is the substitute for the state in the performance of the public service, thus becoming a public servant.”³⁸

Utilities are companies that provide an essential service to the public. According to the Regulatory Assistance Project, two fundamental principles justify governmental oversight of the utility sector. First, the essentiality of the services provided is such that the industry is “affected with the public interest.” Second, the capital requirements and other features of the industry are such that one provider is able to meet demand at a lower cost than they could on a competitive marketplace, therefore creating a natural monopoly.³⁹ Government regulates utility companies in order to mitigate the inherent risks posed to the public by monopolies.⁴⁰

³⁷ Regulatory Assistance Project. “Electricity Regulation in the US: A Guide,” March 2011, 3.

³⁸ Tomain, Joseph and Richard Cudahy. *Tomain and Cudahy’s Energy Law in a Nutshell, Second Edition*. (West Academic, 2011), 187.

³⁹ Ibid

⁴⁰ Government has not proved infallible. Early on, gas and electric utilities were largely regulated at the municipal level. Some municipal regulators abused their regulatory power for personal or political gain, prompting utility companies to request that an alternative be created. *State* regulatory commissions were designed to protect the interests of both consumers and producers from the opportunistic behavior of competing parties. See: Troesken, “Regime Change and Corruption. A History of Public Utility Regulation.” in Edward L. Glaeser and Claudia Goldin, “Corruption and Reform: Lessons from America’s Economic History,” (2006) accessed <http://www.nber.org/chaptersc9986>, 273.

Minnesota statutes and rules

MAD conducted a high-level review and analysis of Minnesota Statutes and Rules⁴¹ as context for this study. Several themes emerged from MAD's review:

- The various statutory provisions require regulators to achieve policy objectives that are, at best, in tension with one another. Objectives such as reliable or universal services, reasonable rates, environmental protection, infrastructure stability, and corporate stability may sometimes be in conflict.
- The regulatory system is complex. Alternatives and exceptions reduce some complexity in process, but increase complexity in options. Complexity becomes even more apparent when considering the interconnections of regulatory matters associated with environmental review.
- The public and interested parties have opportunities for input. The stages where input is sought or possible vary across statutes and subject matters.
- The overall system, while complex, requires that decisions about energy be made through a transparent process (this topic is addressed further below).

An overview of relevant statutes by section is in Appendix A, and a discussion of relevant federal regulatory organizations is in Appendix B.

Assessments

Regulated entities in Minnesota (and by extension, their customers⁴²) fund much of the costs associated with the regulatory system through assessments outlined in statutes.

Some assessments are tied directly to the costs associated with dockets: staff in both the PUC and Commerce track the time they spend conducting analysis, synthesizing, and managing docketed matters, and companies are invoiced biannually. The Department of Commerce manages the assessment process for both the PUC and Commerce⁴³.

Other assessments are intended to recoup indirect costs associated with ongoing administration and management of programs, grants, and regulatory functions. These assessments are calculated proportionally based on operating revenue of the regulated entity. Invoices for these types of assessments are sent quarterly.

⁴¹ The Public Utilities Commission is in the process of making or revising rules that could have a significant impact. Given the organizational scope of this study, MAD did not conduct a thorough review of existing or proposed rules. Additionally, MAD did not review or analyze pending judicial cases that may have an impact on interpretation of these statutes.

⁴² Utilities can recover the costs of regulatory expenses through the rate approval process.

⁴³ Although the state's accounting funds are different for the environmental review process and other dockets (special revenue fund vs. general fund), the invoice process is the same.

Transparency in energy decisions

One of the elements for consideration in this study is whether transferring functions would result in more transparent decision making regarding energy. MAD reviewed statutes, rules, and organizational approaches through this lens. Though the regulatory framework (and associated statutes and rules) is complex, Minnesota's regulatory system has several elements that support transparency in the decision making process.⁴⁴

Online docket system: All matters before the commission are filed in an online system called eDockets. Anyone can go into the case record for a filing and review all of the information submitted by the parties and other participants.⁴⁵ For projects in environmental review, Commerce maintains a project docket website to inform the public about the process and provide links to the eDockets system.

Ex parte rules: Parties and other participants cannot communicate with PUC commissioners off the record regarding material issues in commission proceedings (Minnesota Rules 7845.7200). This means that all communications between decision makers and parties are transparent and available to the public and participants for review.⁴⁶

Open meetings: PUC meetings and hearings are open to the public. Agendas are publicized in advance, and the PUC provides notice of meetings to the public. The Consumer Affairs unit of the PUC manages the logistics of public hearings so that everyone who attends can watch or participate (for example, working in advance to set up overflow rooms where people can view the proceedings even if the main room has filled). The PUC's website provides information to the public on how to participate in public meetings and hearings.⁴⁷

Public comment: For matters before the PUC, members of the public can comment during designated periods. The commission has an online application called Speak Up! where members of the public can offer comments on docketed matters, such as proposed rate increases, company reports and plans, and route and site permit applications. The website provides guidance to the public on how to comment and use the tool. Individual comments are posted in real time, and some participants engage in discussions with each other—similar to a social media feed.⁴⁸ The PUC also receives written comments during public input phases—these are scanned and included in the record. During the scoping phase of the environmental review process and comment periods of draft environmental impact statements,

⁴⁴ Some participants in this study have noted challenges with transparency—not that there is too little, but that the openness of the process can present challenges for informed participation and good decision making.

⁴⁵ Trade secret or other nonpublic information would be redacted.

⁴⁶ Commissioners and staff may communicate with parties regarding matters such as scheduling and process (Minnesota Rules 7845.7000).

⁴⁷ Minnesota Public Utilities Commission. "Meetings and hearings," accessed December 16, 2015 <https://mn.gov/puc/resources/meetings-and-hearings.jsp>.

⁴⁸ Minnesota Public Utilities Commission. "Speak Up!" accessed December 16, 2015 <https://minnesotapuc.granicusideas.com>.

Commerce's Energy Environmental Review & Analysis unit manages public comments. The EERA unit's website offers information to the public about how to participate.⁴⁹

Formal participation in a docketed process: Individuals and organizations can petition the PUC to formally intervene in a case, or they can offer comments and information as participants. The process and requirements are outlined in Minnesota Rules 7829.0800 and 7829.0900. In some situations, an intervenor may be able to receive compensation from the utility (see Minnesota Statutes §216B.16, subdivision 10).

Regulated entities and other stakeholders

The complex regulatory framework described in this report impacts numerous individuals and organizations. This section of the report provides an overview of stakeholders that are involved in and impacted by the programs and processes administered by the PUC and Commerce.

Regulated entities

Minnesota's framework supports monopoly utilities in the energy and telecommunications sectors. These entities are both constrained and supported by regulation: they cannot take certain actions without government approval, but they also have a defined and captured market for their products and services. Regulated entities must file plans and reports, must apply for approval to build new facilities, transmission lines, or pipelines, and must participate in various energy conservation programs. Regulated entities include: electric utilities,⁵⁰ natural gas utilities, wind and solar generation project developers, pipeline companies, and telecommunication companies. Though these companies have some similarities, their interests and approaches can be varied. For example, a large electric company may have the infrastructure and resources to offer a wide range of services to customers, while a small municipal power company may have a more limited range of offerings.

Other interested parties

The energy and telecommunication regulatory framework supports the participation of other stakeholders in the PUC and Commerce processes. This participation can be extremely formal, such as the docket processes used for approving rate requests, or relatively informal, such as ad hoc advisory groups organized by Commerce. Other interested parties include individuals and groups that pay for utilities or who participate in or benefit from PUC or Commerce programs.

At PUC proceedings, representatives of stakeholder interests or organizations can request to intervene to provide information and arguments to the commission. Among the most common intervenors are advocates on behalf of a segment of energy consumers (such as large industrial consumers, businesses, or low- or fixed-income consumers) and policy- or interest-based advocates (such as environmental advocates, renewable energy advocates, or third-party developers).

⁴⁹ Minnesota Department of Commerce. "Siting and Routing of Energy Facilities. Public Participation" <http://mn.gov/commerce/energyfacilities/>

⁵⁰ Information on the different levels of regulation associated with investor-owned, municipal, and cooperative utilities is in Appendix C.

Additionally, the PUC and Commerce engage in public outreach efforts, typically through the official comment process. Individuals can comment regarding proposed rate changes, proposed locations of power facilities, transmission lines, or pipelines, and other matters.

All of these groups and perspectives may also be involved in less formal advisory groups or working groups, though their participation (like that of the regulated entities) may be constrained somewhat by ex parte rules.

Other state and federal agencies

Other state and federal agencies may be involved in PUC and Commerce processes, usually as information sources rather than as formal intervenors in a proceeding. The United States Fish and Wildlife Service or the Minnesota Department of Natural Resources, for example, may provide information to Commerce analysts during the environmental review process. Other examples include the Minnesota Department of Transportation providing information in utility routing matters, or the Minnesota Department of Agriculture playing a role in some renewable energy developments. Especially in matters that involve routing pipelines or transmission lines, the permitting requirements of other agencies become very important—the PUC must not approve a plan that would violate a statute or rule.

The Minnesota Attorney General’s Office has a unique role in the utilities regulatory system. By statute, the attorney general can intervene in matters before the PUC (Minnesota Statutes 2015 §8.33 and §237), they may make arguments and provide information as an intervening party, and they may engage in discussions with other parties regarding the matter. The office also provides direct assistance to consumers who are experiencing problems with utilities. The office also represents the commission and the department in court actions and proceedings and may provide other legal advice.

Background: Changing an organizational structure

The fundamental question posed for this study is whether functions and staff should be moved from the Division of Energy Resources to the Public Utilities Commission. A move of some or all of the division's functions would represent a significant change in both organizations' structure. Such a move would also require an investment of staff resources and at least some initial lost productivity. In monetary terms, a rough estimate suggests that if PUC and DER staff used 10% of their time on reorganization-related activities for two months, the organizations would "lose" about \$230,000 in employee work.⁵¹

This section of the report provides background information and guidance regarding changing an organization's structure.

Making the decision

Changing an organization's structure is a common managerial approach to solving problems, but organizational development experts urge leaders not to make the decision to reorganize lightly.^{52, 53} Reorganizations require significant resources and time, and the work involved can distract managers and staff from mission-focused work.

Before deciding to change an organization's structure, leaders must define the problem: What exactly is the organizational challenge at hand? Is communication ineffective? Are processes unnecessarily slow? Are services not aligned with community needs? Are stakeholders dissatisfied with the organization? Are employees and managers stuck in unproductive ways of approaching work? Ideally, there should be a consensus among all parties about problems and needs: "Fixing the wrong problems, or even worse, fixing the right problems poorly, could cause more harm than good."⁵⁴

Once the problem (or problems) is understood, the next step is to determine the best way to solve it. A reorganization may be a solution, but better or less disruptive options may be available.⁵⁵ Streamlining

⁵¹ Using fiscal year 2016 enacted budgets, compensation expenses only. This calculation is a conservative estimate.

⁵² As examples: Ashkenas, Ron. "Reorganizing? Think again." *Harvard Business Review* (October 25, 2011). Accessed October 30, 2015. Currie, Chris. "Factors to consider when reorganizing." *United States Government Accountability Office*. "Testimony Before the Cybersecurity, Infrastructure Protection, and Security Technologies Subcommittee of the Homeland Security Committee, House of Representatives." October 7, 2015. Accessed October 30, 2015. MAD researchers also relied on in-house organizational development expertise in writing this section.

⁵³ This fairly conservative perspective is not universally held, and some experts maintain that reorganization can be one of several powerful tools to create change. For example, Vermeulen, Freek, Phanish Puranam, and Ranjay Gulati. "Change for change's sake." *Harvard Business Review* (June 2010). Accessed October 30, 2015

⁵⁴ Currie, Chris. "Factors to consider when reorganizing." *United States Government Accountability Office*: 5.

⁵⁵ Ashkenas, Ron. "Reorganizing? Think again." *Harvard Business Review* (October 25, 2011). Accessed October 30, 2015.

work processes, engaging stakeholders to identify needed changes, or clarifying roles and responsibilities may be better solutions than a formal change to an organization.

Especially in the context of public administration, where policy issues and approaches to solving problems can be viewed through various lenses, there may be a myriad of ways to organizing functions and staff—good arguments can be made to organize around a certain principle or policy area or service recipient or business commonality. The desire for a more rational or policy-focused organization must be tempered by the need for continued and stable delivery of government services.

Notably, the sentiments of organization development experts were echoed by several public and private sector interviewees in this study. Examples of advice:

- *Don't change for change's sake.*
- *Beware tendencies to rebuild functions that have been moved—the agency may call it something else, but you're basically doubling staff.*
- *Reorganizations, especially government reorganizations, do not reduce costs—you have to have a better reason than that.*

Factors to consider in state government reorganizations

In the state government context, leaders must consider other factors, including related state and federal laws and civil service requirements.

State and federal law

In addition to any direct changes to statutes to shift functions or change organizations, related state statutes or rules may need to be modified if organizations change. Some changes may be relatively straightforward, such as changing the name of an organization across multiple statutes; other changes may require complex rulemaking processes (with the attendant costs and time needed for public comment periods).

Before reorganizing a state agency, state leaders must ensure that the new organization will be able to comply with relevant federal laws or funding requirements. This is especially important in agencies that receive significant federal funding or have joint enforcement agreements with federal agencies. State agency reorganizations may require new arrangements with federal agencies, which could be straightforward or complex and time-consuming.

Civil service requirements

State law requires that “any restructuring of executive branch agencies must include efforts to ensure that fair and equitable arrangements are carried out to protect the interests of executive branch employees and to provide the best possible service to the public...” (Minnesota Statutes §43a.045). In practice, this can mean that agencies make efforts to retrain current state workers to perform new jobs, or the state may take a phased approach to reorganization to minimize service disruptions.

Additionally, collective bargaining agreements covering employees that work at the PUC and Commerce require that management representatives work with employee representatives for any planning process or management study that may result in a layoff.

Layoffs or elimination of positions can result in additional staffing changes, as employees with more seniority “bump” less senior employees or accept voluntary demotions.

Another factor to consider if any layoffs are anticipated is the need for proportionality in staff and manager/supervisor reductions. Minnesota Statutes §43a.046 require that agencies “with 50 or more full-time equivalent employees must reduce at least the same percentage of management and supervisory personnel as line and support personnel.”⁵⁶

Implementing the change

When a reorganization is the right solution to an organizational problem, managers must be prepared to invest time and resources to make the transition. Organizations must address a combination of logistical and human factors in order to implement a successful structural change.

Logistical factors

- Plan and budget for location changes: moving expenses, lease negotiations, staff time spent packing or unpacking.
- Plan and budget for any technology system changes.⁵⁷
- Plan and budget for any layoffs: retraining, severance pay, unemployment compensation, bumping of other staff.
- Ensure that human resources staff is prepared for the change and has time to transition personnel and payroll systems.
- Ensure that information technology staff has time and resources available to set up or adjust firewalls, build networks, and answer staff questions.

Human factors

- Redefine and clarify staff and management roles in the new organization: Who is responsible for what? Who is accountable? Who must be consulted or informed about tasks?
- Include employees in the change effort. A good practice is to establish a working group of staff to help shift tasks and people from the old organization to the new.
- Develop a clear plan for communicating with employees, explaining the purpose of the change, the timeline for implementation, and expectations for employees and managers.
- If possible, finish any downsizing before a reorganization so that remaining employees have a sense of security as they do the hard work of reorganization.
- Plan and budget for communication with customers or other stakeholders.
- Ensure that existing informal and formal organizational communication networks are supported or replaced.

Implementation of a reorganization can be much easier when existing work units are moved from one organization to another—most of the work is done behind the scenes by human resources and

⁵⁶ This proportional reduction can happen over a biennium and could include layoffs, voluntary demotions, transfers, or other means. See Carter, Julien. “Interpretation of Minnesota Statute 43A.046- Staff Reductions.” Office of the Commissioner, Department of Employee Relations, PERSL #1366: 2002. Accessed December 15, 2015 <http://www.mn.gov/mmb/images/1366.pdf>.

⁵⁷ Given the shared systems already in place at PUC and Commerce, this would not likely be a significant issue.

information technology staff. Even in these contexts, however, any integration or organizational benefits can take years to materialize.

Managers must be prepared to accept that it will take time before a reorganization is truly complete. Physical relocations and organizational charts can change quickly, but changes in work and relationships can take years. As one particularly relevant example, interviewees in this study mentioned that staff are still adjusting to the transition of environmental review and permitting functions from the Environmental Quality Board to the PUC and Commerce—a change that occurred over ten years ago.

Other states' approaches to organizing functions

MAD conducted a focused review of how other states organize functions to understand the current organization in Minnesota and identify potential implications if functions were transferred from Commerce to the PUC.

Overview

In the United States, much of the intra-state utility regulation is conducted at the state level.⁵⁸ MAD researchers found through an informal survey of approximately 20 state utility commission websites that states regulate a variety of industries, ranging from cotton gins in Oklahoma⁵⁹ to ferries in Maine.⁶⁰ However, despite their differences, state utility commission staffs “carry out some or all of the following functions:

- Managing their own personnel, facilities, operations: administrative staff;
- Conducting hearings: administrative law judges, hearings examiners, attorneys;
- Analyzing rate filings through testimony (usually pre-filed): economic, accounting, and engineering staff;
- Enforcing rules and tariffs: compliance staff, attorneys; and
- Providing technical assistance to the commissioners: advisory staff, attorneys.”⁶¹

Commissioners

Governments vary in how they choose their commissioners. Out of the 61 federal and state public utility agencies,⁶² 47 commissions have appointed commissioners and 14 elect their commissioners.⁶³ A joint session of the South Carolina general assembly elects seven commissioners to its Public Service

⁵⁸ Federal Energy Regulatory Commission. “What FERC Does,” accessed December 15, 2015
<http://www.ferc.gov/about/ferc-does.asp>.

⁵⁹ Oklahoma Corporation Commission. “Cotton Gins,” accessed December 15, 2015
<http://www.occeweb.com/pu/cottongin.html>.

⁶⁰ Maine Public Utilities Commission. “Ferries & Water Taxies,” accessed December 15, 2015
<http://www.maine.gov/mpuc/ferries/index.html>.

⁶¹ Regulatory Assistance Project. “Electricity Regulation in the US: A Guide.” March 2011, 20.

⁶² The count of 61 includes the Federal Communications Commission, The Federal Energy Regulatory Commission, the commissions serving the District of Columbia, Guam, and the Virgin Islands, as well as multiple agencies for Massachusetts (2), Nebraska (2), Texas (3), and Puerto Rico (2).

⁶³ Beecher, Janice A. Michigan State University Institute of Public Utilities. “Commissioner Demographics 2015,” accessed December 15, 2015
<http://ipu.msu.edu/research/pdfs/IPU%20Commissioner%20Demographics%20%282015%29.pdf>.

Commission⁶⁴ and Virginia's General Assembly elects three commissioners to its State Corporation Commission.⁶⁵

Consumer and rate payer advocacy

Consumer and other ratepayer advocacy functions in utility regulation largely began in the 1970s and early 1980s as a response to increasing rates stemming from the energy crises of the 1970s.⁶⁶ According to the Regulatory Assistance Project, "many of these [consumer advocates] are housed within the state attorney general's office, but some are located in other agencies or are stand-alone offices with leaders appointed either by the governor or the attorney general."⁶⁷ The role of state consumer advocates has traditionally been to advocate on behalf of the public, especially on rate cases but, as the trend of deregulation has progressed, these offices have re-focused their efforts to consumer protection issues and price stability.⁶⁸ Although consumer advocates may be housed within an attorney general's office or led by attorneys, the consumer advocate "generally has a budget for some technical staff and expert consultants."⁶⁹

A limited survey of state utility commission websites by MAD found that states also vary in how they carry out consumer and other ratepayer advocacy (more details about selected states are in the following section).

In-depth review of selected states

After initial research scans, MAD developed an approach to identify certain states for further review. MAD used the Institute of Public Utilities at Michigan State University 2013 database on commission structure, which includes structural attribute information for each public utility commission in the United States.⁷⁰ This information served as a starting place, and, from there, MAD staff reviewed over two dozen state utilities commission websites. From these websites, MAD chose six states for further examination. These states have somewhat similar populations to Minnesota, yet display the breadth of variety in regulatory structure (the table on page 33 provides an overview of these states; additional detail is in Appendix D):⁷¹

⁶⁴ Public Service Commission, South Carolina. "History," accessed December 15, 2015

<http://www.psc.sc.gov/aboutus/Pages/History.aspx>.

⁶⁵ State Corporation Commission, Commonwealth of Virginia. "About the Commissioners," accessed December 15, 2015 <https://www.scc.virginia.gov/comm/about.aspx>.

⁶⁶ National Association of State Utility Consumer Advocates. "About Us," accessed December 15, 2015 <http://nasuca.org/about-us/>.

⁶⁷ Regulatory Assistance Project. "Electricity Regulation in the US: A Guide." March 2011, 22.

⁶⁸ National Association of State Utility Consumer Advocates. "About Us," accessed December 15, 2015 <http://nasuca.org/about-us/>.

⁶⁹ Regulatory Assistance Project. "Electricity Regulation in the US: A Guide." March 2011, 22.

⁷⁰ Beecher, Janice A. Michigan State University Institute of Public Utilities. "Commissioner Demographics 2015," accessed December 15, 2015 <http://ipu.msu.edu/research/pdfs/IPU%20Commissioner%20Demographics%20%282015%29.pdf>.

⁷¹ MAD's cursory examination of state utilities commission websites should not be considered an exhaustive search or a representative sample. 33

- **Maryland**—Maryland’s Office of People’s Counsel, separate from its Public Service Commission, formed in 1924, is a fully independent office within state government and the nation’s “oldest utility advocacy office of its kind.”⁷² Maryland’s Department of Natural Resources also houses a robust Power Plant Research Program that provides analysis and recommendations to the Maryland Public Service Commission. Pipeline safety is regulated by the Maryland Public Service Commission, whereas multiple state agencies participate in the planning and review of new pipelines.
- **New Jersey**—New Jersey’s Division of Rate Counsel is charged with representing the interests of not only residential and small business consumers, but all ratepayers.⁷³
- **South Carolina**—South Carolina’s Office of Regulatory Staff was “...created in 2004 to assume many of the non-adjudicative functions associated with utility regulation that formerly fell under the auspices of the South Carolina Public Service Commission.”⁷⁴ The Office of Regulatory Staff not only performs an advocacy function, but also administers that state’s telecommunications programs, ensures utility compliance with Public Service Commission orders, and handles consumer complaints against utilities.
- **Tennessee**—The only publicly funded consumer advocacy function that exists in Tennessee is housed in its Consumer Advocacy and Protection Division of the Tennessee Attorney General’s Office. It is unclear as to how much analyst support is available.
- **Wisconsin**—Wisconsin is one of only two states in which an independent 501(c)3, the Citizens Utility Board, intervenes as the residential and small business advocate before the Wisconsin Public Service Commission.⁷⁵
- **Ohio**—Ohio’s Office of the Ohio Consumers’ Counsel has a wide focus on energy and other utility issues as they relate to consumers. The Ohio Office of the Consumers’ Counsel houses legal and analytical advocacy functions, compliance and monitoring functions, and public outreach and education functions.⁷⁶

Observations

MAD researchers made several observations about the regulatory structures of these six states:

- States regulate a variety of utilities, depending on historical, political, and structural requirements and preferences.
- The quasi-judicial decision making function of utility regulation is uniformly housed within the commissions.

⁷² Maryland Office of People’s Counsel. “About Us,” accessed December 15, 2015

<http://www.opc.state.md.us/Home/AboutUs.aspx>.

⁷³ Division of the Rate Counsel, State of New Jersey. “Learn About the Division,” accessed December 15, 2015

<http://www.nj.gov/rpa/about/>.

⁷⁴ Office of Regulatory Staff, South Carolina. “About Us,” accessed December 15, 2015

<http://www.regulatorystaff.sc.gov/aboutus/Pages/default.aspx>.

⁷⁵ Citizens Utility Board of Wisconsin. Accessed December 15, 2015 <http://www.wiscub.org/>.

⁷⁶ Office of the Ohio Consumers’ Counsel. “What is the OCC?” accessed December 15, 2015

<http://www.occ.ohio.gov/about/>.

Table 2: Other states' approaches to organizing functions

	Maryland	Minnesota	New Jersey	Ohio	South Carolina	Tennessee	Wisconsin
Quasi-Judicial Authority	Public Service Commission	Public Utilities Commission	Board of Public Utilities	Public Utilities Commission	Public Service Commission	Tennessee Regulatory Authority	Public Service Commission
Quasi-Legislative Authority	Public Service Commission	Public Utilities Commission	Board of Public Utilities	Public Utilities Commission	Public Service Commission	Tennessee Regulatory Authority	Public Service Commission
Ratepayer Advocacy	Maryland Office of People's Counsel (represents residential customers)	Department of Commerce Attorney General	Division of Rate Counsel	Ohio Consumers' Counsel	Office of Regulatory Staff	Consumer Advocacy and Protection Division of the Attorney General	Citizens Utility Board
LIHEAP	Department of Human Resources	Department of Commerce	Department of Community Affairs	Ohio Development Services Agency	South Carolina Office of Economic Opportunity	Housing Development Agency	Department of Administration
Weatherization	Department of Housing and Community Development	Department of Commerce	Department of Community Affairs	Ohio Development Services Agency	South Carolina Office of Economic Opportunity	Housing Development Agency	Department of Administration
Telecommunications Programs	Department of Information Technology	Public Utilities Commission Department of Commerce	Department of Human Services	Ohio Public Utilities Commission Ohio Consumers' Counsel	Office of Regulatory Staff	Tennessee Regulatory Authority	Public Service Commission
Policy Development	Maryland Energy Administration	Department of Commerce	Board of Public Utilities	Ohio Development Services Agency	SC Energy Office	Department of Environment and Conservation	Department of Administration
Environmental Review and Analysis	Department of Natural Resources	Department of Commerce	Department of Environmental Protection	Ohio Power Siting Board (separate entity within the Public Utilities Commission of Ohio)	Office of Regulatory Staff with input from other agencies	Department of Environment and Conservation	Public Service Commission
Compliance / Monitoring	Public Service Commission	Department of Commerce	Board of Public Utilities	Ohio Consumers' Counsel	Office of Regulatory Staff	Tennessee Regulatory Authority	Public Service Commission
Outreach / Education	Office of People's Counsel	Department of Commerce	Board of Public Utilities	Ohio Consumers' Counsel	SC Energy Office	Department of Environment and Conservation	Department of Administration
Research	Maryland Energy Administration	Department of Commerce	Board of Public Utilities	Ohio Development Services Agency	SC Energy Office	Department of Environment and Conservation	Department of Administration
Consumer Protection	Office of People's Counsel	Public Utilities Commission	Board of Public Utilities	Ohio Consumers' Counsel	Office of Regulatory Staff	Consumer Advocacy and Protection Division of the Attorney General	Department of Administration
Complaints	Public Service Commission	Public Utilities Commission Attorney General	Board of Public Utilities/Division of Rate Counsel	Public Utilities Commission	Office of Regulatory Staff	Tennessee Regulatory Authority	Public Service Commission

- Advocacy functions appear to vary in their structure and most are independent of the quasi-judicial utilities commission.⁷⁷ Different states may differ in what advocacy entails:
 - statutory mandates for advocate involvement;
 - depth of analytical/technical capabilities and expertise; and
 - role in record building and management.
- Utility-related programs are not administered only in energy agencies, but also in housing, human services, and other agencies:
 - Low-income heating assistance (LIHEAP) is administered in housing agencies (New Jersey, and Tennessee), human services agencies (Maryland), and economic development agencies (South Carolina and Ohio).
 - Telephone programs (Lifeline and Relay Services) are administered in Maryland's Department of Information Technology, New Jersey's Department of Human Services, and in regulatory agencies in Wisconsin, Tennessee, and South Carolina.
 - Weatherization programs appear to be housed in and administered by the same agencies that house and administer the low-income heating assistance program.
- Environmental Review and Analysis functions can be found housed both inside commissions and within other state agencies—usually in departments concerned with natural resources or conservation / environmental protection.
- Utility compliance and monitoring is housed in both commissions (Wisconsin, New Jersey, Maryland, and Tennessee) and in consumer advocate agencies (South Carolina and Ohio).

Conclusions

MAD researchers found that states take a variety of approaches in the design of their utilities regulatory structures. However, despite differences in arrangement, the same or very similar functions exist in most states, indicating a broad consensus on the necessity of these functions. Quasi-judicial functions are uniformly found in an independent commission. Consumer or ratepayer advocacy functions, usually found in an attorney general's office, can take on a variety of organizational forms. In addition, energy-related programs, such as the Low Income Heating Assistance Program, weatherization programs, as well as telecommunications programs, are housed in and administered by a variety of agencies in different states, indicative of the cross-agency nature of these programs' missions.

⁷⁷ Regulatory Assistance Project. "Electricity Regulation in the US: A Guide." March 2011, 22.

Organizational review: PUC and Commerce

This section of the report provides information on the subject organizations:

- Mission, purpose, and organizational structure
- Staff
- Budgets
- Docket trends
- Interconnected energy functions
- Other energy functions
- Telecommunications
- Assessment of functions

Public Utilities Commission

Mission and purpose

The mission of the Public Utilities Commission (PUC) is “to protect and promote the public’s interest in safe, adequate, and reliable utility services at fair, reasonable rates.”⁷⁸ The PUC is the state’s only independent regulatory commission, and its purpose is to regulate Minnesota’s electricity, natural gas, and telephone industries. The PUC does this by:

- Carrying out the duties and responsibilities assigned to it by law;⁷⁹
- Establishing rules and policies for the state to ensure energy and utility services are reliable and delivered in a safe and efficient way;
- Considering the diverse interests and perspectives of the public, utilities, and interested parties, and resolving disputes among them;
- Approving rates and service quality standards for electric and natural gas companies; and
- Encouraging conservation and implementing the state’s energy policies.

The PUC is unique in that its statutory responsibilities encompass functions of all three branches of government: legislative, judicial, and executive.

Organizational structure

Commissioners

The PUC has five commissioners, each appointed by the governor for six-year terms. Terms are staggered to minimize the impact of departures on the PUC’s decision making. No more than three

⁷⁸ Minnesota Public Utilities Commission. “About Us,” accessed November 21, 2015 <http://mn.gov/puc/about-us/index.jsp>.

⁷⁹ The PUC’s statutory responsibility is contained in Minnesota Statutes, Chapters 216A, 216B, 216E, 216F, 216G, and 237.

commissioners can be from the same political party and at least one commissioner must live outside of the seven-county metropolitan area at the time of appointment. The governor selects one commissioner to serve as chair.⁸⁰

An executive secretary, who reports to the chair, oversees the agency's finances and operational duties and manages the commission staff. Eleven administrative, managerial, and supervisory staff report directly to the executive secretary. The majority of employees work under the management and supervisory staff in the eight work units listed below. As of September 2015, there were a total of 53 people (including the commissioners) working at the PUC.

Commission units

Eight work units make up the PUC organizational structure. The units and a brief description of the units' primary functions are listed below:

- The **Administrative Services Unit** provides administrative support to the five commissioners and the executive secretary.
- The **Consumer Affairs Office** consists of consumer mediators who respond to and assist consumers with complaints against utilities under PUC's regulatory authority. This office houses the public advisor, who facilitates and guides stakeholder and public participation in the commission's decision making process and manages the flow of communication between the parties and commission (notices, comments, orders, information requests, etc.). This office also maintains and updates content on the PUC website and distributes information about the Cold Weather Rule.
- The **Economic Analysis Unit** consists of economic analysts who review and prepare decision-option briefs for commissioners in cases relating to electricity and natural gas (i.e., resource plans, rate design and miscellaneous cases).
- The **Energy Facilities Unit** consists of economic analysts and engineers who review and prepare decision-option briefs for commissioners for all certificate of need applications and siting and routing permits. Staff also work on regional transmission line matters.
- The **Financial Analysis Unit** consists of financial analysts who review and prepare decision-option briefs for commissioners in general rate cases and miscellaneous cases.
- The **Human Resources and Business Services Unit** manages and administers the agency's budget, human resources, and other administrative functions (invoicing, payroll, etc.); administers the telecom assistance program.
- **Staff Attorneys** draft the commission's orders and rules and engage in rulemaking.
- The **Telecom Analysis Unit** consists of analysts who review commission matters related to telecommunications.

⁸⁰ Minnesota Public Utilities Commission. "Meet Our Commissioners," accessed November 21, 2015 <http://mn.gov/puc/about-us/commissioners.jsp>.

Department of Commerce

Overview of the Department of Commerce

The Department of Commerce mission is “...to protect the public interest, advocate for Minnesota consumers, ensure a strong, competitive and fair marketplace, strengthen the state’s economic future and serve as a trusted public resource for consumers and businesses.”⁸¹ Commerce “regulates over 20 different industries and licenses approximately 350,000 individuals and entities to do business in Minnesota.”⁸²

Among the department’s functions—aside from those of the Division of Energy Resources—are:

- Licensing and examining financial institutions
- Regulating insurance companies
- Providing unclaimed property services
- Registering individuals who provide investment services
- Investigating civil and criminal insurance fraud
- Administering the state’s Petroleum Tank Release Cleanup Fund
- Ensuring that commercial transactions based on weight or measurement are accurate
- Ensuring that petroleum products are consistent in quality⁸³

Division of Energy Resources

Purpose

The Division of Energy Resources’ purpose is to provide “energy-related services to Minnesotans by:

- Advocating on behalf of the public interest in regulated utility matters,
- Administering Minnesota’s Low Income Home Energy Assistance Programs (LIHEAP) and Weatherization Assistance Programs (WAP),
- Assisting viable new energy technologies to enter the commercial market,
- Overseeing utilities’ Conservation Improvement Programs,
- Providing technical support for Public Utilities Commission siting and permitting of large energy facilities,
- Analyzing the human and environmental impacts of energy development, and
- Distributing information to individual energy users on actions they can take to reduce energy usage.”⁸⁴

⁸¹ Minnesota Management & Budget. “2016-17 Governor’s Budget,” accessed December 15, 2015 <http://www.mn.gov/mmb-stat/documents/budget/2015-gov-rec/b13.pdf>, 1.

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid, page 13

Organization structure

The DER is led by a deputy commissioner and comprised of 83 employees and supervisors in the following units:

- **Energy Assistance Program (EAP):** administers this income-based program
- **Energy Environmental Review and Analysis (EERA):** responsible for the environmental review required for pipelines, transmission lines, and energy facilities; provides technical assistance to PUC on energy facility routing and siting matters; monitors related compliance matters
- **Energy Regulation and Planning (ERP):** provides analytical review, record development, and advocacy for energy and gas utilities proceedings at the PUC; monitors related compliance matters
- **State Energy Office (SEO):** houses a range of programs to support energy efficiency and innovation
- **Telecom:** provides analytical review, record development, and advocacy related to telecommunication proceedings before the PUC; administers relay call services; resolves telecommunications related consumer complaints.

These units and functions are described more fully in later sections of this report.

PUC and Commerce DER staffing

The information below is compiled from employee rosters provided by the PUC and Commerce in late September 2015.⁸⁵ Organization charts are in Appendix E.

Some notable findings from the data:

- Commerce's Division of Energy Resources (83 employees) is significantly larger than the PUC (53 employees).
- About 40 division employees work in areas that connect closely with the commission, including employees in the Energy Environmental Review and Analysis, Energy Regulation and Planning, and Telecom Regulation groups.
- The large majority of employees in both organizations are in bargaining unit positions. Most are represented by the Minnesota Association of Professional Employees (MAPE).
- The average length of state service within both organizations is over ten years.
- Most division employees have been in state service and in their current positions for less than 10 years. A greater proportion of PUC employees have been in state service for more than 10 years.

⁸⁵ Notes on data: The employee rosters used here included all employees, some of whom are not full time staff. The list from Commerce is limited to Division of Energy Resources employees—it does not include other staff who provide support to the division and to the PUC (such as staff involved in preparation dockets or sending invoices). Some staff changes have occurred since the lists were created. Calculations of service tenure do not include adjustments for breaks in service or organizational changes.

Table 3: Staff by bargaining unit

Bargaining Unit	DER	PUC
American Federation of State, County and Municipal Employees (AFSCME)	2	5
Commissioner's Plan	1	5
Managerial Plan	7	9
Middle Management Association (MMA)	3	7
Minnesota Association of Professional Employees (MAPE)	68	26
Minnesota Government Engineer's Council (MGEC)	2	1
Total	83	53

Table 4: Average length of service⁸⁶

Averages	DER	PUC
Length with agency	10.6	11.8
Length with state	12.1	15.9
Length in current job	6.3	7.0

Table 5: Years in state service

Years at state	DER	PUC	DER	PUC
0-9	51	21	61%	40%
10-19	13	12	16%	23%
20-29	10	12	12%	23%
30-39	4	6	5%	12%
40+	5	1	6%	2%

Table 6: Years in current position

Years at current job	DER	PUC	DER	PUC
0-9	63	41	76%	79%
10-19	17	7	20%	13%
20-29	2	4	2%	8%
30-39	1	0	1%	0%
40+	0	0	0%	0%

PUC and DER budgets

MAD reviewed agency budget information for state fiscal years 2010 to 2017⁸⁷ to provide an overview of expenditures and employee counts. It is important to note that much of the general fund and special revenue fund allocations are ultimately paid by utility companies through assessments.

Several trends emerge when reviewing the budget and employee complement information:

- Commerce's budget is much larger than the PUC's. Much of Commerce's budget is from federal funds that support specific programs.

⁸⁶ Calculations of service tenure in Tables 4, 5, and 6 do not include adjustments for breaks in service or organizational changes.

⁸⁷ The information in the tables below is from publicly available budget documents or directly from the department or commission.

- When comparing compensation expenses to the number of full-time equivalent staff, the agencies are quite similar. There are similar ratios of staff to compensation expenses.
- Overall, both agencies have grown in terms of staff and budget from fiscal year 2008 to fiscal year 2017,⁸⁸ though both experienced budget reductions in some fiscal years.

⁸⁸ Commerce indicates that the number of staff who interact directly with the PUC has remained relatively flat during this period.

PUC

Table 7: PUC expenditures by fund, by fiscal year

Expenditures by Fund	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	Est. FY 15	Enacted FY 16	Enacted FY 17
General Fund	4,701	6,078	4,961	5,905	5,194	6,372	6,194	6,682	6,966	6,930
Restricted Misc. Special Revenue	1,975	2,461	1,587	1,912	2,442	1,082	1,844	1,956	1,542	1,506
Federal	0	0	57	570	91	0	0	0	0	0
Total	6,676	8,539	6,605	8,387	7,727	7,454	8,038	8,638	8508	8436

dollars in thousands

Table 8: PUC expenditures by category, by fiscal year

Expenditures by Category	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	Est. FY 15	Enacted FY 16	Enacted FY 17
Compensation	3,746	4,301	4,115	4,594	4,081	4,969	5,170	5,176	5,489	5,719
Operating Expenses	1,384	2,292	1,153	2,363	1,384	1,488	1,439	1,957	1,477	1,211
Other	1,546	1,946	1,337	1,430	2,262	1,270	1,430	1,505	1,542	1,506
Total	6,676	8,539	6,605	8,387	7,727	7,454	8,038	8,638	8,508	8,436

dollars in thousands

Table 9: PUC full-time equivalent staff by fiscal year

	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	Est. FY 15
Full-Time Equivalents (FTE)	43.0	47.2	47.2	49.8	47.2	51.5	53.6	52.5

Commerce

Some administrative support and financial functions would not be included in these totals—for example, Commerce’s administrative services staff handle docketing and invoicing processes on behalf of the PUC.

Division of Energy Resources

The tables below include all energy program, policy, and regulatory staff (excluding telecom). A significant proportion of funds are passed through the organization through programs administered by the division.

Table 10: DER expenditures by fund, by fiscal year

Expenditures by Fund	FY 08⁸⁹	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	Enacted FY 16	Enacted FY 17
General Fund	7,059	9,255	3,238	5359	3,138	3,200	24,949	4,036	3,848	3,845
Restricted Misc. Special Revenue	4,931	24,193	9,527	15,228	7,840	12,139	9,450	9,881	23,668	23,612
Federal	111,526	202,223	241,384	287,053	147,577	136,578	127,272	129,867	148,914	160,800
Environment & Natural Resources			702	1,568						
Total	123,516	235,671	254,851	309,208	158,555	151,918	161,672	143,784	176,430	188,257

dollars in thousands

Table 11: DER expenditures by category, by fiscal year

Expenditures by Category	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	Enacted FY 16	Enacted FY 17
Compensation	6,077	8,017	6,723	8,058	6,458	6,544	7,067	7,598	7,552	7,384
Operating Expenses	3,666	5,804	9,956	15,458	3,989	3,669	4,689	136,186	6,194	4,590
Other	113,773	221,850	238,172	285,692	148,108	141,705	149,917	0	162,684	176,283
Total	123,516	235,671	254,851	309,208	158,555	151,918	151,672	143,784	176,430	188,257

dollars in thousands

Table 12: DER full-time equivalent staff by fiscal year

	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15
Full-Time Equivalents (FTE)	70.9	73.2	60.3	83.5	80.3	74.9	78.2	77.7

⁸⁹ FY 08 & FY09 totals likely include the Telecom expenditures included in the tables below.

Commerce Telecommunication⁹⁰

Table 13: Telecommunication expenditures by fund, by fiscal year

Expenditures by Fund	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	Enacted FY 16	Enacted FY 17
General Fund	1,021	934	943	911	864	1,061	882	723	1,009	1,009
Restricted Misc. Special Revenue	5,190	6,091	4,933	4,364	4,077	4,261	4,174	4,006	4,437	4,429
Total	6,211	7,025	5,876	5,275	4,940	5,322	5,056	4,729	5,446	5,438

dollars in thousands

Table 14: Telecommunication expenditures by category, by fiscal year

Expenditures by Category	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	Enacted FY 16	Enacted FY 17
Compensation	931	866	868	820	802	933	809	718	873	871
Operating Expenses	5,280	6,159	5,008	4,455	4,134	4,377	4,243	4,011	4,567	4,561
Other	0	0			5	11	4	0	6	6
Total	6,211	7,025	5,876	5,275	4,940	5,322	5,056	4,729	5,446	5,438

dollars in thousands

Table 15: Telecommunication full-time equivalent staff by fiscal year

	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15
Full-Time Equivalents (FTE)	10.6	9.5	9.7	9.3	8.6	9.2	7.9	7.2

⁹⁰ Telecommunication staff are part of the Division of Energy Resources, but Commerce presents budget information separately. Program and regulatory functions are included in the tables in this section.

Docket trends

The PUC supplied MAD with docket information from 2010 to 2015. The table and chart below show the trends in orders over time. The number of issues ordered within each docket type provide some insight on the quantity and complexity of work involved for both PUC and Commerce staff.

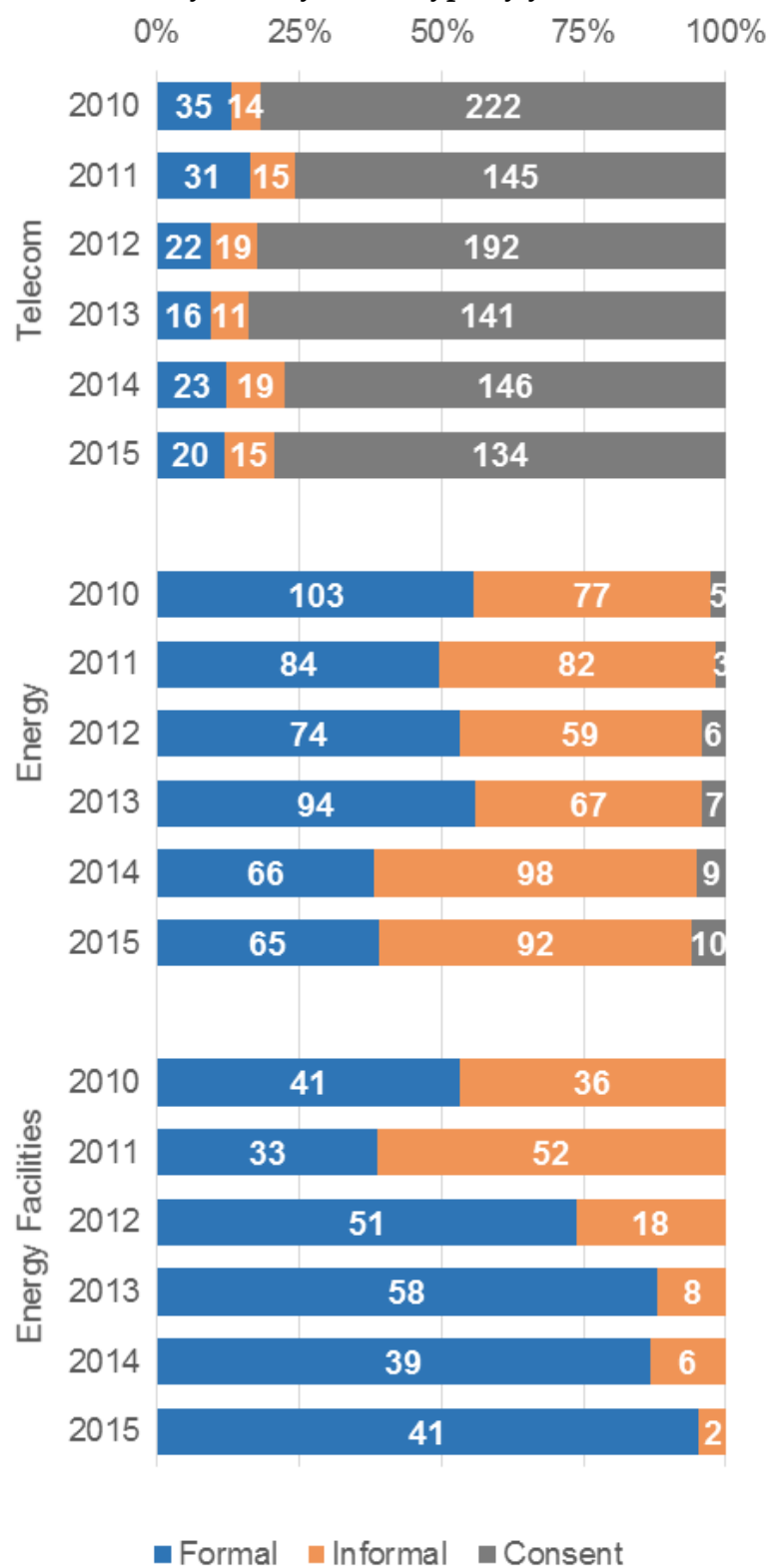
For the Telecom, Energy, and Energy Facilities docket types, the number of formal, informal, and consent orders issued within each docket type is provided (with the exception of Energy Facilities orders, where no consent orders are issued).⁹¹ The data shows that Telecom docket types have a larger number of consent orders issued overall in comparison to Energy and Energy Facilities dockets. This is expected since telecom cases are typically undisputed and do not require a hearing. As of October 31, 2015, consent orders comprised 79 percent (134 out of 169) of the telecom dockets, while only 6 percent of the energy orders (10 out of 167). For Energy dockets, over half (55 percent) of the issues ordered in 2015 have been informal and 39 percent formal. In the 2015 Energy Facilities dockets, 95 percent of orders issued have been formal.

While the trend for the type of Telecom and Energy orders issued remains relatively stable over the six-year period, there is a notable trend showing an increase in the overall percentage of formal orders issued within Energy Facilities dockets since 2010. In 2010, nearly half of the Energy Facility orders issued were informal (47 percent, or 36 out of 41), while in 2015, only two of 41 orders issued have been informal (5 percent). This data demonstrates that the commission shifted around 2012–2013 by deciding to send the majority of energy facilities cases through the contested hearing process with an administrative law judge.

This data also highlights the relative frequency that commission staff are writing decision option briefs for commissioners. Commission staff noted that they will always write a briefing paper in formal order cases, but they generally do not write briefing papers in informal and consent cases. Interviewees said they have written briefs in one or two informal cases in the past several years—but it is very rare. Based on the data on dockets, this means that commission staff have written briefs in approximately one-third (33 percent, or 126 out of 379) of the cases brought before the commission so far in 2015. The other two-thirds of the cases (67%) have been passed through with Commerce-DER's recommendations—without PUC doing further analysis or writing a decision brief.

⁹¹ Notes on data: For the Telecom, Energy, and Energy Facilities docket types, the number of formal, informal, and consent orders issued within each docket type is provided (with the exception of Energy Facilities orders, where no consent orders are issued). Formal orders are written in contested cases that include a hearing. Informal orders are written in non-contested cases and involve a hearing. Consent orders are informal orders that do not involve a full hearing. Telecom dockets include all telecommunications cases. Energy docket types include cases such as rate cases, rate riders, cost-recovery, and integrated resource plans. Energy Facilities dockets include certificates of need, siting and routing permits, and environmental reviews.

Figure 1: Orders by PUC by docket type by year ⁹²



⁹² 2015 data is through October 31, 2015

Table 16: Orders by PUC by docket type by year

Year	Telecom Formal	Telecom Informal	Telecom Consent	Energy Formal	Energy Informal	Energy Consent	Energy Facilities Formal	Energy Facilities Informal	U Formal	TOTAL
2010	35	14	222	103	77	5	41	36	0	533
2011	31	15	145	84	82	3	33	52	1	446
2012	22	19	192	74	59	6	51	18	0	441
2013	16	11	141	94	67	7	58	8	0	402
2014	23	19	146	66	98	9	39	6	0	406
2015 ⁹³	20	15	134	65	92	10	41	2	1	380
TOTAL	147	93	980	486	475	40	263	122	2	2608

Interconnected energy functions

This section of the report describes the interconnected functions of the commission and the division. Information is from agency information and from interviewees who are familiar with the functions.

Docket processes

Over the course of the process between filing a case and the commission's decision, there are many points at which staff from the division and commission connect. This may be the reason why some external stakeholders view some of the tasks or functions performed by the staff as redundant.

Interviewees familiar with these functions, however, consistently drew a distinction: Commerce and the PUC serve in distinct roles and are involved in the process at different times and for different purposes. Commerce acts as the public advocate and intervenes in cases to ensure the public's best interest is represented. They analyze the utilities' proposals and make recommendations to the PUC on behalf of the public. PUC staff becomes more involved when the docket is complete and all parties have submitted recommendations and comments. PUC staff review and synthesize all docket information so it can be digested and understood by the commissioners, and they advise commissioners on decision options that are available to them. The commissioners make decisions and issue orders. Subsequently, Commerce enforces PUC orders by reviewing compliance filings and ensuring that utilities implement the requirements of the orders.

This section describes the four types of dockets that DER and PUC staff are most involved with to demonstrate how their work is connected and similar yet serve different roles and purposes. Each case filed is unique, but the roles of the two agencies remain constant: the DER is the intervening party or participant that advocates or analyzes on behalf of the public's best interest, and the PUC is the decision maker and issues orders. The four docket types are:

- Integrated resource plans

⁹³ Through October 31, 2015

- Rate cases
- Certificates of need
- Siting and routing permits (including environmental review)

Several other docket types fall into the category of miscellaneous dockets or are considered subsets of the docket types listed above. Examples of these docket types are listed below, but are not covered in any depth in this report:

- Consumer service/outage management
- New rate offerings (e.g., LED street lighting)
- Service territory changes/disputes
- Surcharges/rate riders
- Conservation program financial incentives
- Natural gas demand entitlements
- Depreciation studies
- Affiliated interest agreements
- Mergers/sales
- Electric service agreements
- Nuclear plant decommissioning

Overview of docket process

The Department of Commerce, Division of Energy Resources, Energy Regulation and Planning Unit (ERP) as the public advocate, intervenes in all proceedings that go before the commission. Once the division receives the notice for comments and the docket is open, the ERP staff in the division are assigned to the docket to complete a technical, financial, and economic analysis of each proposal so they can make a recommendation to the PUC. ERP's job is to provide the PUC with as complete a record as possible. When the comment period is over, the division submits their analysis and recommendations to the commission via eDockets. Commerce can request a 30-day extension from the commission if they need more time to collect information for a case. At any given point, the ERP is managing over 200 cases, ranging from minor rate changes to billion-dollar resource decisions about energy services.

When development of the record in the docket is complete and all parties have submitted comments, a team of PUC staff is assigned to the docket to compile and review all of the parties' comments, synthesize the information, and draft a brief of decision options for the commissioners so they can make an informed decision.⁹⁴ In disputed (or contested) cases, the PUC reviews and analyzes all of the parties' comments and recommendations and writes a briefing paper for the commissioners with decision options. Less review and analysis is required in undisputed cases. Commissioners make decisions and issue orders at public agenda meetings that are typically held every Thursday at the commission.

⁹⁴ Some interviewees offered this analogy: PUC staff act as law clerks for PUC commissioners. They ensure that the commissioners have enough information and understand the relevant statutes, policies, and implications of each proposal.

In contested cases, where parties dispute the facts and information presented in a docket, the commission refers the matter to an Administrative Law Judge (ALJ) assigned through the Office of Administrative Hearings. The ALJ further develops the record (for example, collecting testimony from witnesses under oath), and then returns the case to the commission for a final decision. In these matters, the ALJ sets the dates within the overall schedule, within the date set by the Commission for the ALJ's Report. With time for investigation, public hearings, several rounds of testimony, an evidentiary hearing, several rounds of briefs, the ALJ's report, synthesis and briefing by Commission Staff, oral arguments before the Commission and the Commission's Order, contested cases often take ten months to one year or longer to complete.

Integrated Resource Plans (IRPs)

Commerce's website⁹⁵ describes IRPs as a planning tool (or roadmap) that an electric utility creates to ensure it can meet customer needs in a reliable and low-cost manner. The plan is called "integrated" because it aims to ensure that the utility uses both generation (i.e., supply) and demand-side resources. Utilities create IRPs for a minimum period of 15 years, and they must be filed every two years by statute. The overall goal of the IRP process is to assess what each utility needs to do to provide reliable, affordable, and environmentally sound energy resources for their ratepayers, in compliance with Minnesota statutes and regulatory requirements.

Carrying out their statutory responsibilities⁹⁶ as the public advocate and intervener, Commerce's Energy Regulation and Planning Unit (ERP) uses a variety of analytical tools, including economic modeling software called Strategist, to analyze the utilities' plans. The best plans are selected through hundreds of sets of model results. Assessing the results requires examining robustness, effects on reliability, risks, state policy compliance, sources of uncertainty, and factors that are not captured by modeling. ERP analysts also assess demand and energy forecast bands, existing and forecasted supply, available alternatives, compliance with state policies and prior commission orders, and modeling inputs, including capital costs, fuel prices, externality costs, load curves, generation profiles, and discount rates. This detailed analysis is required for ERP staff to determine whether the utilities' plans are low-cost, in compliance with statutes, and able to meet customers' needs. The ERP's responsibility is to make sure the record is reasonable and can hold up in court.

When the docket is complete, PUC staff, primarily within the Economic Analysis Unit, review, analyze, and synthesize all of the parties' comments and recommendations (which include Commerce's recommendations), set the dates for proceedings, and draft a briefing paper with decision options for the commissioners.

⁹⁵ Minnesota Department of Commerce. "Integrated Resource Plans," accessed on November 23, 2015 <http://mn.gov/Commerce/energy/utilities/energy-projects/Energy-Regulation-Planning/Integrated-Resource-Plans.jsp>.

⁹⁶ Advocate before the PUC (Minnesota Statutes §§216A.07, subdivision 2, 3) to ensure energy utilities, provide reliable service (Minnesota Statutes §216B.04), charge customers fair and reasonable rates (Minnesota Statutes §216B.03), and fairly consider alternatives to minimize costs and environmental effects (Minnesota Statutes §216B.07, subdivision 2).

When PUC analysts review the full docket, they determine if more information needs to be collected, or if the analysis from the division is complete enough. PUC analysts contribute more time to a docket if it is not complete, but in many cases, they do not prepare a briefing paper when they think the department's analysis can stand on its own. PUC analysts said they try to be inclusive of all perspectives, so it is common for them to construct a hybrid option for the commissioners to consider. PUC staff said they do not take a position, but do analysis during the process of packaging the information in the docket. As one analyst stated, "We tee-up the issues so the commissioners can make their own value judgments."

After the commissioners hold the agenda meeting and issue the order, it is Commerce's responsibility to enforce the commission's orders.⁹⁷

Rate cases

A rate case is a proceeding where utilities request adjustments to the rates they are charging customers. When utilities file for a rate increase, which is one type of rate case, the Department of Commerce's ERP Unit staff analyze the utility's proposal to ensure customers are being charged reasonable rates (required by law), and that the utility has a reasonable opportunity to recover its costs. Staff conduct complex financial, accounting, and forecasting analyses before making a recommendation to the PUC. Staff review and analyze utility balance sheets and income statements, the cost of capital, sales forecasts, rate design, and cost recovery to determine a reasonable rate and how the costs should be allocated across various customer classes. Utilities can file for a rate change at any time and trigger statutory timelines. Commerce is not in control of the timing.

Overall, Commerce's responsibilities include:

- Clarifying the utility's request, as needed;
- Assessing whether the proposal is consistent with the overall requirements; and
- Providing recommendations to the commission.

As the decision maker, the PUC rates and financial analysts (primarily in the Financial Analysis Unit) are involved in rate cases by preparing and reviewing the information that parties submitted in the docket, analyzing and summarizing what the parties have proposed, and advising the commissioners with decision options. More specifically, commission staff analyze what utilities are asking for, fill in missing information in the record, and comprehend the ramifications of each position so they can inform the commissioners and give them options. Rate cases typically take ten months to complete from the time filed.

Permitting process

Certificate of need

Before any large energy facility is built in Minnesota, a certificate of need (CN)⁹⁸ and routing permit must be issued by the commission. In simplified terms, the process is designed to first evaluate

⁹⁷ Minnesota Statutes §216A.07, subdivision 2.

⁹⁸ Minnesota Department of Commerce. "Certificates of Need," accessed November 23, 2015
<http://mn.gov/Commerce/energy/utilities/energy-projects/Energy-Regulation-Planning/Certificates-of-Need.jsp>.

whether there is a need for the energy project in the state (CN), including the type of facility (e.g., power generating plant, pipelines, pump stations) to be constructed, the size of the facility, and when the facility must be in service. If there is a need, the siting and routing permit process determines where and how it will be built. The certificate of need process is completed through a series of steps that involves the applicant, the public, and other interested parties, Commerce and the PUC, and the Office of Administrative Hearings (OAH). The following is a high-level outline of the certificate of need permitting process:⁹⁹

- Applicant submits a notice plan;
- Commerce ERP reviews the plan for completeness;
- The PUC approves or denies the notice plan;
- The applicant files a certificate of need application;
- Public comments on the completeness of the CN application;
- Commerce ERP reviews the CN application for completeness and whether it meets rule requirements;
- The PUC determines whether CN application is complete or needs more data (this is when the official 12+ month CN process begins);
- The EERA prepares environmental analysis;
- Commerce and the PUC jointly hold meeting for public to provide comments on the scope of the environmental review;
- Commerce's Energy Environmental Review and Analysis unit (EERA) conducts environmental analysis and enters it into the record as an exhibit;
- Commerce, the public, and other parties develop the record through analysis, testimony, and exhibits;
- The administrative law judge (ALJ), assigned through the OAH, holds contested case hearing (if commission decides on a contested hearing process as opposed to an informal process);
- The ALJ issues a report (if full process is used as opposed to an alternative process);
- The PUC's Energy Facilities unit reviews and analyzes the full record and develops decision options for the commissioners, who then approve or deny the CN application;
- The commission issues CN permit through order (if approved);
- Commerce monitors regulatory filings for compliance with the commission's orders.

The certificate of need process involves many steps and parties. The Department of Commerce's Energy Regulation and Planning unit (ERP) reviews all notice plans for completeness. It does a technical and economic analysis of the CN application to make a recommendation to the PUC on whether the application shows a need for the facility, and it examines the application to ensure it meets all of the requirements set in the rules and statutes. Commerce's EERA unit is involved in the public input process and conducts the environmental analysis for the docket. The PUC's public advisor (within the Consumer Affairs unit) is involved in scheduling and ensuring notices are sent out to appropriate parties, and the advisor assists with the public input process. The ALJ is involved in evidentiary hearings when cases are contested, and the commission is involved at all points in the process where a decision needs to be made (approving notice plans, as well as approving and issuing

⁹⁹ Environmental Quality Board. "Interagency Report on Oil Pipelines," March 2015.

CN permits). Like other types of cases brought before the commission, commission staff review, analyze and develop decision options for the commissioners (when a report is not provided by the ALJ). They also assure the procedural process for issuing CNs is followed.

Siting and routing permits

Energy construction projects may require a siting/routing permit pursuant to Minnesota Statutes §216E, §216F, and §216G. Some of these projects also may require a CN permit. The siting/routing process usually takes 9 to 12 months or more, and, for projects also requiring a CN, can take place after the CN process or in conjunction with the CN process. Deadlines are statutory, but the commission can extend the process if needed. This permit determines the specific location, and construction and mitigation requirements of an energy facility¹⁰⁰. The siting/routing process is similar to the CN process, but provides for expanded public involvement through the associated hearing processes (Minnesota Rules 1405 and Minnesota Rules 7850.3800). The applicant applies to have their application reviewed under a full or partial review process, the PUC initiates a public comment period to collect input on the completeness of the application, Commerce conducts the technical and environmental review, the case is heard by the ALJ for contested hearings, and the commission makes the decision on the siting/routing permit. The commission tracks the permits, but the compliance regulatory monitoring is managed by Commerce.

Environmental review

Minnesota Statutes §216E specifies that Commerce will conduct the environmental review of large energy facilities. The type of environmental review varies with facility type and size. For example, the review for a large transmission line would be an environmental impact statement and include a contested case hearing.

The environmental review describes the project, analyzes the potential human and environmental impacts of the project and alternatives, and, where potential impacts are noted, suggests measures to avoid and mitigate these impacts. The environmental review is added to the docket for the PUC to consider in its decision.

The main functions of Commerce's EERA in this process:

- Provide guidance on completing applications
- Gather public input
- Conduct environmental review (environmental impact statement or environmental assessment)
- Develop recommendations for PUC regarding route options
- Conduct compliance reviews once permits are granted to ensure compliance with conditions that PUC has issued.

Commerce's EERA unit also maintains a website with case-specific information and documents posted for the public to access.

¹⁰⁰ These facilities include power plants, transmission lines, wind farms, and pipelines.

Memorandum of Understanding¹⁰¹

A Memorandum of Understanding (MOU) between the commission and the department was created in 2014 to outline roles and the terms and conditions for how Commerce will provide technical assistance and expertise and share resources with the commission during the permitting process. Staff at Commerce and the PUC said the MOU has helped clarify some of the ongoing issues they were experiencing relating to agency and unit roles and responsibilities since the EQB siting and routing responsibilities transitioned to Commerce in 2005.

Other interconnected functions

Workgroups and other collaboration

PUC and Commerce interact on several formal workgroups and ad hoc groups as necessary. Examples offered by interviewees include:

- Joint or separate engagement with national or regional groups like the Federal Energy Regulatory Commission (FERC), the Midcontinent Independent System Operator (MISO), and the National Association of Regulatory Utility Commissioners (NARUC)¹⁰²
- Commerce's Energy Assistance Planning Council
- Energy Regulation and Planning and Telecom workgroups
- Joint presentations to utilities or other interested groups
- Management-level meetings or informal communication to improve cross-agency processes and working relationships
- Leadership meetings with other agency officials on security and emergency planning activities.

Databases

Commerce and PUC staff have developed shared database systems, including eDockets and eHeat.

eDockets

Commerce and PUC jointly developed the eDockets system. The system is administered through Commerce's Administrative Services Division's Regulatory Information Center. eDockets is the sole repository for filings on cases for all parties. Commerce staff handle the mechanics of establishing each docket, including assigning companies to certain dockets for billing purposes. The PUC uses eDockets to view dockets and assemble the information to create a summary briefing paper for the Commissioners. Interviewees explained that before eDockets, there was much duplicative work being done at Commerce and PUC around copying and organizing information. The eDockets system has eliminated that duplication and has increased the speed at which information is available.

eHeat

Commerce's Energy Assistance Program (EAP) developed and maintains, with MN.IT, the eHeat database for verifying the income of people who apply for LIHEAP assistance. Commerce's weatherization program uses this system to verify income for their program. The PUC uses the system to look up consumer information to determine eligibility in appeals of disconnect notices and to

¹⁰¹ The MOU is in Appendix F.

¹⁰² NARUC is the national association that represents the commissioners who regulate utility services in each state. FERC and MISO are described in Appendix B.

implement the Cold Weather Rule. PUC Consumer Affairs has had access to this database for over 10 years.

Billing system/invoicing

The PUC shares a billing system with Commerce's Finance Unit. The Administrative Services Division at Commerce maintains and administers the billing process. Commerce (ERP and EERA) and PUC staff track their direct costs on cases, and utilities are billed for these costs. Approximately 50 utilities are invoiced. Invoices are prepared hour-by-hour for each docket, so utilities know exactly how much time staff spends on each docket. The PUC submits staff data to Commerce to process the invoice and mail it to utility companies. Interviewee information indicates that invoices can be extremely long because of the level of detail, but this means there are few contested bills from the utility companies. The Chief Financial Officer at Commerce works with the Human Resources and Business Services manager at the PUC on this process.

Other PUC functions

Several other units within the PUC either do not have as much interaction with Commerce-DER, or perform such distinct functions from the DER that they warrant separate discussion. These units, with a brief description of their primary functions, are below.

Attorneys

The primary role of the PUC's staff attorneys is similar to the role of a law clerk working for a judge. The attorneys at the PUC develop the reasoning and rationale for the commission's decisions and draft all final orders. Staff attorneys do not provide counsel to the commissioners.

The secondary role of this unit is to lead and coordinate rule making, prepare and promulgate rules, and draft proposed legislation. The attorneys also supervise law student interns and prepare minutes of the commission meetings to be formally approved.

Consumer affairs

The Consumer Affairs Office (CAO) is considered the public face of the PUC. Mediators in this office respond to consumer inquiries and complaints, provide outreach and education to stakeholders and the general public, and advise and guide the public on how to participate in the commission's decision-making process. The core functions of the CAO are described in more detail below.

Consumer complaints

The primary function of the CAO is to provide information and mediation services to customers of regulated natural gas, electric, and telephone utilities in the state. The office receives approximately 2,500 to 3,000 complaints annually that mediators address. They resolve issues by providing consumers with information about the laws and regulated utility industry to help clarify issues, by contacting the utility company and resolving a dispute or addressing a billing question, or by referring issues that are outside of the PUC's jurisdiction to other entities to resolve (e.g., complaints about city water). Mediators also identify enforcement actions for utilities they find are not following the commission's rules or orders. Mediators also use the eHeat database (described above) to access consumer financial

information to help resolve disputes that may involve consumers' eligibility for energy assistance programs.

Outreach and education

Another core function of the CAO is to conduct outreach and present information about the commission's decision-making responsibilities and processes, new rules, and the Cold Weather Rule to utility representatives, special interest groups, other state agencies, legislators, and public groups.

Other activities this office is responsible for include:

- Creating printed and web-based consumer materials;
- Coordinating public notices and press releases for the media and State Register;
- Developing commission notice templates;
- Updating the PUC's website content;
- Reviewing, approving, and mailing all commission and utility notices (from a consumer protection standpoint and ensuring that federal and state orders and tariffs are followed); and
- Participating in committees, task forces and work groups (NARUC,¹⁰³ Commerce's Energy Assistance Planning Council, Energy Regulation and Planning and Telecom workgroups).

Public involvement facilitation

A third core function of the public advisor position in the CAO is to facilitate public involvement in the commission's decision-making process—especially in energy facility cases with strong public interest.¹⁰⁴ This outreach function moved from Commerce's Energy and Environmental Review (EERA) unit to the PUC in 2012, several years after the PUC received authority for siting and routing in 2005.

The public advisor's responsibilities include:

- Informing and guiding stakeholders and the public through the commission's administrative processes for energy facilities cases (siting and routing for pipelines, transmission lines, and power plants);
- Answering stakeholders' questions and providing information on how to access dockets and the companies' proposals; and
- Assuring that all notices are sent to the public and relevant entities during the process and managing the planning, logistics, and input process at public hearings for the Office of Administrative Hearings. Some of the tasks involved with arranging the logistics include contingency planning, arranging security, securing communication devices and space, making seating arrangements, and setting up the room.

Leadership, management, and business services

In addition to the functional units described above, the PUC also has common leadership, management, and administrative functions. The Executive Secretary is responsible for providing

¹⁰³ National Association of Regulatory Utility Commissioners (NARUC) is the national association that represents the commissioners who regulate utility services in each state. FERC and MISO are described in Appendix B.

¹⁰⁴ This position is heavily involved in CN, siting and routing and environmental review processes (described on pages 50).

direction and leadership for the PUC by managing the fiscal and operations of the agency. The Secretary also manages legislative affairs, media/communication, and operational responsibilities. The Director of Policy is a relatively new position at the PUC. The role provides policy and trend insights on energy and telecom to the commission. The Human Resources and Business Services unit is responsible for managing the PUC's human resources, purchasing, accounting, payroll, budgeting, and information technology transactions and processes.

Other DER functions

The Deputy Commissioner's office and the managers of the functional units described elsewhere are the only leadership and management positions in the DER. Other Commerce leadership, management, and shared business services functions (accounting and legal staff, as examples) are housed in other parts of the department.

There are several other units within the DER that have limited (or no) connection with the PUC.

Energy Assistance Program (EAP)

The EAP provides services to low-income people. They administer the federal Low-Income Home Energy Assistance Program (LIHEAP), a federal block grant administered at the federal level by the U.S. Department of Health and Human Services. States use LIHEAP funds to develop programs that assist low-income households to meet their immediate home energy needs. "The five categories of EAP activities required by law are:

1. Outreach activities.
2. Assistance with home energy costs.
3. Intervention in energy emergency situations.
4. Provision of low-cost residential weatherization and cost-effective energy-related home repair.
5. Planning, developing, and administering Commerce's program, including leveraging programs."¹⁰⁵

The EAP received \$114.5 million in LIHEAP funds for fiscal year 2015. The program is income-based; therefore, recipients of the funds must income qualify. LIHEAP provides low-income households with assistance to pay their energy bills through local service providers. The EAP contracts with local entities to administer the LIHEAP funds. These local entities include Community Action Programs (CAPs), counties, tribes, and one nonprofit that is not a CAP. The EAP is able to assist approximately 450,000 people annually. The average annual income level of people receiving LIHEAP assistance in fiscal year 2015 was approximately \$18,000. LIHEAP is audited every year by the Office of the Legislative Auditor because of the size of the funds.¹⁰⁶

¹⁰⁵ Minnesota Department of Commerce. "Minnesota EAP Policy Manual FFY2016" ch 1, p. 1. Accessed December 16, 2015 <http://mn.gov/commerce-stat/pdfs/ffy2016-eap-policy-manual.pdf>

¹⁰⁶ Data in this paragraph is from the Department of Commerce, October 2015.

State Energy Office

The primary goal of the State Energy Office (SEO) is “to accelerate market acceptance of high-efficiency and renewable energy technologies and practices.”¹⁰⁷ The office provides unbiased information to Minnesotans to assist them in making decisions about their energy use, technical assistance to support the implementation of conservation, and energy efficiency and renewable technologies. The office promotes energy efficiency and renewable energy, but they are not in an advocacy or regulatory role. The SEO administers the Conservation Improvement Program and several deployment programs, as described below.

Conservation Improvement Program

The Conservation Improvement Program (CIP) is a statewide program administered by electric and natural gas utilities that helps Minnesota households and businesses use electricity and natural gas more efficiently. Minnesota electric and natural gas utilities offer a variety of rebates and other incentives to help their customers make energy efficiency improvements as part of the CIP. Each utility tailors specific programs offered to their residential and business customers. The DER oversees the CIP to “ensure that ratepayer dollars are used effectively and energy savings are reported as accurately as possible.”¹⁰⁸

Each electric and natural gas utility develops its own CIP plan. Plans offer a variety of programs to assist residential and business customers to increase their energy efficiency. The DER reviews and approves the plans and the associated energy savings calculations. CIP plans must be submitted to the DER every three years. Utilities report their actual CIP spending and savings achieved on an annual basis to the DER. Stipulations of the CIP include:

- Electric utilities, except Xcel Energy, must spend a minimum of 1.5 percent of annual gross operating revenues on CIP programs
- As an owner of nuclear generation facilities, Xcel Energy must spend at least 2 percent
- Natural gas utilities must spend a minimum of 0.5 percent
- At least 0.2 percent of residential gross operating revenue must be spent on programs specifically serving low-income customers.¹⁰⁹

Deployment

The deployment unit in the SEO administers three programs: the State Energy Program, Made in Minnesota (MiM), and the Weatherization Program.

¹⁰⁷ National Association of State Energy Officials. “State Energy Office Overview,” accessed November 7, 2015 <https://www.naseo.org/Data/Sites/1/events/regional/midwest/2012/MN.pdf>.

¹⁰⁸ Minnesota Department of Commerce. “Conservation Improvement,” accessed November 7, 2015 <https://mn.gov/Commerce/industries/energy/utilities/cip>.

¹⁰⁹ Ibid

State Energy Program (SEP)

The State Energy Program (SEP) provides education and technical and financial assistance to the residential, commercial, industrial, and government sectors in energy efficiency and renewable energy. The SEP is funded through the federal Department of Energy. Initiatives within the SEP include:

- Energy Information Center. This is a web-based portal for consumers to find unbiased information on energy topics.
- Energy Assurance. Staff working in this area develop an energy emergency plan that is part of the Homeland Security Plan for Minnesota and submitted to the federal Department of Energy.
- Renewal Energy/Distributed Energy. Staff in this area provide consumer protection by providing information on renewable and distributive energy.

Made in Minnesota (MiM)

Created in 2013, the Made in Minnesota (MiM) Solar Energy Incentive Program provides financial benefits to energy customers who choose to install solar panels on their home or business. MiM is a program designed to grow Minnesota jobs within the solar industry and support the installation of solar electric systems and thermal for residents and businesses. The solar incentive program is available to customers of investor-owned electric utilities who install solar electric systems using solar modules certified as manufactured in Minnesota. The DER administers the MiM program and provides technical expertise. This program is funded through utilities. MiM has an annual budget of up to \$15 million through 2023.¹¹⁰

Weatherization

The Weatherization Assistance Program is an income-based program. Qualifying individuals can arrange to have a home energy audit to determine if there are ways that energy upgrades would reduce energy costs and improve safety. The program often connects with the Energy Assistance Program to assist consumers. Funds for this program come from the federal Department of Energy and from five percent of the state's LIHEAP allocation.¹¹¹

Telecommunications functions – PUC and DER

The Public Utilities Commission has regulated telecommunications in Minnesota since 1915¹¹² and has seen the industry grow and change with technological innovation. Currently, telecommunications functions performed by the Public Utilities Commission are outlined in Minnesota Statutes §237.

In a manner similar to the energy divisions, the functions of telecommunications regulation are divided between the Department of Commerce and the Public Utilities Commission. Staff describe both the Department of Commerce and the Public Utilities Commission staffs as working on behalf of the broad public interest. However, department staff assume a role of ratepayer advocates, whereas commission staff assume a broader role as an impartial public arbiter.

¹¹⁰ Information on MIM is at <https://mn.gov/Commerce/consumers/your-home/save-energy-money/mim.jsp>.

¹¹¹ Information on WAP is at <https://mn.gov/Commerce/consumers/your-home/save-energy-money/wap.jsp>.

¹¹² Minnesota Public Utilities Commission. "About Us," accessed December 16, 2015 <http://mn.gov/puc/about-us/index.jsp>.

The telecommunications industry has experienced substantial change in the past twenty years. According to both department and commission staff, telecommunications filings have seen a decline, enough so that commission managers will not be replacing an analyst position vacated by a retirement (they are moving that position to another analytical unit).

Telecommunications programs

There are two state telecommunications programs, one managed by the DER and one by the PUC. These programs are funded by rate surcharges.

Telecommunications Access Minnesota

Telecommunications Access Minnesota is the federally mandated telecommunications relay program in Minnesota. This program “allows an individual who is deaf, deaf/blind, hard of hearing or speech disabled to communicate over the telephone in a manner this is functionally equivalent to a person who does not have a hearing loss or speech disability.”¹¹³ This program is administered by the Department of Commerce with budgetary oversight by the Public Utilities Commission.

Telephone Assistance Plan

The Telephone Assistance Plan “provide[s] eligible subscribers with a monthly credit on the basic service portion of their telephone bill.”¹¹⁴ The Telephone Assistance Program is administered by a staff person in PUC, with DER handling any program-related disputes.

PUC telecommunication regulatory functions

The Public Utilities Commission telecom staff view their primary responsibility as being to the commissioners. The telecom unit’s principal task is to aid the commissioners in understanding filings before the commission, identifying decision points, synthesizing case documents and arguments, and making recommendations, when appropriate. Telecom business before the Public Utilities Commission includes:

- Formal telecommunications orders, which are complex, multi-issue cases in which governing laws are generally known and stable; the usual parties are the affected companies and regulatory agencies.
- Informal telecommunications orders; single issue items that are significant but not disputed.
- Ongoing program cases (accepting reports and approving budgets).
- Consent telecommunications orders.¹¹⁵

¹¹³ Minnesota Department of Human Services. “Minnesota Relay Outreach,” accessed December 15, 2015 http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_163182.

¹¹⁴ Minnesota Department of Human Services. “Telephone Assistance Programs,” accessed December 15, 2015 http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=cm_002909.

¹¹⁵ These include cases that consist of filings required by Chapter 237 and the Telecommunications Act of 1996, i.e., undisputed mergers, 911 plans, negotiated interconnection agreements, certificates of authority, relinquishment of authority, service area changes, name changes, initial tariff filings, compliance filings.

Department of Commerce telecommunication regulatory functions

The Department of Commerce’s telecom staff of five analysts and one manager is responsible for responding to each of the above types of cases that are received. The analytical work done at the department ensures that compliance filings are accurate, complete, and meet any applicable legal requirements. For contested cases department staff read, analyze, and synthesize each filing, take a position, develop recommendations, and submit those recommendations to the commission.

Department of Commerce staff take a position on behalf of Minnesota ratepayers (all classes) in its dealings with telecommunications companies. In addition to the work it does on filings (contested and otherwise), the department works with telecommunications companies, sometimes mediating between parties to come to agreements before cases ever have to go through a contested filing process.

Functions summary

The following table lists the functions of Commerce-DER and the PUC:

Table 17: Function Overview

Function	Description	Agency/Unit Responsible
Quasi-judicial ¹¹⁶	Commissioners resolve disputes, adjudicate cases, make decisions on regulated utility matters, and issue orders.	Commission
Quasi-legislative	Commissioners set utility rates, develop policies through issuing orders, and develop rules during rule-making process.	Commission
Permit issuance	Commissioners approve and issue certificate of need and siting and routing permits.	Commission
Program administration and associated outreach and education	<p>Commerce programs LIHEAP, WAP, CIP, MiM, State Energy Program, TAM</p> <p>Commission programs¹¹⁷ TAP</p>	<p>Commerce</p> <ul style="list-style-type: none"> • State Energy Office • Energy Assistance Unit • Telecom <p>Commission</p> <ul style="list-style-type: none"> • Business Services

¹¹⁶ An administrative law judge assigned through the Office of Administrative Hearings proceeds over all contested cases—as requested by the Commission—before the PUC makes a final decision.

¹¹⁷ A staff person in the PUC manages this telecom program.

Function	Description	Agency/Unit Responsible
Grant management	Staff manages and administers federal block grant to community agencies for energy assistance programs.	Commerce <ul style="list-style-type: none"> • Energy Assistance Program (EAP)
Consumer complaint resolution	Mediators resolve customer complaints related to utilities the commission regulates, including the Cold Weather Rule. ¹¹⁸	Commission <ul style="list-style-type: none"> • Consumer Affairs Office
Public outreach and education related to docketed processes	<p>Commerce Staff participate in public input meetings during the certificate of need, environmental review, and siting and routing permitting process.</p> <p>Commission Public advisor facilitates public involvement in the certificate of need, environmental review, and siting and routing process; manages the meeting logistics; and ensures notices are delivered to parties during the process. Consumer Affairs Office manages logistics of commission hearings.</p>	<p>Commerce</p> <ul style="list-style-type: none"> • Energy Environmental Review and Analysis (EERA) • Energy Regulation and Planning (ERP) <p>Commission</p> <ul style="list-style-type: none"> • Consumer Affairs Office
Advocacy ¹¹⁹	Analysts advocate on the public's behalf in regulated utility matters by conducting technical, financial, and economic analyses to make solid recommendations to the commission.	Commerce <ul style="list-style-type: none"> • Energy Regulation Planning (ERP) • Telecom
Advisory	Analysts review, analyze, and synthesize complete dockets with all of the parties' recommendations and comments and writes a briefing paper for the commissioners with decision options to consider.	Commission <ul style="list-style-type: none"> • Economic/Financial Analysis Units • Energy Facilities • Telecom

¹¹⁸ Some consumer complaints or stakeholder inquiries are handled at Commerce, such as landowner inquires during EERA review or complaints regarding telecom programs.

¹¹⁹ The Attorney General's Office intervenes in cases at their discretion.

Function	Description	Agency/Unit Responsible
Environmental analysis/review	Analysts analyze the human and environmental impacts of energy development by conducting an environmental review for certificate of need and siting and routing permits to add to the docket.	Commerce <ul style="list-style-type: none"> • Energy Environmental Review and Analysis (EERA)
Testifying	Staff provide testimony under oath in contested cases before the administrative law judge.	Commerce <ul style="list-style-type: none"> • Energy Environmental Review and Analysis (EERA) • Energy Regulation and Planning (ERP) • Telecom
Compliance/monitoring	Staff monitor and ensure utilities follow the commission's orders (including resource plans, siting/routing permits, and CIP plans).	Commerce <ul style="list-style-type: none"> • Energy Environmental Review and Analysis (EERA) • Energy Regulation and Planning (ERP) • Telecom • State Energy Office

Assessment of possible duplication or redundancy

MAD examined staff functions and management roles to determine if there is duplication of staff functions or redundancy of management positions.¹²⁰ In short, MAD identified some areas of similarity and interconnection but did not identify duplication or redundancy.

Management positions

Within Commerce's Division of Energy Resources

MAD examined the roles of management across the Division of Energy Resources. Most of the management roles are clearly singular and separate. For example, there is only one director of the energy assistance program, and that program is quite different from other functions of the division.

MAD focused on areas where roles seemed less distinct to determine whether management functions are redundant. In particular, MAD reviewed the roles of supervisors and managers of analytical positions in the Energy Regulation and Planning, Environmental Review & Analysis, Conservation Improvement Program, and Telecommunication work groups. The subject matter of the regulatory areas at issue and the expertise of the employees they supervise varies significantly across these groups. The supervisory positions are not redundant. The Environmental Review & Analysis manager, for example, must have in-depth understanding of environmental laws and review processes, as well as research skills and knowledge of environmental and technical aspects of energy facilities. As another example, the Telephone Unit Manager must understand telephone regulation laws and policies, as well as have skill in developing analytical models for evaluating proposed rates and other issues.

Though there is substantial connection between the roles of supervisor and manager of the Energy Regulation and Planning group, their duties are distinct. In general, the supervisor is more directly involved in workload planning, while the manager is more involved in cross-agency connections and policy development. Between the two of them, they supervise and manage a large number of professional staff. Their positions are not redundant.¹²¹

Within PUC

MAD examined the roles of management and supervisors across the Public Utilities Commission. Most of the management roles are clearly singular and separate. For example, there is only one manager overseeing human resources and business services functions for the commission.

As with Commerce, MAD focused on management and supervisory roles that seemed similar. For the PUC, MAD focused on the four supervisors of units in the regulatory analysis division: Energy Facilities, Economic Analysis, Financial Analysis, and Telecom Analysis. These units handle different

¹²⁰ During this analysis, MAD focused on the legislative direction to identify duplication and redundancy. MAD did not evaluate whether there are conceivably other good ways to organize work within these two organizations, nor did MAD evaluate the merit or effectiveness of the policy or programs these organizations implement. MAD's analysis of whether division functions should be transferred to the commission is in a later section of this report (page 80).

¹²¹ A few interviewees (not within Commerce) wondered if there were too many analysts in this reporting line, given the active involvement of management in the document review process.

types of dockets, though there are often cross-functional teams and some crossover on miscellaneous dockets. A review of job descriptions shows that there are some strong similarities in the skills and knowledge needed for these positions and in the actual duties of the supervisors, such as the ability to ensure that commissioners receive quality and timely analysis of issues. But key differences are relevant. For example, the economic analysis group is focused on utility rate design and resource plans, while the energy facilities group focuses on location and reliability of energy infrastructure development. Supervisors need different expertise to supervise those teams effectively. The PUC explained that the organization of this division into four groups is relatively recent—the PUC determined that having additional supervisors would ensure that important issues do not slip through the cracks. These supervisory positions are not redundant.¹²²

To the extent that commissioners themselves are managers, MAD considered whether there is redundancy in these positions. Minnesota law requires that there be five commissioners: no more than three from a single party, and at least one who resides outside of the metropolitan area. Other states have a smaller number of commissioners, so it is at least theoretically possible that Minnesota has some redundancy in these roles. A change in the number of commissioners would have significant implications, including difficulty in obtaining diversity in political party, region, and expertise, and in procedural issues such as inadvertent quorum formation during casual conversations. For the purposes of this study, MAD has determined that the statutory requirements related to commissioners necessarily lead to the conclusion that the Minnesota Legislature does not view the commissioners' roles as redundant.

Across PUC and Commerce

MAD reviewed management and supervisory roles across the PUC and Commerce. Though some positions are similar, most are easily determined not to be redundant because they oversee work of distinct and separate organizations. To answer the research question more thoroughly, MAD also considered whether the positions would be redundant if functions were transferred from Commerce to the PUC. Even with this hypothetical analysis, it quickly became clear that some positions are simply not redundant. As examples:

- The position of Commerce Director of Administrative Services/Chief Financial Officer¹²³ is somewhat similar to the PUC's Business Office Manager. They both oversee human resources, administrative, and technology services related to activities that are interconnected. However, since they are managing different budgets, staff, and functions, their positions are not redundant. The Commerce role supports far more than the division of energy resources. Even if division-related administrative, fiscal, and technology functions that Commerce currently performs were moved to the PUC, Commerce would still need someone to do the work of chief financial officer and administrative services director.

¹²² See page 82 for a discussion of telecommunications functions. Changes to that regulatory and market environment may lead to changes in staffing needs for the PUC, which could lead to changes in supervisory needs.

¹²³ Though this position is technically not in the Division of Energy Resources and is therefore arguably out of scope for this study, MAD considered this position in the interest of thoroughness.

- The PUC Executive Secretary, PUC Director of Policy, State Energy Office Manager, and Deputy Commissioner of Commerce for the Division of Energy Resources have some similarities in roles regarding executive leadership, policy articulation, and external communication. These positions are not redundant, however, because the agencies have different staffs, missions, and functions.

Interconnected functions

MAD focused on management and supervisory roles for interconnected functions of the PUC and Commerce. As discussed above, there are compelling rationales for separate supervisory lines for the different docket types and staff expertise areas. Though it would be relatively easy to assert that the roles in the different agencies are obviously not redundant because they are supervising different types of work, MAD considered the question carefully.

To determine if the supervisor roles were redundant, MAD researchers considered whether moving staff from Commerce to the PUC would allow reduction of one or more supervisors. Many of the participants in this study indicated that if Commerce's advocacy and analysis functions were transferred, organizational walls and controls would have to be set up to ensure fairness of process (i.e., separating the role of public advocate from the role of advisor to commissioners). Assuming this is true, staff would need at least some level of separated supervision, so supervisory positions could not be eliminated. Even if an organizational wall were not necessary, reducing the number of supervisors for the large number of analytical staff would result in significant management challenges. Unless the amount of work were significantly reduced so that the number of analysts decreased markedly, the number of supervisors could not be decreased. These supervisory roles are not redundant.

Staff functions

MAD examined the functions of staff to determine if there is duplication in staff functions across the PUC and Commerce. The table above (page 59) provides a broad overview of the functions of the commission and division. The *Organizational Review* section of this report beginning on page 35 describes the work of these organizations and their interconnected functions in detail. Many of the functions are clearly distinct, such as the social service program function of Energy Assistance and the renewable incentive programs like Made in Minnesota Solar. MAD focused on areas that could be duplicative.

Administrative functions

As described above, the PUC and Commerce have adopted many areas of shared administrative functions, such as docketing and billing. The agencies have already addressed potential duplications in these areas and have gained efficiencies.

To answer the research question more fully, MAD considered whether transferring functions from Commerce's DER to the PUC would yield a reduction in administrative staff. If functions were transferred, staff from another part of Commerce would either need to be moved (and their other Commerce duties reassigned to other staff), or the PUC would need to identify and train staff to perform that work. In either scenario, the net number of administrative staff is likely to be the same, but with a temporary loss in productivity as staff are realigned and trained. Given these distinctions and scenarios, MAD determined administrative functions are not duplicative.

Analytical and advisory functions

Many of the participants in this study who are familiar with these organizations explained that it is understandable that stakeholders and the public may question how work differs for the analysts at the division and the commission. Indeed, many of the professional staff at the PUC and Commerce share official job titles (e.g., Public Utilities Rates Analyst, Public Utilities Financial Analyst), and have similar (though not identical) job descriptions. A thorough examination of these interconnected functions is in the section beginning on page 46.

In general, Commerce analysts provide independent analytical work to vet submissions of other parties to the case and build a record to support the division's assessment of the case. Under the existing regulatory framework, staff are supposed to *take a perspective*, examining the case to advocate for ratepayers or to evaluate the environmental effects of a facility or route. PUC analysts, on the other hand, synthesize the entire record and brief commissioners on the case. Their role is to bring all of the disparate arguments (from utilities, Commerce, other parties, and the public) and complex facts together and present information so that commissioners can make a decision.¹²⁴ Given the very different purposes for these analytical and advisory roles, the functions are not duplicative. (The question of whether the functions in Commerce should be moved to the PUC is examined in a later section of this report, beginning on page 81.)

¹²⁴ MAD's research shows that there is some inconsistency in understanding of whether PUC analysts should be adding information or recommendations to the docketed record, but this is a separate issue and is described elsewhere in this report (see page 71).

Perspectives on PUC and Commerce

This section of the report provides a summary of information provided by interviewees that is most relevant to the key legislative questions for this study.¹²⁵

Overview of interviews

MAD researchers conducted interviews with over 100 individuals, including commission and department staff, managers, and leadership, representatives of regulated entities, individuals familiar with legislative and administrative histories in energy and utility policy areas, representatives of other state agencies, and representatives of other participants in commission and division processes. Almost all interviews were conducted in October and November 2015. Appendices G and H provide additional information about the interview process.

Interviewees were remarkably candid and generous with their time and expertise.

Interviewee selection

MAD sought to interview as many commission and division staff as possible with minimal disruption, so MAD conducted a mix of individual and group interviews. One of MAD's primary objectives was to understand how division and commission functions connect and potentially overlap. Therefore, MAD focused project resources on the analytical work units in the commission and the advocacy and analytical work units in the division.

MAD used an iterative approach to identify stakeholder interviewees: the commission and department suggested specific interviewees, and MAD conducted preliminary research to identify potential stakeholder interviewees. MAD identified key categories of stakeholders: regulated entities, other participants in commission and division processes (including representatives of advocacy groups), and other state agencies.¹²⁶ MAD conducted early interviews with key informants and gathered their ideas for interviewees, then used all suggestions to develop and expand the interviewee list. Time was limited for this study, so MAD was unable to include all of the stakeholders suggested by interviewees. Some individuals and organizations contacted to provide input declined to participate. Given the focus of the research questions implied by the study, MAD aimed to gain *depth* in understanding of regulated entities and *breadth* of understanding of the range of other interested individuals and organizations.

Not surprisingly, given the technical expertise needed for this type of work, many interviewees in this study have experience working in other organizations. These interviewees brought perspectives from

¹²⁵ A few external stakeholders expressed opinions about the substance of policies or administration priorities, about whether the PUC should or should not be active in policy formation, or about whether Commerce advocacy and analytical staff should or should not be influenced by other parts of the division. But these issues are beyond the scope of this study.

¹²⁶ MAD sought perspective from investor owned, municipal, and cooperative utilities, and from individuals and organizations that had engaged with the PUC and Commerce in certificate of need, siting and routing, rate cases, IRP filings, CIP filings, and workgroups.

other states and from the public and private sector in addition to their perspectives from their current role.

Interviewees outside of the PUC and Commerce often emphasized that they did not want their comments linked to their names or organizations. Sometimes interviewees emphasized that they were not speaking for their entire organization.

In this summary and analysis of perspectives, MAD has attempted to strike a balance between shielding individual identities and providing the maximum amount of useful information in this report. MAD has adopted conventions in this summary:

- General terms like *many*, *several*, or *a few* are used instead of reporting frequencies or percentages of responses. Use of any type of quantifying categories can be particularly challenging when interviews were conducted in groups. MAD erred on the side of caution in not attributing an individual's perspective to the whole group.
- To provide more concrete qualitative information, paraphrased statements from interviewees are included in this summary. Though the statements accurately reflect the sentiment and content of interviewee comments, they should not be viewed as direct quotations attributable to individuals.
- The perspectives of external stakeholders, such as regulated entities, other state agencies, and advocacy groups, are sometimes combined in the summary below. Where relevant, the summary distinguishes among these perspectives.

What is working well?

MAD examined interview responses to identify what parts of the status quo are working well from the perspectives of individuals inside and outside of the subject organizations.

Quality staff in PUC and Commerce

Interviewees from all perspectives commended PUC and Commerce staff. Other state agency interviewees, for example, said that they have professional respect for the knowledge of both staffs, and that the staff have a "wealth of information." Many interviewees from regulated entities and advocacy organizations commented about the benefits of having knowledgeable and experienced staff at both the PUC and Commerce, and a few noted that it seemed that both organizations have recently hired people with specific expertise or knowledge that will be beneficial. Interviewees from inside and outside of the organization used terms such as "accurate," "thoughtful," "trusted," "valued," "balanced," "expert," "thorough," "responsive," and "well-organized" to describe staff.

Many interviewees from regulated entities and other parties commented about the ease of sharing information and discussing issues with Commerce. Interviewees from regulated utilities lauded Commerce staff for their willingness to look for ways to solve problems even when they disagree with the company's position.

Commissioners spoke highly of PUC staff and the open relationship they have with them. They indicated that it is helpful to have access to staff to ask questions and request more information for a

case if needed. They also appreciate the research that staff do proactively so commissioners can be more knowledgeable of trends in the industry (e.g., electric cars).

Current organizational structure

Many PUC and Commerce interviewees spoke positively about the current organizational structure, with Commerce in the advocacy role and the PUC in advisory/decision making role, with comments including that it “makes sense,” “there is a clear separation,” and “there is a reason it was created this way.” Some interviewees spoke strongly about the need for both advocacy and advisory roles, and the need to keep these roles separated—it allows the PUC to look at the bigger picture and it keeps the agency that represents the public interest accountable to the administration.

Many representatives of regulated utilities and advocacy organizations also indicated that the separation of advocacy and advisory roles is a positive aspect of the current system,¹²⁷ with several commenting that the adversarial aspects of the process are valuable. Several also shared that the process helps build a good record for commissioners to consider. For example, a representative of a regulated entity noted that having the PUC as another analytical “check” improves the record.

Interviewees from other state agencies agreed that the division of functions, as it currently exists, allows for a large degree of transparency in the process—although they uniformly agreed that these processes likely appear confusing to the uninitiated. This sentiment was shared by several other external interviewees.

Transparent and fair process

Many interviewees from inside and outside the organizations indicated that the decision-making process is highly transparent—especially because everyone has access to cases via eDockets at the same time the commission does.

Interviewees indicated that the PUC Commissioners engage in discussion and decision-making in open proceedings, and they take the time to listen to all parties. A few external stakeholders remarked that they think highly of current commissioners and are glad they are working to increase understanding of emerging policy and regulatory issues.

A few internal and external interviewees remarked that this level of transparency can be challenging. Some closed-door commissioner discussions and information sharing might be more expedient or productive, and the sheer volume of information available on eDockets can make it difficult for members of the public to locate information.

The large majority of external interviewees, including representatives of regulated entities, said that the overall process is fair and ensures due process.

¹²⁷ This was not a universally held opinion: Several stakeholders—most of them not from regulated utilities—do not see the current organizational division as a strength. Their opinions varied in degrees of intensity, ranging from speculation that the functions could work just fine in the same organization, to the opinion that there is nothing at all positive about the current organizational structure.

Several external interviewees complimented the PUC and Commerce for their engagement with stakeholders, noting this as a relevantly recent trend that could still be improved. A few mentioned the Speak Up! tool as a good resource for engaging the public. Other state agency representatives commended the approach of bringing stakeholders together and facilitating robust conversations.

Accomplished process improvements

Shared docket and billing systems

Interviewees inside the PUC and Commerce said the eDockets and joint billing systems are examples of what is working well. Agency staff have worked hard to gain efficiencies through these shared systems, and they have eliminated duplicative work and have kept administrative costs lower.

A few external observers also noted that it was apparent that the organizations have identified ways to become more efficient, with the shared eDocket system as a prime example.

Interviewees from inside and outside the organization said the eDockets system works well, allows flexibility for staff and the public to access case information from anywhere, and contributes to an open decision-making process.

Other improvements

A few external interviewees highlighted recent efforts by the PUC to improve consistency in process across docket types, improved use of the OAH for contested hearings, and improved scheduling and timing.

Several Commerce interviewees highlighted the environmental review MOU as an example of a document that has helped processes run more smoothly. The MOU has been valuable in clarifying roles and focusing work.

What improvements can be made?

Increase staffing

Many interviewees from regulated entities, advocacy groups, and other agencies said that both the PUC and Commerce need additional staff to do the work that is necessary. Terms like “overloaded,” “overworked,” and “overwhelmed” were used to describe both staffs, and interviewees expressed belief that additional staff would improve the depth of analysis and would speed up the process. A suggestion was for the PUC and Commerce to provide data showing how additional staff would directly speed up the process or improve quality. This may help convince sceptics that additional staff are needed.

Staff at the PUC and Commerce also expressed the sentiment that they are understaffed to do existing work or that additional staff resources would improve quality and timing.

A few regulated entities mentioned that streamlining the process for contracting with experts would be helpful. Sometimes, technical expertise is necessary to analyze a case properly, but it takes a seemingly long time to bring in outside contractors.

Ex parte restrictions and open meeting requirements

Though many interviewees from inside and outside of the PUC and Commerce spoke favorably about the transparency of the process, interviewees noted challenges created by strict communication and meeting requirements.

Ex parte rules

Interviewees from inside and outside the organizations pointed to difficulties with restrictions of communications between the PUC and parties to docketed matters. For a few interviewees, this was a source of significant frustration. The challenges include:

- **Lack of clarity/inconsistency:** Several interviewees framed the issue as a lack of clarity regarding when ex parte communication is or is not permissible. Others said that the rule was applied differently by different staff.
- **Unnecessarily restrictive:** Several interviewees from outside of the PUC indicated that the current interpretation of prohibited ex parte communication is unfounded or is unnecessarily restrictive, especially when it is applied to PUC staff. Several interviewees said this restriction is making it difficult to share relevant information with the PUC, such as information from Commerce, other state agencies, utilities, and advocacy groups. A few interviewees noted that some additional work by PUC analysts on cases could be avoided if staff can simply contact Commerce to find out if their analysts had reviewed a specific issue. Several agency staff wished Commerce and PUC staff could talk together more about issues. However, they said there is rarely a window of opportunity to do so since there always seems to be a pending contested case open.

Open meeting requirements

Several interviewees from inside and outside of the PUC said they wish commissioners had the opportunity to talk to each other about issues or information that might be needed prior to a case going to a full hearing, or that PUC staff would be able to brief commissioners (perhaps as a group) more fully throughout the process. Suggestions included that PUC staff could brief commissioners in an executive session that was not a public hearing, or that PUC documents on topics or issues could be considered nonpublic.¹²⁸

Role clarification

Interviewees from inside and outside of the PUC and Commerce identified some areas where roles could be clarified to improve processes or transparency.

PUC's role in record and recommendation development

Many external stakeholders from a variety of perspectives described a need for clarity in roles between the PUC and Commerce, particularly in record and recommendation development. Interviewees described situations where they were troubled or surprised when PUC staff contributed to the record

¹²⁸ PUC interviewees explained that training documents they create for a commissioner (e.g., providing information to get a new commissioner up-to-speed on a complex topic) become public documents when other commissioners request the document. More time and resources are involved when staff have to edit documents for the public that were intended to be for internal training purposes only.

presented to the commissioners. A few described the difficulty this presents as they advocate for their position—they worry that they will be viewed as criticizing commission staff or commissioners.

Similarly, many DER staff described situations when PUC staff presented options in briefing papers that were not proposed by parties. They expressed concern that these options are not vetted through the same process as other information entered into a docket, and parties are not able to respond to the option until the commission meeting. An illustrative comment: *It confuses the process when PUC staff do discovery...It is not their role to build the record.*¹²⁹

Environmental review process

PUC and Commerce interviewees noted that the MOU has been helpful in clarifying roles for environmental review for EERA and the PUC, but there remain areas of needed clarity (note that these were mentioned by only a few interviewees):

- Recommendations from EERA to the PUC: PUC Commissioners have sought additional information from EERA analysts regarding their recommendations for courses of action. EERA staff have not played that role previously.
- Public input: The Public Advisor role is now established in the PUC, and there may be opportunities to further clarify or streamline the public input process so that the public knows how to participate at various stages and can readily understand the roles of the different parts of the PUC and Commerce. A few interviewees noted problems with having two public input tools available during an environmental review, though they noted members of the public might not be that attuned to or troubled by the differences.
- Completeness or clarity of the MOU: It can be challenging to apply the language of the MOU to the various day-to-day issues that come up in environmental review.

A few external stakeholders noted that they also see areas for improved clarity here, remarking that it is hard for people outside of the process to understand why two sections of Commerce (and perhaps the Attorney General) may be offering different perspectives on a docketed matter.

Length of process

A few representatives of regulated entities emphasized that the length of docket processes *must* be reduced: the amount of time it takes leads to investor and consumer uncertainty. Also, a few state agency interviewees wondered if getting involved is too onerous for both the general public as well as for formal interveners. They say that other groups could contribute subject matter expertise regarding relevant issues, but the process is too burdensome (i.e., long and drawn-out) to meaningfully contribute.

A few regulated interviewees noted the amount of stakeholder involvement required by the current regulatory system necessitates additional time for the proceedings—it takes time to gather and analyze

¹²⁹ This perspective was not universal among interviewees. For example, a few external interviewees described the value of having PUC make sure the record is complete or suggested that PUC staff should be more involved. PUC staff shared that their role is to ensure that Commissioners have information and options to make a decision—this may mean that PUC staff provide alternatives to the options presented by the parties.

public and advocacy group input. (These interviewees did not necessarily object to the current system's emphasis on public input—they were simply pointing out a reality.)

Scheduling and priority-setting

Interviewees from inside and outside the PUC and Commerce described possible improvements or challenges related to scheduling and priority setting.

Several regulated entity and advocacy group interviewees expressed a desire for more certainty about the commission's priorities and expected timelines. These interviewees understand that matters take time, but uncertainty is extremely problematic. Suggestions included that the PUC articulate a set of priorities on an annual basis, that the PUC and Commerce meet to develop a shared set of priorities, and that the PUC and Commerce meet to determine schedules that will assure timely procedures and avoid extensions.

DER staff also suggested that if the PUC had more control over the timing of when utilities file cases, it would assist the DER in managing workloads and ensure the state has adequate resources to represent the interests of the ratepayers. Utilities can file a rate case at any time and, once that process begins, statutory guidance dictates the timeline. When several rate cases are filed at one time (as of December 2015 there are five rate cases, an unprecedented number), staff and resources are strained.

DER staff also lamented that they cannot predict when a case they are assigned to will actually reach the commission's agenda. Sometimes, there can be a significant amount of time between when ERP analysts finish their analyses and when the case is heard by the commission. Several interviewees expressed they would like the PUC to collaborate more with the DER on scheduling so that analysts have more notice before their work will be before the commission.

Other ways to streamline the process

Interviewees from inside and outside of the PUC and Commerce offered suggestions for streamlining the process (note that some of these suggestions were offered by one or two people):

- Establish a streamlined process for handling routine regulatory cases that come before the commission or making minor changes, such as delegating authority to the executive secretary. This might also include determining what kind of resources should reasonably be assigned to those dockets.
- Shorten the extension period for Commerce filings or reduce frequency of extensions. This suggestion often was tied to the suggestion that the PUC work more closely with Commerce on scheduling.
- Encourage settlement of cases¹³⁰ and consider an external mediation approach.
- Involve commissioners earlier in dockets to define scope and limit issues.
- Consider what other non-disputed issues could be moved to the consent calendar.

¹³⁰ Several interviewees from regulated entities and advocacy groups indicated that they would like to see the PUC do more to encourage settlements (and less to discourage them). When large settlements are agreed upon by the parties, it is difficult to have the PUC challenge detailed aspects—the whole arrangement can unravel.

- Define policies and rules establishing timelines better for submitting supplemental comments in miscellaneous cases that do not have statutory deadlines in place.
- Streamline the process for reviewing compliance filings for telecom.
- Transfer advocacy functions from Commerce to the PUC, eliminate the Attorney General's role, and establish an Office of Rate Payer Advocacy.

Improvements to public engagement and outreach

No “one-stop” website for the public

A few internal interviewees noted that information for energy facilities dockets are posted on both the PUC's website (via eDockets) and Commerce's-EERA website for the public to review. A few PUC interviewees said that the information on the EERA website is well organized and user-friendly for the public, but there is duplication of work because some of the materials are reposted instead of being linked to the eDockets.

Suggestions for improvement include having one website for the public to go to for information, and presenting more educational information for the public and stakeholders to understand the process and docket types (e.g., a FAQ for topics such as IRPs and solar energy).

eDockets

Interviewees from inside and outside the organization noted that the volume of information available on eDockets can make it challenging to locate and understand filings. Several interviewees said that the eDockets interface could be improved. PUC staff noted the system is not as useful as it could be because it sometimes crashes, and its search functions are limited (and sometimes ineffective).

Workgroups and committees

A few external interviewees noted challenges with the PUC and Commerce's approach to workgroups and committees. Some examples include that PUC staff are not able to participate or stay involved in groups, that Commerce's engagement with stakeholders can appear to be a formality (i.e., the DER has already decided what it plans to do), and that it can be difficult for stakeholders outside of the Twin Cities metropolitan area to stay engaged.

Improvement to the regulatory system itself

Several external interviewees, most from representatives of regulated entities, suggested that if the state were serious about improving the process or timing for the PUC or Commerce, state regulation would need to change. A few remarked that this was a far greater concern for them than whether there could be efficiencies gained by moving functions from Commerce to the PUC.

Perspectives on performance measures

Because one of the legislative questions for this study relates to whether quantity or quality of work would be affected by a function transfer, MAD asked PUC and Commerce interviewees how their agencies measured program performance. This section of the report summarizes interviewees' perspectives.

In general, MAD learned that some agency staff and leaders have considered what measures matter in terms of quantity, quality, and outcome, but data is not readily available through formal or consistent databases. Different units and divisions maintain their own spreadsheets on cases or summaries of activities.

Output measures

Interviewees talked about a variety of output, quality, and outcome performance measures they use to assess their work and performance. As with other organizations, output data is easier to track so supervisors and staff often mentioned these measures in the interviews. For example:

- Number and types of dockets filed
- Number of consumer complaints
- Number of types of orders issued

Quality measures

Quality measures were also mentioned by staff and leadership. However, this data did not appear as accessible to the agency staff via current database systems—staff were not systematically collecting the data, or staff were using other informal ways to assess the quality of their work.

Efficiency and timeliness

Timeliness was mentioned as an important measure by many of the interviewees, especially since there are statutory deadlines to follow for many of the cases that come before the commission. Information on whether the organizations are meeting statutory deadlines is at least hypothetically available through eDockets, but it is not easily accessible. During the agency interviews, most staff said that the commission was meeting statutory deadlines for processing filings, but timeliness for cases that do not involve statutory deadlines was less known. Interviewees also commented about heavy workloads and increasing case complexity contributing to timelines being extended. One interviewee commented: *“Are we getting to matters without statutory deadlines in a timely way? In all cases, we aren’t. This is a reflection of amount of workload and resources we are given to do this work.”*

Other interviewees cited reasons for why cases can often take longer than desired:

- *“Lately the number and complexity of filings has increased. The scope changed in 2007 with the Next Generation Energy Act.”*
- *“The commission has been criticized for taking too long on Resource Plans. In large measure, it is because utilities come in with changed circumstances or parties are contesting issues or raising disputes with utilities...the PUC has to consider all of the complex variables and make the best decision...There is tension between wanting the freshest information and making the right decision and moving forward...Having the ship changing course in mid-stream, the Department has to determine – do we need to remodel this? It’s not an easy timeline to understand.”*

Other timeliness measures that the interviewees mentioned as important include the percentage of consumer complaints that are resolved in a timely manner, and the amount of time between the closing of contested hearings and when the commission receives the ALJ report.

Quality of orders

Many staff referred to success being measured by the quality of the commission's orders and decisions. One way they determine this is by informally tracking the number of orders that are challenged or overturned on appeal. As a personal measure of work quality, staff said they know when they have done quality work when they see how the commissioners react to their briefing paper or filing. If the papers or filings are written in such a way so the commissioners understand the issues, staff from both the PUC and Commerce said the commissioners can make an informed decision. One interviewee noted, *"You learn from each briefing paper based on the feedback you get from them [commissioners]. They generally want flexibility and to be given the information to make a thoughtful decision."*

Public participation and stakeholder feedback

Another metric that the agencies pay close attention to is the extent to which the public and stakeholders are participating in the process and public/stakeholder feedback they receive. The agencies want to ensure that parties feel they have been fairly represented by the commission and that the process is open and accessible to allow for participation from the public. (MAD did not inquire further on this issue to determine whether processes are currently in place to collect this feedback.)

Outcome measures

At the end of the day, what measures demonstrate that the PUC and Commerce are making a difference and achieving desired results? Interviewees provided several ideas and referred MAD to agency information. Potential outcome measures include:

- Accessibility of telephone service
- Compliance with renewable energy standards and distributive generation
- Energy efficiency
- How well PUC decisions are carried out
- Policy decisions made regarding community solar gardens and distributive generation
- Progress made on accomplishing the goals of the Minnesota Legislature
- Rate of compensation on community solar gardens
- Reasonable energy utility rates
- Reliability of the system
- Renewable energy generation
- Savings for consumers through Commerce's advocacy
- Share of competitive providers in the telephone market

Since the focus of this report was not to assess the agencies' program performance, MAD did not inquire further about whether the agencies were collecting data for all of these measures. However, insight from one of the interviewees suggests that formal measures may not exist for all:

"We don't have any formal metrics to determine how well our decisions are carried out. If we set a rate and if the utility bills something else – we will hear about it. We are telling utilities what to do/not do. If they act differently than the order from the PUC, we will hear of that."

Perspectives on the Attorney General's Office

Though the Attorney General's Office (AGO) was not a subject of this study, a sizeable number of interviewees from inside and outside of the PUC and Commerce raised concerns regarding that office's involvement in utility matters.

Intervention in PUC cases

Several interviewees expressed concerns about the AGO's utility unit's advocacy in matters before the PUC. Interviewees described inconsistent (but possibly improving) quality of analysis and understanding of issues. A few interviewees indicated that the AGO becomes involved only in high-profile cases, and that the interest in litigation and narrow issue focus is a barrier to problem solving and effective settlement. A few expressed frustration that the AGO seems to have a very similar (if not duplicative) advocacy role as Commerce, and yet the AGO somehow takes a different position than Commerce and sometimes seems antagonistic towards their staff.

Consumer advocacy

A few interviewees expressed concerns about the consumer advocacy functions of the AGO. They indicated that the AGO's consumer advocacy work is not properly aligned with the PUC's—AGO staff may be providing incorrect information or providing assistance that would be better performed at the PUC.

Relevant trends

MAD researchers asked interviewees inside and outside of the subject organizations what trends might be relevant to this organizational study. External interviewees were generally more vocal regarding trends. This section summarizes comments from all interviewees.

Though some external stakeholders disagreed about the level of proactive involvement that is appropriate for the PUC and Commerce, there is a consensus that staff and leaders in both organizations should have a detailed understanding of these developments.

Participants also generally agreed that regulatory issues in the energy sector are becoming more complicated. Several external interviewees directly connected this complexity with assertions that more state agency staff will be needed. Several external interviewees connected their descriptions of trends with an identified need for large-scale regulatory reform.

Interviewees discussed factors that are leading to a transformation of the energy utility industry. The financial, technical, and market underpinnings of the electric industry are shifting due to changes such as increased demand and availability of renewable energy products, increased call for cleaner power plants, environmental concerns about pipelines, and changes in customer preferences and expectations. An interconnected issue is the increased participation and interest in regulatory processes. New companies are entering the market, customers are more involved, and advocacy groups are very engaged. These new stakeholders may be unfamiliar or impatient with existing processes.

Several interviewees (particularly from representatives of regulated entities) expressed deep concern that the regulatory environment is not changing quickly enough to react to changes. This will have

implications for consumers and utilities, and some expressed concerns about how consumers will be protected in this new reality.

Several interviewees expressed concern about the ongoing stability and security of the electrical grid and related infrastructure. As new ways to generate power gain traction, the way that power is distributed will also change. This will have significant implications for companies responsible for transmission line infrastructure and for ratepayers that fund those companies. Additionally, changes to system infrastructure and increased interconnectedness across regions bring added security risks (cyber and conventional). Role clarity for emergency preparedness is an ongoing concern.

Several interviewees discussed work that regulated entities, regulatory staff, and other stakeholders are doing to address these changes and associated challenges, especially the work of the e21 group.¹³¹

Interviewees familiar with the telecom sector described a changing market and regulatory environment, with fewer telecommunication companies actually regulated by state law and fewer consumers purchasing from regulated entities. (Opinions differed regarding whether this is a positive or negative trend.) A few interviewees described potential expansion of existing regulation to cover cable companies that offer phone service.

Implications of transfer

Overall

In general, regulated entity representatives, other state agencies, and other external stakeholders were not encouraging of a transfer of functions from Commerce to the PUC. Expressed concerns about a transfer were more common—and more strongly stated—than expressed hopes for positive outcomes.¹³²

Similarly, PUC and Commerce staff and leaders expressed significant concerns about a transfer and did not foresee much (if any) benefit. Interviewees expressed concerns that transparency, objectivity, and credibility of the regulatory process would be lost or severely impacted if the advocacy function were moved in such close proximity to the advisory/decision-making body.

A few external stakeholders (not representatives of utilities) were relatively enthusiastic about the possibility of transferring public advocacy functions from Commerce to the PUC, noting that there must be efficiencies to be gained and that moving functions away from policy advocates would enhance credibility and reduce potential contradictions.

Positive implications

MAD asked external stakeholders to identify positive and negative implications to a function transfer. From regulated entities especially, these positive possibilities were often couched in terms such as

¹³¹ See: Great Plains Institute. Accessed December 15, 2015 <http://www.betterenergy.org/projects/e21-initiative>. The reference to this group is not a surprise given that some interviewees participated in the group.

¹³² This does not suggest that these stakeholders are satisfied with the current system—many offered ideas for improvement that are outlined above.

“maybe” and “possibly.” A few interviewees said directly that these positive implications could be achieved by other organizational improvements instead of a transfer. Potential positive implications included (most were mentioned by only one or two people):

- Help the commission be more active because they have more staff
- Allow (or force) re-examination of processes and identification of efficiencies
- Provide better information directly to Commissioners
- Eliminate any influence of the Commerce Deputy Commissioner over the advocacy and analysis functions
- Allow more flexibility in staffing
- Improve public perception and enhance credibility
- Clarify roles for the public if all regulatory matters were at the PUC and all other energy policy and programs were at the DER.

Staff within the PUC and Commerce offered few positive implications from a transfer of functions.¹³³ A few interviewees identified potential benefits that might transpire from transferring functions. For example (these were offered by one or two individuals):

- It may be easier to communicate with staff from the other agency if work processes are closely connected, such as processes within the environmental review and siting and routing processes.
- Staff may be more productive because they could develop skills and play both the advocacy and advisory role. Staff morale may also improve because of this development opportunity.
- There may be common interests among staff dealing with regional/federal matters and issues (FERC, MISO, etc.).

Cost implications

Most external interviewees were skeptical regarding whether transferring functions would reduce costs in any meaningful way, if at all. A few utility representatives explained that the costs of the regulatory process that are associated with the PUC and Commerce staff are negligible compared to their overall regulatory costs. A few external interviewees expressed hope that a transfer of functions would yield efficiencies and therefore reduce costs.

PUC and Commerce staff and leadership generally agreed that there would be no or minimal cost savings associated with a function transfer. They explained that any savings would likely to be small since the organizations have already combined a number of functions, such as the administration of dockets and billing for both agencies. Additionally, they asserted that there would still need to be organizational separation between advocacy and advisory functions, and they noted that there would still need to be staff to do the work that is required under statute and rule.

¹³³ Only individual interviewees were specifically asked to identify positive and negative implications: many PUC and Commerce staff were involved in group interviews.

Transparency implications

A few representatives of regulated entities indicated that transparency would suffer if functions were transferred, while others said it would be a non-issue. None of these entity representatives suggested that transparency would necessarily improve with a transfer.

A few other external stakeholders said that transferring functions could conceivably make the process clearer to the public. Others said it would probably make little difference.

PUC and Commerce interviewees generally agreed that the process would likely be less transparent to the public if the two functions were housed in the same organization. Interviewees said that the current organizational structure facilitates transparency, and that nothing would be gained in terms of transparency if functions were moved. Interviewees said that even with an organizational separation between advocacy and advisory roles, members of the public would wonder if there was truly separation.

Communication implications

Interviewees from a variety of perspectives raised concerns about communication if functions were transferred.

Several external interviewees from regulated entities, other state agencies, and other stakeholders worried that there would be a loss of information sharing and collaborative problem solving among stakeholders and parties if Commerce functions were moved. Other state agencies in particular expressed concern about a loss of knowledge transfer among agencies. If ex parte rules are applied in the same way they are now, staff that would then be at the PUC would be limited in their ability to communicate with external stakeholders or partners. Internal interviewees expressed similar concerns. The environmental review process would be especially hindered by the application of ex parte rules: staff that are now in DER-EERA need to communicate directly with affected individuals and other stakeholders as part of their review and analysis.

A few interviewees from inside and outside of the organizations said that there would be an unfortunate loss of information sharing across the DER if the advocacy functions were transferred. For example, State Energy Office technical staff often provide expertise in ERP analysis.

A few interviewees expressed concern about potential breach of ex parte rules if there were a merger. Even if there were an organizational wall, a few staff interviewees shared concerns of having both functions working under the same roof because staff would be “bound to talk about cases and the lines would get blurry.”

Loss of independence and overall fairness

Many interviewees from a variety of perspectives expressed concerns about loss of actual or perceived independence of the advocacy role if functions were transferred. Comments from staff interviewees revealed that many are concerned that the public would perceive the advocates as “having a backdoor” to the commission and that DER and PUC staff would influence each other too much by being housed in one location. Other interviewees talked about a concern that it would appear that the process was “stacking the deck” against utilities. Overall, many interviewees said that mingling the advocacy and

advisory roles would complicate matters and create a more litigious environment, create turmoil (or even “chaos”), and weaken both agencies’ functional roles.

Several interviewees representing regulated entities expressed concerns about the overall fairness of the process if functions were transferred. With both functions under one roof, it might appear that the advocacy function was given more weight in the commission’s decisions, or it might be hard to challenge an advocate’s position.

Other negative implications

Several agency staff and leaders offered other negative implications to a transfer of functions, including:

- Change and dramatic expansion of the PUC’s mission, especially if DER programs were moved¹³⁴
- Cost of organizational change, including moving expenses and loss of productivity
- Negative impacts on staff morale as the two agencies tried to merge work and cultures, under current workloads and stresses, without clear reason for doing so
- Weakened federal advocacy: PUC Commissioners have been reluctant to take strong positions on federal issues because these same issues may surface later in state proceedings. Commerce, however, is in a position to advocate at the federal level. If functions were transferred, that advocacy may be lost.

While not exactly a negative implication, a few interviewees representing regulated entities said that transferring functions would simply require the same thing to be done a different way—a change with no purpose.

¹³⁴ Interviewees noted that being a quasi-judicial, regulatory entity, the PUC is not structured to administer programs. One described these as being “out of scope” for the PUC.

Examining whether functions should be transferred

MAD considered all of the research gathered during this study to examine the key issue: whether there are cost savings and program efficiencies to be gained by transferring functions from the Division of Energy Resources to the Public Utilities Commission.¹³⁵

In short, the function transfer suggested by the legislation would not yield meaningful cost savings or program efficiencies. MAD's analysis is summarized below. Responses to key study questions are in the Findings section beginning on page 83.

Energy programs and policy functions

The energy programs and policies currently housed at Commerce have some connections with the PUC, but are generally distinct and separate. Transferring these functions would require a change in the PUC's mission and leadership expertise to include program administration and policy implementation. The programs include social service programs (e.g., Energy Assistance Program), renewable incentive programs (e.g., Made in Minnesota Solar), and programs for government entities (e.g., Local Energy Efficiency Program).

MAD's research did not reveal a problem with these policies or programs that would be solved by transferring functions.¹³⁶ Transferring all or some of these functions would, at best, simply move one set of employees from Commerce to the PUC. More likely, moving these functions would damage existing formal and informal connections, would require new connections to be built, and would strain PUC leadership.

CIP

The Conservation Improvement Program warrants additional discussion in this context. This function is not purely program administration because it involves reviewing and approving utilities' plans. Though it was not a significant topic in stakeholder interviews, neither representatives of regulated entities nor other stakeholders raised concerns with the existing interconnections between the PUC and Commerce (it is rare that the PUC is involved at all) or with the administration of the program itself.¹³⁷ While there is some intuitive logic to having a similar analytical/decision-making separation for the CIP as in other docketed matters, it is also not uncommon for program review or plan approval to occur in the same agency in other types of programs. Moving the CIP to the PUC would not yield cost savings or program efficiencies. Adding an additional PUC layer of decision making, without additional changes in the regulatory system, would add inefficiencies and time to the CIP process.

¹³⁵ MAD did not examine other possible organizational arrangements or evaluate the effectiveness of the programs.

¹³⁶ To emphasize a point and preemptively respond to a concern that may be raised by certain stakeholders: MAD did not examine the merits or effectiveness of the policies or programs that Commerce implements or advocates.

¹³⁷ This is not to suggest that all interviewees approve of the program itself.

Energy advocacy and analytical functions

There are significant areas of connections between the division and the commission on docketed matters. (These are described in the section beginning on page 46.)

A few external interviewees expressed great hopes that transferring functions would have overwhelmingly positive outcomes. But many more interviewees expressed significant concerns about a reorganization, including loss of transparency as the public and parties could not clearly differentiate between advocates and decision-makers, loss of support for the advocacy role or (conversely) too much influence for the advocacy role, and loss of advocacy and presence at the regional or federal level.

Many participants in this study indicated that an organizational wall would need to be raised, which would mean that a transfer would simply replicate existing work under a different organizational roof. Even if this were not true, without changes to the amount of work that must be done (i.e., without changes to the regulatory system itself), positions would not be eliminated in a transfer of functions. Cost savings are therefore not likely with a transfer of functions.

MAD's research shows areas for improvement in alignment and clarity in these functions, which are described in other sections of this report.¹³⁸ Interviewees described some possibilities for program efficiencies, such as aligned scheduling, and they offered ideas for improvement, such as focusing docket issues. These efficiencies could be achieved in the existing organizational structures at far less of a cost than restructuring in terms of disruption and staff time.

Telecommunications functions

Commerce currently houses two main telecommunication functions: analysis/advocacy and program administration. As noted above, program administration is not currently a significant area in the PUC's mission. There would be no obvious benefit to moving telecom program administration to the PUC. Though energy and telecom cases differ markedly in terms of typical complexity and content, there is a similar argument for maintaining separation of analysis/advocacy and decision-making. There are no program efficiencies or cost savings to be gained by moving the telecommunication functions to the PUC. Note, however, MAD recommends the agencies continue to review staffing needs as the regulatory environment changes (see page 87).

¹³⁸ Among them, the need for clarity about PUC analysts' role in adding to the case record or offering recommendations and clarity about whether EERA should be offering recommendations.

Findings and recommendations

Findings

Overall finding

The legislation requiring this study asked MAD to examine potential cost savings and program efficiencies that may result from transferring certain functions and staff of the division of energy resources in the Department of Commerce to the Public Utilities Commission.

MAD's research and analysis revealed that the function transfer suggested by the legislation would not yield meaningful cost savings or program efficiencies. This is not to suggest that the current organizations or systems are perfect. MAD identified several areas for possible improvements.

Answers to research questions

The Minnesota Legislature asked MAD to examine several specific topic areas. MAD framed those requirements in the form of questions to focus research and analysis. MAD's answers to the questions are below.

Functions of the Public Utilities Commission and Division of Energy Resources

Question: What are the functions of the commission and the division?

Answer: MAD examined the functions and roles of both organizations. Detailed information is in in the *Organizational Review* section of this report, beginning on page 35. Broadly (with exceptions noted elsewhere):

- For docketed matters: the commission is the decision maker and the division is the analyst, advocate, and enforcer of commission decisions and relevant Minnesota statutes.
- For energy and telecommunications programs and grants: the division is the program administrator.
- For consumer affairs for utility concerns and for most public outreach related to docketed matters: the commission is the responsible actor. The division may provide support and information.

Questions: When staff functions are compared, are there duplications? When management positions are compared, are there redundancies?

Answer: No. MAD's research and analysis indicates that there are areas of similarity and interconnection between the commission and division, but there are substantive distinctions between management roles and organization functions. The PUC and Commerce have already adopted shared administrative and technological services in areas where their functions connect. The eDockets system and shared invoicing are key examples. MAD's detailed analysis is on page 62. Though MAD did not find that there is duplication or redundancy, MAD's research identified several opportunities for improvements, which are outlined below.

Benefits and costs of transferring functions from the division to the commission

Question: If functions and staff were transferred from the division to the commission, would governmental decisions regarding energy be more transparent to the public?

Answer: No. The main decisions regarding energy that involve these two organizations are docketed matters before the PUC. As described on page 23, these processes are currently transparent to the public. Though there are some improvements to be made to facilitate good decision making and public understanding, transferring functions and staff would not lead to more transparency. Indeed, some study participants worried that there would be less transparency with a transfer.

Question: For those activities where the commission has the power to make decisions and the division has the duty to carry out the activities, would moving functions and staff make these connections more clear or functional?

Answer: No. The main activities that seem to be suggested by this legislative requirement are: (1) the division's enforcement of the commission's orders and (2) the environmental review process, where division staff are charged with conducting reviews and providing technical assistance to the commission. MAD did not identify problems associated with the division's enforcement of orders. The commission and division have been and continue to clarify roles and responsibilities, particularly regarding environmental review. Moving functions and staff from Commerce to the PUC would not necessarily—and certainly not automatically—make connections between these organizations clearer or more functional. Existing legal and process requirements would not become simpler or more streamlined through a reorganization alone. Opportunities for improvement related to role clarity are noted below.

Question: If functions transferred, could positions be eliminated without diminishing quantity or quality of work?

Answer: No. MAD's research determined that there were no areas of duplication or redundancy in staff functions or management roles. Many external stakeholders, including regulated entities, said that more staff resources are needed for energy regulatory functions. If functions were transferred and positions eliminated, without significant changes to regulatory requirements, MAD believes that the quantity or quality of work (or both) would suffer as staff attempted to address the challenges of reorganization while doing existing work with fewer staff resources. As MAD examined this question and the existing performance measurement approaches in place at the subject organizations, MAD identified opportunities for improvement, which are described below.

Question: If functions and staff were transferred from the division to the commission and if any redundant positions were eliminated, would there be a reduction in costs to state government?

Answer: No. MAD's research indicates that moving functions and staff from Commerce to the PUC, without significantly changing the regulatory system, would not change the amount of work staff and managers need to do. There would be additional costs to government associated with the transfer itself, such as moving expenses, lost productivity (at least temporarily), and organizational realignment.

Question: If functions and staff were transferred from the division to the commission, would there be a reduction in costs for regulated utilities?

Answer: No. MAD's research indicates that utility-born costs associated with the PUC or Commerce staff are not significant compared with other costs, and these costs are generally distributed across rate-payers. A few utility representatives explained that the costs of the regulatory process that are associated with the PUC and Commerce staff is negligible compared to their overall regulatory costs.

Question: Are there other benefits or costs to transferring functions and staff from the division to the commission?

Answer: Participants in this study identified many implications of transferring functions. The large majority were negative, but some were positive (implications are described beginning on page 77). MAD found that the likely negative implications, such as concerns about fairness and transparency of the regulatory process, communication challenges, and significant change in mission for the PUC, outweigh the possible positive implications.

Other relevant findings

As MAD was answering the identified research questions, other important findings emerged.

MAD's research into how other states organize these types of functions shows that there are many approaches to organizing energy functions. Quasi-judicial functions are uniformly found in an independent commission. States take varied approaches to organizing consumer or ratepayer advocacy functions. Energy-related programs and telecommunications programs are housed in and administered by a variety of agencies in different states, indicative of the cross-agency nature of these programs' missions.

Minnesota has evaluated or attempted several organizational structures to support energy policy and regulation over the past several decades. These studies and the legislative call for *this* study indicate that Minnesota's policymakers are not universally settled on where these functions should be housed.

Experts on organizational change urge caution in changing an organization's structure. Reorganizations take substantial time and resources, and distract attention from the organization's mission. The first critical step is to define the problem and then determine if structural change is the best solution.

Minnesota statutes require utility regulators to achieve policy objectives that are, at best, in tension with one another: Objectives such as reliable or universal services, reasonable rates, environmental protection, infrastructure stability, and corporate stability may sometimes be in conflict. These tensions and the need for procedural fairness have led to a complex regulatory system.

The Department of Commerce plays a unique role in the Public Utilities Commission's work. It is an intervenor and advocate in docketed matters, a technical advisor, a builder of the evidentiary record, and an enforcer of Minnesota statutes and the commission's orders. These connections are established in practice and in statute. Commerce is not an intervenor or party in the same ways that a regulated utility or advocacy group would be.

Energy policy development and energy industries are in a dynamic state. Subject matter experts describe large-scale policy initiatives, new stakeholders, and market changes as bringing about transformation in the energy sector. The energy regulatory environment, however, is changing at a much slower pace. Though there was not uniform agreement about the direction regulation should take (and this was not the subject of MAD's study), interviewees from a variety of sectors argued that significant changes will be necessary in energy regulation as this sector changes.

The telecommunication industry is changing as well, with the result that fewer companies are regulated under existing laws. In recent years, the number of staff responsible for telecommunication work has decreased, and the PUC intends to shift another analyst position soon. There are legal questions regarding whether more companies (cable companies, in particular) should be covered under telecommunication regulations. If present trends continue, however, the need for dedicated telecommunication regulatory staff will continue to decrease.¹³⁹

Opportunities for improvement

MAD's research and analysis identified existing challenges and areas of opportunity for the PUC and Commerce.

Role clarification: MAD's research identified needs for clarification of roles and responsibilities in key areas:^{140, 141}

- The PUC's role in record and recommendation development: Many interviewees (not in the PUC) expressed concerns about how PUC staff present new information or options in briefing papers that were not supplied by parties.
- The environmental review process: The recent MOU has been helpful in clarifying roles for technical assistance and environmental review for EERA and the PUC, but there remain areas for further clarification, such as the role of other parts of Commerce and the overall public input process.

Ex parte restrictions and open meeting requirements can be improved or clarified. Significant differences of opinion exist on what counts as prohibited ex parte communication, and there may be opportunities for decision making to be improved with different approaches to ex parte restrictions and open meeting requirements (some of which may require changes in statute or rule).

Performance measurement can be improved. Though both organizations have made efforts to measure and report on their performance, there are opportunities for refinement and improvement. For example, data in the eDockets system could allow agencies to conduct detailed analysis of process flow and identify bottlenecks or other problems. Both agencies have established some performance

¹³⁹ MAD did not identify trends that suggest that the need for telecommunication *program staff* will change.

¹⁴⁰ Some participants also called for clarification (or elimination) of the Attorney General's role in utility matters. That office was not a subject of MAD's research, and there is not sufficient information to make a finding on this topic.

¹⁴¹ This is not to suggest that either PUC or Commerce is acting outside of their scope or mandate in these areas—clarification of these roles and responsibilities will help staff and external stakeholders understand distinctions and connections.

measurement approaches, but they could benefit from a more comprehensive approach to performance measurement.

Interviewees offered ideas that could streamline or otherwise improve the process for docketed matters, perhaps with relatively small statute, rule, or administrative changes. These ideas warrant continued consideration by the PUC and Commerce:

- Develop a joint website to explain docketed process and participation options
- Establish a streamlined process for handling routine regulatory cases that come before the commission or for making minor changes to existing plans, such as delegating authority to the executive secretary
- Work more closely with Commerce on scheduling proceedings so that Commerce can allocate staff efficiently
- Further encourage settlement of cases and consider an external mediation approach for energy and telecom matters
- Involve commissioners earlier in dockets to define scope and limit issues
- Consider what other non-disputed issues could be moved to the consent calendar.

Recommendations

Overall recommendation

MAD recommends that functions not be transferred from the division to the commission.

Long-term recommendation

Instead of moving functions from the division to the commission, MAD recommends taking a phased approach to improvement.

Ultimately, the state should redefine or restate state objectives for energy policy and regulation, ensure that statutes and rules lead to those objectives, and structure state organizations accordingly.

Energy utilities, regulators, and other stakeholders agree that significant changes are needed in Minnesota's energy system and regulatory environment.^{142,143} Applying the principle that form should follow function, MAD recommends that any large organizational changes to the PUC or Commerce (or energy functions in general) be based on agreed-upon strategies to improve the state's energy regulatory system.

¹⁴² Several interviewees for this study expressed the view that the organizational questions posed by this study were not priorities—the real focus should be on preparing Minnesota for coming transformations in the energy sector.

¹⁴³ In addition to interviews conducted for this study, MAD consulted the e21 report, which offers consensus recommendations on moving towards reform. See: Great Plains Institute. "e21 Initiative," December 2014, accessed December 15, 2015

http://www.betterenergy.org/sites/www.betterenergy.org/files/e21_Initiative_Phase_I_Report_2014.pdf.

To that end, MAD recommends that the PUC and Commerce continue to participate in or lead efforts to make positive changes to the regulatory environment. Since the PUC and Commerce are not independent actors in this work, MAD recommends that the PUC and Commerce, with input from stakeholders, develop and adopt a joint plan to move these issues forward.¹⁴⁴

Regarding telecommunications, MAD recommends that the organizations not invest in organizational change and strategy development unless they identify changes that will increase workload beyond what is suggested by current trends.¹⁴⁵ The PUC and Commerce leaders should continue to evaluate the appropriate level of telecommunication staff and adjust the staff and supervisory make-up accordingly.

Near-term recommendations

The recommendation described above is no small task, and could take years to implement. MAD recommends that the PUC and Commerce take steps in the near term that may yield significant improvements with relatively limited effort.

Role clarity: MAD recommends that PUC and Commerce leaders and staff collaborate to develop or revise memoranda of understanding (or other explanatory documents) to provide better clarity in roles in docketed matters, particularly in the role of PUC staff in adding to the case record and for PUC and Commerce in the environmental review process generally. MAD also recommends that the organizations develop plain language versions of the existing MOU and new MOUs or other documents to help stakeholders and the public understand roles.

Ex parte communication: MAD recommends that the PUC and Commerce develop guidance for staff, leadership, and the public on ex parte communication and reevaluate whether applications of this rule have negatively affected PUC and Commerce communication.

Improvement to processes: MAD recommends that the PUC and Commerce examine ways to streamline and improve processes within the existing framework with a minimum amount of effort and statutory change. Some examples include:

- Develop approaches to scheduling cases that will allow Commerce to deploy its analytical staff efficiently¹⁴⁶
- Consider whether some matters would benefit from early intervention by the PUC in defining critical issues, delegation to a single commissioner for resolution, or encouraging settlement
- Develop policy or rule to allow PUC staff to share information on dockets or topics with commissioners simultaneously and for commissioners to ask questions (but not make decisions). A summary of the session could be entered into the record to ensure transparency.

¹⁴⁴ This could be done through expansion of PUC's current work in generic dockets, through the e21 process, or through some other means.

¹⁴⁵ Telecommunication employees should be involved in the planning efforts described above. However, the potential for decline in regulatory workload means that strategic or organizational focus on telecom is not warranted at this time.

¹⁴⁶ Commerce's unique role in the process and its status as a state government agency may mean that it is appropriate to treat Commerce differently than other parties in scheduling matters.

MAD recommends that the PUC evaluate whether there are ways to do this within existing law and policy or whether an exception would be needed.

Performance measurement: MAD recommends that the PUC and Commerce jointly conduct analysis of processes and develop performance measurements that will lead to improvements.

Continue to improve public accessibility and outreach. MAD recommends that the PUC and Commerce jointly develop a one-stop website to explain processes to the public. (MAD notes that both agencies have made recent efforts to improve public access to information on dockets and process.)

Appendix A - Minnesota Statutes

This appendix provides an overview of Minnesota Statutes and Rules.

Minnesota Statutes §216A – Public utility regulators

The first of several statutes related to utilities, §216A specifies the roles and duties of the Public Utilities Commission and the Department of Commerce. The statute sets out ex parte and conflict of interest standards for the commission, provides some options for flexibility in process for the commission (such as delegation of functions to subcommittees or lead commissioners), specifies powers of the commission and department, and allows cooperative arrangements between the commission and department.

Though the Attorney General’s Office is not a subject of this study, some additional context is needed. Minnesota Statutes §8.33 outline the rights and duties of that office in utilities matters before the PUC. The office is responsible for representing the interests of small business and residential customers, and it has the right to intervene in cases involving rates and adequacy of services at the PUC and in related civil actions.

Minnesota Statutes §216B – Public utility regulations

Minnesota Statutes §216B set out the state’s policy and regulatory framework related to energy utilities. The overarching policy statement provides good context for the interconnected (and sometimes competing) interests that the state attempts to balance in utility regulation:

It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with *adequate and reliable services at reasonable rates*, consistent with the *financial and economic requirements of public utilities* and their *need to construct facilities* to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers. (Minnesota Statutes 2015 §216B.01; emphasis added)

The statute covers these primary areas: rates, standards, and practices, protections for residential consumers (including the Cold Weather Rule), requirements for hearings and other commission procedures, incentives and requirements for conservation improvement programs, and requirements for certificates of need for power facilities. The statute also establishes distinctions between investor owned utilities, municipalities, and cooperative utilities.

Minnesota Statutes §216C – Energy planning and conservation

This statute addresses the connected issues of conserving energy and planning for the state's energy needs. Most of the duties are assigned to the Department of Commerce. The statute establishes requirements and incentives for conservation and renewable energy, requirements that information be provided to consumers, programs and policies for government buildings, and financial assistance to support conservation. Commerce is required to file various reports on its analysis of energy planning and infrastructure needs.

Minnesota Statutes §216E – Electric power facilities

The Minnesota Power Plant Siting Act sets out requirements for high voltage power lines and large electric power generating plants, including certain solar generation facilities. As with other utilities regulations, there are interconnected policy interests involved:

The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an *orderly manner* compatible with *environmental preservation* and the *efficient use of resources*. In accordance with this policy the commission shall choose locations that minimize adverse human and environmental impact while insuring continuing *electric power system reliability and integrity* and insuring that *electric energy needs are met and fulfilled* in an orderly and timely fashion. (Minnesota Statutes 2015 §216E.02, emphasis added)

The statute sets out Commerce's duties in this area, including conducting environmental review, providing technical expertise and assistance to the commission, and engaging other state agencies in this process. Notably, the statute specifies that Commerce is not authorized to consider the need for a facility when conducting required analysis under the statute. This is in contrast to the department's other duties related to energy planning in §216B.

Minnesota Statutes §216F – Wind energy

A comparatively short statute, §216F outlines when a wind energy conversion system must have a site permit from the commission. In general, only large wind systems come under the commission's jurisdiction.

Minnesota Statutes §216G – Pipelines

This statute establishes requirements for siting and construction of pipelines, and it describes specific requirements for public meetings and notice.

Minnesota Statutes §237 – Telecommunications

The state's regulatory approach on telecommunication services utilities is intended to include consideration of these interconnected and sometimes conflicting goals:

(1) supporting *universal service*; (2) maintaining *just and reasonable rates*; (3) encouraging *economically efficient deployment of infrastructure* for higher speed telecommunication

services and greater capacity for voice, video, and data transmission; (4) encouraging *fair and reasonable competition* for local exchange telephone service in a competitively neutral regulatory manner; (5) maintaining or improving *quality of service*; (6) promoting *customer choice*; (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and (8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation. (Minnesota Statutes 2015 §237.011; emphasis added, line breaks removed)

To accomplish these goals, the statute specifies how telephone, telegraph, and telecommunications companies may operate in Minnesota, including how rates can be set, what services are considered competitive or noncompetitive, what protections for consumers must be upheld, how companies must deal with each other on interconnection issues, and what reports companies must submit to the state. Telecommunications programs for people with disabilities are established, with responsibilities assigned to the Department of Human Services and the Department of Commerce outlined. The statute provides administrative procedures for telecommunication matters before the Public Utilities Commission.

Appendix B - Federal Context

Federal regulation and regional connections

Minnesota's regulatory framework exists within an interconnected set of federal laws and regulation and regional approaches to utility management. A few examples: the Environmental Protection Agency's Clean Power Plan, the Federal Communications Commission, and the Public Utility Regulatory Policies Act. Most relevant to this study are the bodies that the PUC and Commerce participate in or advocate to: the Federal Energy Regulatory Commission (FERC) and the Midcontinent Independent System Operator (MISO).

These organizations' activities have significant impact on Minnesota utilities and consumers, such as establishing the authorized rate of return for transmission facilities and coordinating the operations of electricity and natural gas utilities.

Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (FERC) is an independent agency with the mission to "[a]ssist consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means."¹⁴⁷ FERC is given statutory authority by the Federal Power Act, Public Utility Regulatory Policies Act, Natural Gas Act, and Interstate Commerce Act, among others, to regulate interstate transmission and wholesale of energy in the forms of electricity and natural gas. FERC also regulates interstate transportation of oil via pipeline, has the authority to protect the reliability and cybersecurity of bulk power systems and to enforce regulatory requirements. The President of the United States appoints commissioners and a chairperson to a bipartisan body that votes on orders that determine FERC's course of action.¹⁴⁸ State public utilities commissions have the right to intervene in FERC proceedings, and state public advocates and others¹⁴⁹ can also intervene.

Both the PUC and Commerce sometimes intervene and participate in FERC proceedings, separately or jointly. Commerce sometimes works with other public consumer advocates to intervene in FERC, and the PUC participates at FERC as a member of regional or national associations, such as the Organization of MISO States and the National Association of Regulatory Utility Commissioners.

Midcontinent Independent System Operator

The Midcontinent Independent System Operator (MISO) is an independent interregional coordinating group with membership from Minnesota and 14 other states. MISO's website¹⁵⁰ articulates that their

¹⁴⁷ Federal Energy Regulatory Commission. "About FERC," accessed December 7, 2015

<http://www.ferc.gov/about/about.asp>.

¹⁴⁸ Federal Energy Regulatory Commission. "Strategic Plan, March 2014," accessed December 7, 2015

<http://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf>, accessed on December 7, 2015.

¹⁴⁹ Federal Energy Regulatory Commission. "Frequently Asked Questions," accessed December 7, 2015

<http://www.ferc.gov/resources/faqs/active-int.asp>

¹⁵⁰ MISO. "What We Do," accessed November 24, 2015

<https://www.misoenergy.org/WhatWeDo/Pages/WhatWeDo.aspx>.

purpose is to “strengthen the reliability of the region’s interconnected transmission network, bringing benefits to all consumers of electricity.” MISO members engage in regional planning to build a stronger, more reliable electric grid for the future. MISO serves as the Reliability Coordinator for the region, which is required by the North American Reliability Corporation. The Reliability Coordinator has certain defined responsibilities to monitor and ensure operation reliability of the power systems.¹⁵¹

A few designated PUC and Commerce staff¹⁵² are involved in MISO and advocate for Minnesota’s interests in regional matters. MISO meetings are held quarterly, but staff also participate in workgroups in the interim.

¹⁵¹ Regional Transmission Organization. “Reliability Plan, June 1, 2014,” accessed on November 24, 2015 <https://www.misoenergy.org/Library/Repository/Procedure/MISO%20Reliability%20Plan.pdf>.

¹⁵² Commerce’s statutory role for advocating on regional and federal issues is contained in Minnesota Statutes §216A.07, subdivision 3A.

Appendix C - Types of utilities

Overview

An important distinction in Minnesota's approach to regulating utilities is how differently owned utilities are regulated at different levels of intensity.¹⁵³ Energy utility companies take three different forms: investor-owned utilities, municipally owned utilities, and cooperatives. These three forms are subject to different regulatory systems. As explained by a subject matter expert, "As a general rule, the Public Utilities Commission has regulatory authority over for-profit utilities providing services directly to retail customers in the state, as well as not-for-profit entities that have opted for comprehensive regulation by the Public Utilities Commission."¹⁵⁴ Broadly, though municipal and cooperative utilities must file some plans and reports with the PUC or Commerce, they are not as closely regulated as investor-owned utilities.

Investor-owned utilities

Investor-owned utilities are private for-profit companies that are "financed by a combination of shareholder equity and bondholder debt."¹⁵⁵ These companies hold a fiduciary responsibility to their shareholders. Minnesota's investor-owned electric, natural gas, and telecommunications utilities are subject to regulation by the Public Utilities Commission. In Minnesota, there are five electric investor-owned utilities and six natural gas investor-owned utilities.¹⁵⁶

Investor-owned electric utilities serve more than 1.4 million customers.¹⁵⁷ It is also important to note that Minnesota's five investor-owned utilities are vertically integrated, meaning they "generate, transmit, and distribute their own electricity."¹⁵⁸

Municipally owned utilities

Minnesota's municipal utilities, often referred to as "munis," are nonprofit enterprises that are governed by the city council or appointed utility commission, and regulation mostly takes place at the

¹⁵³ Minnesota statutes also provide different types of regulation for different types of telecommunication utilities, but these distinctions are not as relevant in the current market.

¹⁵⁴ Bull, Mike. House of Representatives, Research Department. *The Minnesota Public Utilities Commission and Related Agencies: Structure and Functions*. (St. Paul, MN): Research Department, Minnesota House of Representatives, 2002.

¹⁵⁵ Regulatory Assistance Project. "Electricity Regulation in the US: A Guide." March 2011, 9.

¹⁵⁶ Bull, Mike. House Research Short Subjects, October 2002, "Regulation of Energy Utilities in Minnesota," accessed December 15, 2015 <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssegutil.pdf>.

¹⁵⁷ Minnesota Municipal Utilities Association. "About MN's Municipal Utilities," accessed December 15, 2015 <https://www.mmua.org/about/about-mns-municipal-utilities>.

¹⁵⁸ Baker, Karen and Steve Hinze. Minnesota House of Representatives Research Department, Information Brief. "Primer on Minnesota's Property Taxation of Electric Utilities," October 2006. Accessed December 15, 2015 <http://www.house.leg.state.mn.us/hrd/pubs/pruttax.pdf>.

local level.¹⁵⁹ There are two types of munis: distribution munis, which are munis that provide retail electricity to consumers, and municipal power agencies, which are munis that generate and transmit the electricity for distribution munis.¹⁶⁰

Minnesota Statutes §216B.025 allow municipalities the choice to subject themselves to regulation by the Public Utilities Commission. In order to make themselves subject to regulation, the board or other governing authority must make a resolution to such effect and file it with the Public Utilities Commission. In 2002, there were 31 natural gas distribution munis,¹⁶¹ and 125 electric munis in 2015.¹⁶²

Cooperatives

According to the Minnesota Rural Electric Association, there are 50 electric cooperatives¹⁶³ governed by their own boards of directors.¹⁶⁴ Although cooperatives are nonprofits, they are allowed to make a margin on their sales.¹⁶⁵ Like munis, cooperatives are not vertically integrated, and they are structured in a similar manner, with distribution cooperatives that provide the retail service, and generation and transmission cooperatives that generate and transmit the power.¹⁶⁶

Minnesota Statutes §216B.026-27 relate to the regulation of cooperatives and provide cooperatives the opportunity to self-elect regulation by the Public Utilities Commission. Electric cooperatives serve approximately 741,000 Minnesotans.¹⁶⁷

¹⁵⁹ Minnesota Municipal Utilities Association. "About MN's Municipal Utilities," accessed December 15, 2015 <https://www.mmua.org/about/about-mns-municipal-utilities>.

¹⁶⁰ Baker, Karen and Steve Hinze. Minnesota House of Representatives Research Department, Information Brief. "Primer on Minnesota's Property Taxation of Electric Utilities," October 2006. Accessed December 15, 2015 <http://www.house.leg.state.mn.us/hrd/pubs/pruttax.pdf>.

¹⁶¹ Bull, Mike. House Research Short Subjects, October 2002, "Regulation of Energy Utilities in Minnesota," accessed December 15, 2015 <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssegutil.pdf>.

¹⁶² Minnesota Municipal Utilities Association. "About MN's Municipal Utilities," accessed December 15, 2015 <https://www.mmua.org/about/about-mns-municipal-utilities>.

¹⁶³ Minnesota Rural Electric Association. "What We Do," accessed December 15, 2015 <http://www.mrea.org/about-mrea>.

¹⁶⁴ Minnesota Municipal Utilities Association. "About MN's Municipal Utilities," accessed December 15, 2015 <https://www.mmua.org/about/about-mns-municipal-utilities>.

¹⁶⁵ Ibid

¹⁶⁶ Baker, Karen and Steve Hinze. Minnesota House of Representatives Research Department, Information Brief. "Primer on Minnesota's Property Taxation of Electric Utilities," October 2006. Accessed December 15, 2015 <http://www.house.leg.state.mn.us/hrd/pubs/pruttax.pdf>.

¹⁶⁷ Minnesota Municipal Utilities Association. "About MN's Municipal Utilities," accessed December 15, 2015 <https://www.mmua.org/about/about-mns-municipal-utilities>.

Appendix D - Other state approaches

This appendix provides additional information on selected states' approaches to organizing energy and regulatory functions.

Maryland

The Maryland Office of People's Counsel (OPC) was created in 1924 as an independent office that advocates before the Maryland Public Service Commission on behalf of residential utility customers. The People's Counsel is appointed by the Attorney General and confirmed by the state senate. However, the focus of this illustrative example of a different regulatory system is not the residential advocacy function but the siting and routing environmental analysis function that is conducted by the Maryland Department of Natural Resources.

Environmental planning and analysis

It is interesting to note that in Maryland, the environmental analysis/siting and routing regulatory function is housed neither in its Public Service Commission nor its Office of People's Counsel, but in its Department of Natural Resources.

The Power Plant Assessment Division of the Maryland Department of Natural Resources was created in 1971 to conduct environmental research, monitoring, and assessments "to evaluate and minimize the environmental effects of power plants without imposing unreasonable costs on the production of electricity."¹⁶⁸ As part of its work, the Power Plant Assessment Division makes recommendations "related to the design, construction, and operation of power plants" that are necessary to protect the environment and it "provides a continuing program for evaluating electric generation issues and recommending responsible, long-term solutions."¹⁶⁹ This office provides a "framework for the comprehensive review of all electric power issues with the goal of balancing need, cost, and impacts."¹⁷⁰ Funded by an environmental surcharge that is assessed on electricity ratepayers, the Power Plant Research Program has published more than 700 reports on new and existing power facilities, as well as ongoing evaluations on topics such as acid mine drainage, radioactivity, ozone attainment, and industry deregulation since 1971.

Citizens Utility Board of Wisconsin

The Citizens Utility Board of Wisconsin was created as an independent residential and small business utility advocate in 1979 by an act of the Wisconsin Legislature to "...give residential and small business utility ratepayers a voice before the Public Service Commission."¹⁷¹ Not originally organized as a

¹⁶⁸ Maryland Manual On-Line. "Department of Natural Resources," accessed December 15, 2015

<http://msa.maryland.gov/msa/mdmanual/21dnr/html/21agen.html>

¹⁶⁹ Maryland Department of Natural Resources. "Power Plant Research Program," accessed December 15, 2015

<http://dnr2.maryland.gov/pprp/Pages/description.aspx>.

¹⁷⁰ Ibid

¹⁷¹ Citizens Utility Board of Wisconsin. "Mission," Accessed December 15, 2015

<http://www.wiscub.org/about#mission>.

nonprofit, the Citizens Utility Board reorganized as a 501(c) 3 due to a 1986 United States Supreme Court decision that impeded its ability to attract members and fundraise.¹⁷²

As do many nonprofits, the Citizens Utility Board solicits memberships, has a board of directors, and receives private donations. Its website articulates its mission as follows:

- “Provide Public interest legal services to ensure effective and democratic representation of residential and small business utility customers before the legislature, regulatory agencies, and the courts
- Advocate for reliable affordable, and sound utility service
- Educate consumers on utility service through the preparation, compilation, analysis, and dissemination of information and resource materials relating to utility regulation and public energy and telecommunications policy.”¹⁷³

Housing the residential and small business utility ratepayer advocacy function in an independent nonprofit is relatively unique. Illinois¹⁷⁴ is the only other state MAD found that employs this structure. The Citizens Utility Board is not required to participate in all cases before the Public Service Commission, and it is unclear as to what percentage of cases in which they intervene.

The Citizens Utility Board has three major sources of revenue: intervener reimbursement, donations from its members, and some state grants.¹⁷⁵ However, this past spring a legislative committee recommended, against the advice of the Wisconsin Public Service Commission, that the Wisconsin Legislature end a \$300,000 annual grant, calling into question how effecting the organization might be in the future.^{176,177}

South Carolina Office of Regulatory Staff

The South Carolina Office of Regulatory Staff was established by the South Carolina Legislature in 2004 and tasked with many of the non-adjudicative functions that were formerly housed in the South Carolina Public Service Commission.¹⁷⁸ In its creating statute, the Office of Regulatory Staff was mandated to be a party to all “filings, applications, or proceedings before the commission” and represent the public interested as defined by the balancing of these three priorities:

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ Citizens Utility Board. Accessed December 15, 2015 <http://www.citizensutilityboard.org>.

¹⁷⁵ Wisconsin Eye. “Newsmakers: Funding Citizens Utility Board,” accessed December 15, 2015 <http://www.wiseye.org/Programming/VideoArchive/EventDetail.aspx?evhdid=9796>.

¹⁷⁶ Urban Milwaukee. “Republicans Target Utility Fighter CUB,” accessed December 15, 2015 <http://urbanmilwaukee.com/2015/05/04/the-state-of-politics-republicans-target-utility-fighter-cub>.

¹⁷⁷ Journal Sentinel. “Business group, CUB debate effort to cut funding,” accessed December 15, 2015 http://www.jsonline.com/business/business-group-cub-debate-effort-to-cut-funding-b99490356z1-301627371.html?subscriber_login=y

¹⁷⁸ South Carolina Office of Regulatory Staff. “About Us,” accessed December 15, 2015 <http://www.regulatorystaff.sc.gov/aboutus/Pages/default.aspx>.

- “Concerns of the using and consuming public with respect to public utility services, regardless of the class of customer
- Economic development and job attraction and retention in South Carolina
- Preservation of the financial integrity of the state’s public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.”¹⁷⁹

This emphasis on advocacy “regardless of the class of consumer” is interesting to note because many states rely on the services of an attorney general’s office who may only be charged with protecting residential and small business customers. The New Jersey Division of Rate Counsel takes a similar approach, advocating on behalf of all classes of ratepayers on cases before the New Jersey Board of Public Utilities.¹⁸⁰ South Carolina’s Office of Regulatory Staff also takes an active role in ensuring and monitoring compliance with South Carolina Public Service Commission orders.¹⁸¹

¹⁷⁹ South Carolina Legislature. “South Carolina Code of Laws,” accessed December 15, 2015

<http://www.scstatehouse.gov/code/t58c004.php>.

¹⁸⁰ Division of the Rate Counsel, State of New Jersey. “Learn About the Division,” accessed December 15, 2015

<http://www.nj.gov/rpa/about/>.

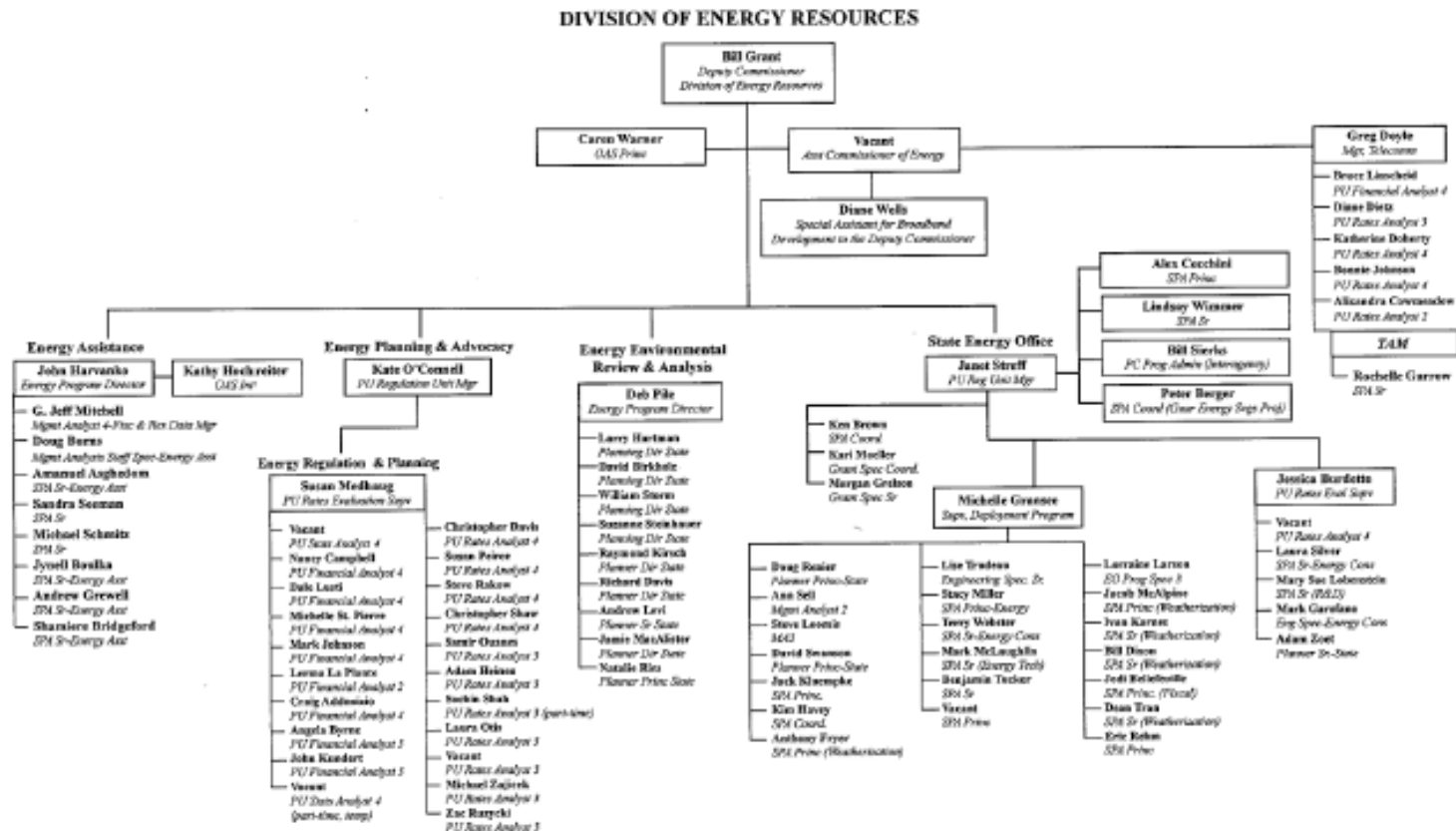
¹⁸¹ Office of Regulatory Staff, South Carolina. “About Us,” accessed December 15, 2015

<http://www.regulatorystaff.sc.gov/aboutus/Pages/default.aspx>.

Appendix E - Organizational charts

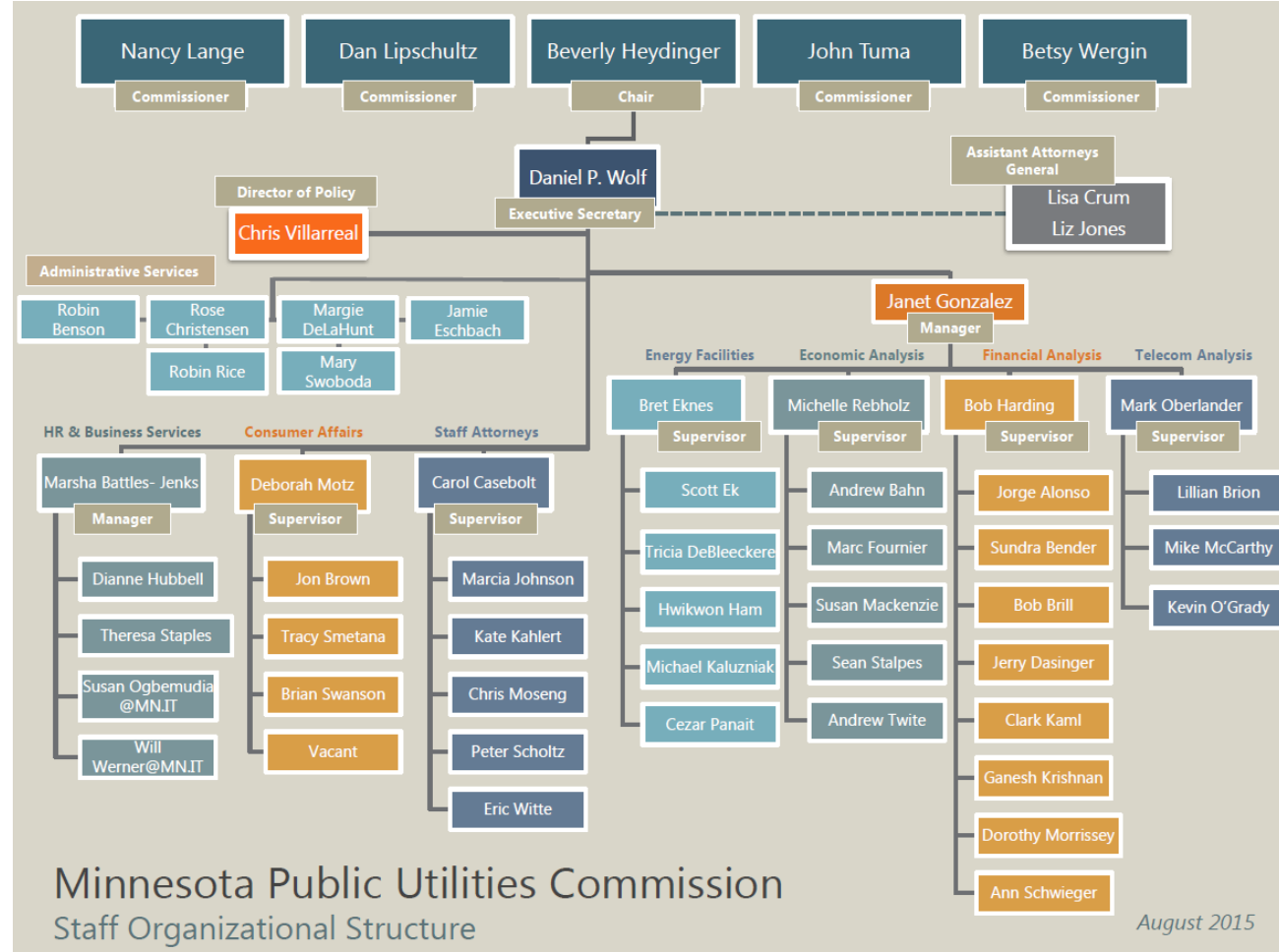
Commerce Division of Energy Resources

Note: working position titles and unit names may be different than those shown here



R: 09/16/2015

Public Utilities Commission



Appendix F – Memorandum of Understanding

The following is the Memorandum of Understanding between PUC and Commerce related to technical assistance and environmental review.

MEMORANDUM OF UNDERSTANDING BETWEEN THE MINNESOTA PUBLIC UTILITIES COMMISSION AND THE MINNESOTA DEPARTMENT OF COMMERCE

I. PURPOSE

This Memorandum of Understanding (MOU) between the Minnesota Public Utilities Commission (Commission) and the Minnesota Department of Commerce (Department) establishes the terms and conditions under which the Department will provide technical assistance and expertise to the Commission and share resources with the Commission under Minn. Stat. § 216E.03, subd. 11.

II. BACKGROUND

During the 2005 legislative session, the Minnesota Legislature transferred from the Environmental Quality Board (EQB) to the Commission, among other duties, the following siting and routing responsibilities: a) issuing site permits for large electric generating plants under Minn. Stat. § 216E; b) issuing site permits for large wind energy conversion systems under Minn. Stat. § 216F; c) issuing route permits for high-voltage transmission lines under Minn. Stat. § 216E; and d) issuing route permits for pipelines under Minn. Stat. § 216G.

In addition, the 2005 legislation transferred the environmental review responsibilities associated with applications for site and route permits – and the EQB staff who had been performing it – to the Department of Commerce.¹⁸²

The legislation also directed the Department to provide to the Commission “technical expertise and other assistance,” including “the sharing of power plant siting and routing staff and other resources as necessary....”¹⁸³ It authorized the two agencies to enter into an interagency agreement setting the terms of this assistance and sharing of resources, should either agency deem it necessary.¹⁸⁴

After eight years of informal cooperation, the Commission and the Department deem it necessary to enter into this agreement to clarify and formalize their roles and responsibilities.

¹⁸² Minn. Stat. §§ 216E.03, subd. 5; 216E.04, subd. 5; Laws 2005, c. 59, art. 3, § 17.

¹⁸³ Minn. Stat. § 216E.03, subd. 11.

¹⁸⁴ *Id.*

III. GENERAL ROLES AND RESPONSIBILITIES

The Commission acts on applications for site and route permits based on evidentiary records developed by the applicants, the Department, intervenors, and members of the public.

The Department provides technical expertise and assistance to the Commission and prepares the environmental review documents required in siting and routing cases. In providing technical expertise and assistance, the Department oversees the development of the environmental review document and provides its own analysis and recommendations, at points in the process as requested by the Commission.

In preparing the environmental review documents, the Department functions as the “responsible governmental unit” (RGU) under the Minnesota Environmental Policy Act and related regulations.¹⁸⁵ Besides preparing the environmental review document, the RGU performs related tasks, including scoping meetings and coordination of advisory task forces when requested.

The Department has assigned all duties transferred to it under the 2005 legislation to a specialized unit, the Energy Environmental Review and Analysis Unit, or its successor.

IV. SPECIFIC ROLES AND RESPONSIBILITIES

A. Completeness Review and Determining Procedural Framework – The Department will file comments in response to Commission notices seeking comments on the completeness of permit applications and the appropriate procedural framework for acting on them.

B. Environmental Review

- 1. Conduct of Review** – As the Responsible Governmental Unit (RGU) under the Minnesota Environmental Policy Act, the Department will continue to independently manage all statutorily required environmental reviews for applications for site and route permits under Minn. Stat. Chapters 216E, 216F, and 216G.
- 2. Developing Site and Route Alternatives** – As RGU, the Department will submit the list of alternative sites and routes it intends to examine under Minn. R. 7850.2500 and 7850.3700 before it issues its scoping decision, to permit the Commission to identify specific sites and routes to be examined.
- 3. Engaging Other Agencies** – As RGU, the Department will consult as necessary with other state and federal agencies with relevant expertise, such as the Minnesota Department of Natural Resources, the Minnesota Department of Transportation, and the U.S. Fish and Wildlife Service, and will ensure that their correspondence, comments and analyses, as appropriate, are promptly entered into the record.

¹⁸⁵ Minn. Stat. Chapter 116D; Minn. R. Chapter 4410.

4. **Updating Evidentiary Record** – As RGU, the Department will file public comments received during environmental review or pertaining to environmental review as soon as possible following the end of the applicable comment period.
5. **Timing of Process** – The Commission and Department will conduct their processes consistent with the Commission's duty to meet statutory deadlines for final action on applications for site and route permits under Minn. Stat. Chapters 216E, 216F, and 216G.

C. Review on the Merits

1. **Contested Case Proceedings** – The Commission will refer site and route permit cases involving contested material facts to the Office of Administrative Hearings (OAH) for public hearings and evidentiary development through contested case proceedings. Commission staff will enter a site or route permit template into the record at the time of application acceptance. In these cases, when the Department files a draft of the applicable environmental review document, it will also file an initial technical analysis of the record, including an initial analysis of the following issues and factors:
 - a. the proposed project's compliance with applicable statutes and rules;
 - b. an analysis of the feasibility of each alternative site or route examined with respect to the factors to be considered in designating a site or route;
 - c. a comparison of the human and environmental impacts of the proposed project and the impacts of the alternatives;
 - d. the Department's conclusions regarding relative impacts of all routes or sites studied based on the factors set forth in statute and rule;
 - e. any permit conditions, permit modifications, or mitigation measures to eliminate or minimize adverse impacts and to meet required statutory, regulatory, or public-interest requirements.

The Department's analysis of relative impacts or merits will examine each alternative in relation to all other alternatives. It will identify alternatives with fatal flaws and ones with common or similar impacts relative to the factors. Where factors differ among alternatives, it will generally group the alternatives, identifying those needing no mitigation, those with negative impacts that would need mitigation, and those with unavoidable impacts that cannot be mitigated.

The Department may update and revise its analysis and shall file the final environmental review document during the comment period(s) established by the Administrative Law Judge.

2. **Full-Process Pipeline Contested Case Proceedings** – The Commission will refer full-process pipeline route permit cases involving contested material facts to the Office of Administrative Hearings (OAH) for public hearings and evidentiary development through contested case proceedings. Commission staff will enter a route permit template

into the record at the time of application acceptance. In these cases, the Department will administer the route proposal development process pursuant to MR 7852.1400 and file with the Commission routes for its consideration for public hearing. Prior to the hearing, the Department will prepare and file the comparative environmental analysis document, and it will also file an initial technical analysis of the record, including an initial analysis of the following issues and factors:

- a. the proposed project's compliance with applicable statutes and rules;
- b. an analysis of the feasibility of each alternative routes examined with respect to the factors to be considered in designating a site or route;
- c. a comparison of the human and environmental impacts of the proposed project and the impacts of the alternatives;
- d. the Department's conclusions regarding relative impacts of all routes studied, based on the factors set forth in statute and rule;
- e. any permit conditions, permit modifications, or mitigation measures to eliminate or minimize adverse impacts and to meet required statutory, regulatory, or public-interest requirements.

The Department's analysis of relative impacts or merits will examine each alternative in relation to all other alternatives. It will identify alternatives with fatal flaws and ones with common or similar impacts relative to the factors. Where factors differ among alternatives, it will generally group the alternatives, identifying those needing no mitigation, those with negative impacts that would need mitigation, and those with unavoidable impacts that cannot be mitigated.

The Department may update and revise its analysis during the comment period(s) established by the Administrative Law Judge.

- 3. Wind Farm Site Permits** – In wind farm site permit proceedings, Commission staff will enter a site permit template into the record at the time of application acceptance. The Commission will likely order a public hearing to be held on the proposed project. In these cases the Department will determine whether an informational meeting, held in the area of the project, would be appropriate in assisting in developing its technical analysis. The Department will file a preliminary technical analysis of the proposed project at least 15 days prior to Commission consideration of site specific draft site permit issuance, including an initial analysis of the following issues and factors:

- a. the proposed project's compliance with applicable statutes and rules;
- b. an analysis of the proposed project with respect to the factors to be considered in designating a site;
- c. an analysis of measures to address the human and environmental impacts of the proposed project;

- d. the Department's conclusions regarding appropriate modifications of the project and site, based on the factors set forth in statute and rule;
- e. any permit conditions, permit modifications, or mitigation measures to eliminate or minimize adverse impacts and to meet required statutory, regulatory, or public-interest requirements.

The Department may update and revise this analysis based on comments submitted during the public hearing and public hearing comment period.

4. **Other Cases Referred to OAH** – The Commission will refer certain site and route permit cases that do not involve contested material facts to OAH for public hearings and evidentiary development using less formal procedures than contested case proceedings. Commission staff will enter a route permit template into the record at the time of application acceptance. In these cases, when the Department files the applicable environmental review document, it will also file an initial technical analysis of the record, including an initial analysis of the following issues and factors:

- a. the proposed project's compliance with applicable statutes and rules;
- b. an analysis of the feasibility of each alternative site or route examined with respect to the factors to be considered in designating a site or route;
- c. a comparison of the human and environmental impacts of the proposed project and the impacts of the alternatives;
- d. the Department's conclusions regarding relative impacts of all routes or sites studied, based on the factors set forth in statute and rule;
- e. any permit conditions, permit modifications, or mitigation measures to eliminate or minimize adverse impacts and to meet required statutory, regulatory, or public-interest requirements.

The Department's analysis of relative impacts or merits will examine each alternative in relation to all other alternatives. It will identify alternatives with fatal flaws and ones with common or similar impacts relative to the factors. Where factors differ among alternatives, it will generally group the alternatives, identifying those needing no mitigation, those with negative impacts that would need mitigation, and those with unavoidable impacts that cannot be mitigated.

The Department may update and revise this analysis during the comment period(s) established by the Administrative Law Judge.

5. **Cases Not Referred to OAH** – In appropriate site and route permit cases the Commission will refer the case to OAH only for public hearings and will develop the record in conjunction with the staff of the Commission and Department. Commission staff will enter a route permit template into the record at the time of application acceptance. In these cases, when the Department files the applicable environmental

review document, it will also file an initial technical analysis of the record, including an initial analysis of the following issues and factors:

- a. the proposed project's compliance with applicable statutes and rules;
- b. an analysis of the feasibility of each alternative site or route examined with respect to the factors to be considered in designating a site or route;
- c. a comparison of the human and environmental impacts of the proposed project and the impacts of the alternatives;
- d. the Department's conclusions regarding relative impacts of all routes or sites studied based on the factors set forth in statute and rule;
- e. any permit conditions, permit modifications, or mitigation measures to eliminate or minimize adverse impacts and to meet required statutory, regulatory, or public-interest requirements.

The Department's analysis of relative impacts or merits will examine each alternative in relation to all other alternatives. It will identify alternatives with fatal flaws and ones with common or similar impacts relative to the factors. Where factors differ among alternatives, it will generally group the alternatives, identifying those needing no mitigation, those with negative impacts that would need mitigation, and those with unavoidable impacts that cannot be mitigated.

The Department may update and revise this analysis following the close of the public hearing comment period under time frames established by the Commission.

D. Delegated Administrative Responsibilities

1. **Delegations in Initial Order** – The Commission will normally request the Department's technical assistance in siting and routing cases in the initial order. The order will ask the Department to begin the environmental review process and to begin site or route selection, including identifying alternative sites or routes; to conduct public scoping meetings and issue notices required in that process; and to perform related administrative tasks, including coordinating advisory task forces in appropriate cases.
2. **Documentation and Filing** – The Department will document compliance with applicable statutes and rules when conducting environmental review, providing technical assistance, and performing delegated tasks. The Department will promptly file in the electronic filing system notices of publication, notices of public meetings, and similar documents demonstrating that all applicable environmental review procedural requirements have been met.

E. Permit Compliance Review

The Department will review compliance filings required under site and route permits and will file comments on those requiring Commission action. Comments will be filed within 20

days of the date of the filing, unless the Department requests an extension. The Department will also maintain compliance information on all active site and route permits and will file an annual report outlining the compliance status of all active permits.

F. Post-Permit Filings and Miscellaneous Filings

The Department will analyze and file comments on all requests for changes in site or route permits, including requests for amendments, minor alterations, and permit transfers. The Commission will normally issue a notice soliciting comments on the proposed change, and the Department will file comments within the comment period established in the notice.

V. GENERAL ADMINISTRATION

A. Fees and Assessments; Personnel

The Department will continue to independently administer the assessment and collection of permit application fees under Minn. Stat. § 216E.18, subds. 2 and 2a; the quarterly assessments required under Minn. Stat. § 216E.18, subd. 3; and the preparation and management of its siting and routing budget. The Department will continue to independently retain and manage the staff of its Energy Environmental Review and Analysis Unit.

B. Contact Lists

The Commission and the Department will work together to maintain in user-friendly, electronic form the notification lists required under Minn. Stat. § 216E.03, subd. 4 and Minn. Rules 7850.2100, as well as any other mailing lists required for the agencies to perform their siting and routing duties.

C. Reporting Schedule; Annual Public Hearing

The Department will file operational reviews of Minnesota's siting and routing program under Minn. Stat. § 216B.03, subd. 11 on a semi-annual basis, with reports due each April 1 and October 1. These reviews will address general operational issues, as well as issues arising specifically under this Memorandum of Understanding. The October report will include an accounting summary of siting and routing expenses, fees and assessments, organized by docket.

The Department will participate and assist in conducting the annual public hearing on siting and routing issues required under Minn. Stat. § 216E.07.

VI. PUBLIC ROLES CLARIFICATION

The Commission and the Department will work to clarify to applicants, intervenors, and members of the public their respective roles and responsibilities in the siting and routing processes. Neither agency will act on behalf of the other, except when authority to act has been expressly delegated. Both agencies will work to avoid conduct or other representations, including publications and legal guidance, that could confuse applicants, intervenors, or members of the public about which agency is acting or is authorized to act on specific issues.

VII. COORDINATING WEBSITE INFORMATION

The Commission's website will include links to the Department's website, to facilitate public access to general information about the siting and routing processes, guidance on how to participate in siting and routing cases, and information on the status of specific siting and routing cases. The Commission's website will post an explanation of the Department's independent role in providing assistance to the Commission in siting and routing cases and will include notices of public meetings and hearings conducted or convened by the Department in the course of performing its siting and routing responsibilities.

VIII. INTER-AGENCY COMMUNICATIONS AND COORDINATION

To ensure independent judgment on the part of both staffs, and to avoid any appearance of impropriety, Commission and Department staff members will not discuss the merits of pending cases. They will limit their communications to procedural, scheduling, and status issues and to requests for information that would not affect the merits or outcome of pending cases. Written and e-mail communications between Department and Commission staff members will be copied to the managers of both staffs.

The managers of the Commission and Department staffs will work together to ensure that questions from applicants, parties, and members of the public are promptly directed to the proper member of either staff and that procedural, scheduling and similar information on pending cases is readily accessible to members of both staffs.

The managers and staff of the Commission and Department will work cooperatively to develop schedules and implement public involvement processes to enhance efficiency and ensure effective public participation.

IX. GENERAL PROVISIONS

This MOU is not a contract and does not create or waive any legal rights, duties, or obligations of any party. Responsibilities or practices not addressed in this agreement will continue to be carried out in the manner they have been prior to this agreement, consistent with the requirements of Minnesota Rules and Statutes. The Commission and the Department will use reasonable efforts to implement the terms of this agreement.

X. EFFECTIVE DATE

This MOU will become effective upon signature by the authorized representatives of the parties and will remain in effect until written termination by either party. The Commission and the Department will review the operation of this MOU semi-annually, as part of the semi-annual operational review discussed in part V, and may amend or supplement the MOU by mutual agreement.

Appendix G - Interviews

The names of individuals who participated in this study are private. The list below includes the names of the organizations that employ these individuals. The list does not include organizations or individuals who declined to participate. Interviews solely for background information are not included in this list.

An organization's presence in the list below does not indicate that comments or ideas included in this report represent the official position of any organization. The interview overview on page 66 contains more information on MAD's interview process.

Department of Commerce

- Administrative and financial services (outside of but supporting the division)
- Division leadership and management
- Energy Assistance Program
- Energy Regulation & Planning
- Environmental Review & Analysis
- State Deployment Program
- State Energy Office
- Telecommunication

Public Utilities Commission

- Executive leadership and management
- Commissioners
- Consumer Affairs
- Human Resources and Business Services
- Regulatory Analysis Division
 - Energy Facilities
 - Economic Analysis
 - Financial Analysis
 - Telecommunication Analysis
- Staff Attorneys

Other state agencies

Minnesota Department of Natural Resources

Minnesota Environmental Quality Board

Minnesota Office of Administrative Hearings

Minnesota Pollution Control Agency

External stakeholders

AESL Consulting

CenterPoint Energy

CenturyLink

Dakota Electric Association

Energy Cents Coalition

Fredrickson & Byron

Fresh Energy
Geronimo Wind Energy
Great River Energy
Legal Services Advocacy Project
Minnesota Center for Environmental Advocacy
Minnesota Chamber of Commerce
Minnesota Energy Resources Corporation
Minnesota Power
Otter Tail Power
Southern Municipal Power Agency
Stoel Rives
Wind on the Wires
Winthrop & Weinstine
Xcel Energy

Appendix H - Interview questionnaires

Individual Interview

This questionnaire was used primarily for manager and supervisory interviews at Commerce. A similar questionnaire was used for PUC individual interviews.

1. What is your position in Commerce and what are your main responsibilities?
 - a. How long have you worked for Commerce?
 - b. How long in your current position?
2. Who are the primary customers and stakeholders for your area of Commerce?
 - a. Are these customers similar or different from the customers and stakeholders for the PUC?
3. Please describe how your work intersects with other units/divisions in Commerce.
 - a. What, if any, key process handoffs do you make to other internal unit/divisions of Commerce?)
 - b. For which work processes/functions do you rely on the work of other units/divisions in Commerce in order to complete your work?
4. In what ways does your work intersect with the PUC?
 - a. What, if any, key process handoffs do you make to staff in the PUC?
 - b. For which work processes /functions do you rely on the work of the PUC in order to complete your work?
5. Thinking about those areas where your work intersects with the PUC:
 - a. What business processes/functions work well?
 - b. What areas could be improved?
6. Please describe communication methods that staff and leaders at PUC and Commerce use to share information between organizations.
 - a. In your view, are these methods effective?
 - b. What, if any, improvements could be made?
7. One of the areas of focus for the study is to assess whether transferring functions would result in a “clearer and more functional link between authority and responsibility for accomplishing various activities.” Please describe current linkages between authority and responsibility between PUC and the division of energy resources.
 - a. Are there areas where these linkages could be made clearer or more effective?
8. What indicators or performance measures do you use to assess the quantity or quality of your unit/division’s work?
 - a. In what ways are these indicators or measures similar to those used by the PUC?
9. In your view, are there areas of duplication or redundancy between PUC and the division of energy resources in Commerce?
 - a. Are there areas of significant similarity of functions between PUC and the division of energy resources? If so, please describe similarities and important distinctions.

10. If functions and staff from the division of energy resources were transferred to PUC, what would be the implications? (positive and negative)
 - a. If functions *but not staff* from the division of energy resources were transferred to PUC, what would be the implications? (positive and negative)
11. Please describe the communication methods the division of energy resources in Commerce uses to communicate with customers, stakeholders, and members of the public, particularly regarding decisions about energy.
 - a. What, if any, improvements could be made?
12. From your perspective, please describe the processes PUC and Commerce use to make decisions regarding energy.
 - a. How transparent are these processes to the public?
 - b. What works well?
 - c. What could be improved?
13. Are there trends affecting energy industries that we should be aware of as we conduct this organizational study?
14. Do you have anything else to add?

Group Interview

This questionnaire was used primarily for group interviews at PUC. A similar questionnaire was used for Commerce group interviews.

1. Round robin: briefly describe your position and how long you've worked at PUC.
 - a. Is there anyone from your workgroup who's not here today? What kind of work do they do?
2. What core business functions and activities is your unit/division responsible for? (What are the main types of work that you do?)
3. Who are the primary customers and stakeholders for your area of PUC?
 - a. Are these customers similar or different from the customers and stakeholders for the division of energy resources in Commerce?
4. How many employees currently do the work you've identified?
 - a. Do staff specialize in certain topics or processes, or are staff cross-trained?
5. In what ways does your work intersect with the division of energy resources in the Department of Commerce?
 - a. What, if any, key process handoffs do you make to staff in that division?
 - b. For which work processes /functions do you rely on the work of the division of energy resources in Commerce in order to complete your work?
6. Thinking about those areas where your work intersects with the division of energy resources at Commerce:
 - a. What business processes/functions work well?
 - b. What areas could be improved?
7. Please describe communication methods staff at PUC and Commerce use to share information.
 - a. Do you think these methods are effective?
 - b. What, if any, improvements could be made?

8. Please describe the communication methods PUC uses to communicate with customers, stakeholders, and members of the public, particularly regarding decisions about energy.
 - a. What, if any, improvements could be made?
9. What indicators or performance measures do you use to assess the quantity or quality of your work?
10. Do you have anything else to add?

External Stakeholder Interview

This questionnaire was used for interviews with external stakeholders, such as representatives of regulated entities and advocacy groups.

1. Please briefly describe your position and role within your organization.
 - a. How many years have you worked in this field?
2. Is there any background or context that you can provide that would be helpful for us to know as part of this study?
3. In what ways does your work intersect with the work of the Public Utilities Commission (PUC) and the Department of Commerce's Division of Energy?
 - a. What type of interactions do you have with the two organizations? (e.g., communications, sharing data, getting input)
4. How would you explain the key roles and responsibilities of the PUC and the Dept. of Commerce's Division of Energy?
 - a. What are the similarities and differences between the two?
5. Please describe your experience engaging as a stakeholder with the PUC? (e.g., stakeholder advisory groups, planning committees, party to a case)
 - a. What has worked well in your experience engaging with the PUC?
 - b. What could be improved?
6. Please describe your experience engaging as a stakeholder with DER in Commerce? (e.g., stakeholder advisory groups, planning committees, party to a case)
 - a. What has worked well in your experience engaging with Commerce?
 - b. What could be improved?
7. From your perspective, please describe the processes PUC and Commerce use to make decisions regarding energy.
 - a. How transparent are these processes to the public?
 - b. What works well?
 - c. What could be improved?
8. Thinking about the current organization of functions related to energy (separation between PUC and Commerce):
 - a. Are there positive aspects to the status quo? Please describe
 - b. Are there improvements that could be made? Please describe
9. If functions and staff from the division of energy resources were transferred to PUC, what would be the implications? (positive and negative)
 If functions *but not staff* from the division of energy resources were transferred to PUC, what would be the implications? (positive and negative)

10. Are there trends affecting energy industries that we should be aware of as we conduct this organizational study?
11. Can you recommend any other individuals or organizations we should contact during this study?
12. Is there anything we didn't cover in our interview that you wanted to talk about related to this study?