

860324

DEPARTMENT OF ADMINISTRATION

**MANAGEMENT STUDY
OF THE
MINNESOTA PUBLIC UTILITIES COMMISSION**



MANAGEMENT ANALYSIS DIVISION

860324

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OF THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**DEPARTMENT OF ADMINISTRATION
Management Analysis Division**

January 15, 1986



**Department of
Administration**

**OFFICE OF
THE COMMISSIONER**

Architectural Design

Building Code

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Plant Management

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Public Documents

Purchasing

Real Estate Management

Records Management

Resource Recycling

State Bookstore

Telecommunications

Volunteer Services

January 15, 1986

The Honorable Rudy Perpich
Governor
130 State Capitol Building

Patrick E. Flahaven
Secretary of the Senate
231 State Capitol Building

Edward A. Burdick
Chief Clerk
House of Representatives
211 State Capitol Building

Dear Gentlemen:

Pursuant to 1985 First Special Session Laws, Chapter 10, Section 9, the Department of Administration has studied the purposes, statutory obligations, procedures, and the utilization of staff of the Minnesota Public Utilities Commission. The study was conducted by the Management Analysis Division with the cooperation of the Public Utilities Commission, the Department of Public Service, the Attorney General's Office and the Office of Administrative Hearings.

We have found that the regulation of public utilities is in a period of sweeping transition. The era of deregulation and the fostering of competition within the public utility industry represents a fundamental shift in the role of the Commission. This movement toward competition is not only affecting the telecommunications industry, but it is also affecting the gas and electric utilities as well.

The Commission's enabling legislation and organizational structure are centered around the traditional duties of regulating monopolies; consequently, the Commission has some fundamental legal and organizational limitations which impede its ability to respond to its changing role. Accordingly, we have made recommendations that will address these limitations.

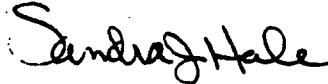
Although many of the recommendations can be adopted by the Commission without legislative action, legislation will be necessary to provide the Commission with the legal and technical resources required during this period of movement toward competition.

January 15, 1986

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Finally, we wish to acknowledge the excellent cooperation and assistance provided us by the Commissioners, staff of the Commission and the Department of Public Service. We were impressed by the commitment of the staff of the Commission to perform their jobs in the most professional and competent manner possible.

Respectfully submitted,



Sandra J. Hale
Commissioner

cc: Chair, Senate Agriculture, Transportation,
Semi-states Subcommittee/Finance
Chair, Senate Governmental Operations Committee
Chair, House Regulated Industries and
Energy Committee
Chair, House Agriculture, Transportation,
and Semi-states Division/Appropriations
Chair, House Governmental Operations Committee

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SUMMARY OF RECOMMENDATIONS

Recommendation 1:

- The current appointment process should be modified by the establishment of an expert review panel whose primary tasks would be to review any and all candidates for commissioner(s) and provide the Governor with a list of five (5) candidates from which the Governor would make his/her final selection. The expert panel could be drawn from such groups as former commissioners, former legislators, former judges and others. The panel would be appointed by the Governor.
- Current Minnesota Statutes 216A.03 could be amended to accommodate this recommendation, or the Governor could establish a panel without specific legislative authorization.

Recommendation 2:

- During this transition period of utility regulation the number of members on the Commission should remain at five (5); however,
- If recommendation #14 on page 41 is adopted by the Legislature, and Minnesota Statutes Chapter 237 (Telephone and Telegraph Companies) is rewritten to respond to the affects of the introduction of competition into portions of the telecommunications industry, an orderly reduction of the number of commissioners to a total of three (3) should be considered.
- The Commission should utilize subcommittees to assure that at least one of its members attends all proceedings which will eventually require a decision by the Commission.

Recommendation 3:

- The chair of the Commission should be appointed by, and serve at the pleasure of the Governor. The chair should be given elevated status and additional remuneration. Statutory language should be clear with respect to the independence of the decisions made by the other commissioners; however, the chair should have the authority to assign work to the commissioners and hold them accountable for their activities.
- Minnesota Statutes 216A.03 will have to be amended to accommodate this recommendation.

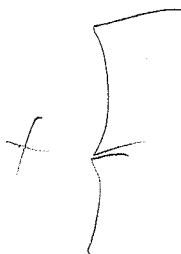
Recommendation 4:

- The Commission should develop a formal training program for new appointees, who should be required to attend the training program prior to taking their oaths of office.
- The Commission should develop a formal in-service training program and allocate sufficient resources to carry out the plan.
- The Commission should develop a procedures manual for commissioners. The manual would outline the authorities and limitations of their office and relationship with staff and the Department of Public Service.

Recommendation 5:

- The Commission, through rules, should adopt a code of conduct similar to the judicial code of conduct for judges.
- Minnesota Statutes should be amended to clarify the language concerning ex parte communication as such communication relates to the dual role of the Commission. The statutory changes should be incorporated in the law that specifically relates to the Commission (Chapter 216A).

Recommendation 6:

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- Minnesota Statutes Chapter 216A should be amended to prohibit a Public Utilities Commissioner from accepting employment with a utility under the jurisdiction of the Commission for a period of two (2) years after leaving office.
 - Employment would also include: contractual relationships, membership on the board of directors, consultant, and legal counsel to the utility.
 - The utility under the jurisdiction of the Commission should also include: holding companies, subsidiaries, affiliated firms, corporations, and associations.

Recommendation 7:

- The current system of having two state agencies with their separate and distinct responsibilities for utility regulation should be maintained.
- The Executive Secretary of the Commission and the Director of the Department should re-examine the separation agreement of the two agencies to determine its current application and need for revision.

Recommendation 8:

- The staff size should be increased and reorganized (see Figure 2 on page #28).
- Creation of three (3) utility units:

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3
The reorganization would create a Telecommunications Unit, a Gas Unit, and an Electric Unit. The establishment of three separate units organized around specific utilities would permit the staff to gain expertise in those areas since the criteria and methods for rate making for each of the three utilities is unique.

- Creation of a Policy and Planning Unit

It is recommended that a new unit be created to perform several related policy and planning functions including but not limited to: writing rules, creating and maintaining a precedent tracking and retrieval system, researching public utility policy areas (including telecommunications and energy), and analyzing the affects of federal initiatives on the state's regulatory practices and policies. The staff in this unit would not have any rate making responsibilities.

- Reassignment and increase of support staff:

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The reassignment of the support staff to specific work units within the Commission will enable the support staff to become part of the work team and to develop expertise in matters for the team. The reassignment of the support staff would also reduce the number of people to whom the support staff report. The assignment of two (2) support staff to the Commissioners and Executive Secretary will permit them to exclusively serve the commissioners and Executive Secretary. The additional clerical support position, at a lower classification than the current Executive I's, would perform more routine functions such as mailings, copying, phone answering, and receptionist duties and would fill in for absent secretaries.

- Increase of staff:

The proposed reorganization would add five (5) professional staff and one (1) clerical staff to the Commission. Three (3) of the professional staff would be assigned to the newly recommended Policy and Planning Unit and the remaining two (2) would be added to the Telecommunications Unit. The additional clerical staff would be assigned to the Commissioners' and Executive Secretary's Office. The increase in staff would permit

the Commission to be more responsive to the needs of the utilities and consumers with regard to rate making and would provide the Commission the opportunity to be affirmative instead of reacting to events that affect the Commission.

- In order to respond to the fluctuating work load, the Commission should utilize consultants or Rule 10 hires.
- Customer Service Unit: Two organizational options

The role of the Customer Service Unit has evolved since the creation of the Commission and the Department. Originally, the designers of the two agencies felt the role of the Unit was primarily one of policy development; however, the role has changed to becoming an advocate on behalf of consumers. There are legitimate arguments for the placement of the Unit in either agency. Therefore, as was recommended in Recommendation #7, the Director of the Department and the Executive Secretary of the Commission should analyze the original separation agreement between the two organizations for its current relevancy and re-examine the best placement of the Customer Service Unit. The final placement of the Unit can be made by a Reorganization Order written by the Department of Administration.

In summary, the benefits of the proposed reorganization are:

- The span of control of the Executive Secretary would be reduced and more manageable.
- Career advancement opportunities would be available to staff.
- It would enable the development of expertise within a given utility area.
- The increase of staff in the telecommunications area would meet an increasing need.
- The secretaries would have one person to whom they are accountable instead of three.

Recommendation 9:

- The Commission, through legislative action, should be financed through a revolving or special revenue fund account. This method of funding would enable the Commission to be responsive to the fluctuating nature of utility regulation.

- Additionally, the Commission should establish a cost-based billing system. A cost-based billing system would enable the retention of additional temporary staff or consultants during unusually high periods of regulatory activity.
- The cost of providing regulatory services to smaller public utilities, those granted the exception to 100% billing, should be funded by one of the alternatives presented below:
 - o charge the smaller utilities 100% of all costs, or
 - o pro-rate the cost of regulating the smaller utilities to the larger utilities and build the cost into the rate charged the larger utilities, or
 - o public utilities whose revenues qualify them for the exemption should be removed from the regulatory authority of the Commission except for quality of service and areas of service.

Recommendation 10:

- A job description which explicitly outlines the duties and responsibilities of the Executive Secretary should be immediately written and adopted by the Commissioners and Executive Secretary.
- The Commission and Executive Secretary should develop written procedures which outline those administrative and management issues that should be the prerogative of the Executive Secretary and those issues which should be brought before the Commission for decisions.

(The creation of the commissioners' procedures manual as recommended on page 17 will also address the issue of duties and responsibilities.)

Recommendation 11:

- The Commission should immediately make efforts to install a state-of-the-art office automation system. First, the Commission, with the assistance of the Department of Administration's Information Management Bureau, should conduct a systems analysis to determine their specific automation needs.
- At a minimum, the system should have text processing, data base management, statistical analysis, econometric modeling and accounting capabilities.

- The system should also be designed around the needs of the entire staff and the commissioners.


Recommendation 12:

- The Commission should immediately analyze their current informal office policies and procedures, analyze their efficiency and effectiveness, and write and adopt a formal policies and procedures manual.
- The Commission should, upon the completion of the office policies and procedures manual, provide training for all Commission staff and commissioners on the contents of the manual.

Recommendation 13:

- The Commission should establish a formal training program for new staff and should also develop an in-service training program.
- Funds should be budgeted accordingly.

Recommendation 14:

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- The Legislature should establish a temporary joint commission to examine the affects of deregulation of the telecommunications industry and, in particular, determine the relevancy of Chapter 237 to the regulation of the telecommunication industry and to develop any needed legislative remedies.

Recommendation 15:

- The Legislature should, at the initiative of the Commission and the Department, remove the statutory language requiring a contested case process for general rate cases exceeding \$500,000.

Recommendation 16:

- The Commission should, with the assistance and cooperation of the Department, dedicate staff resources, including the retention of consultants if necessary, to the development of rules and regulations. The current set of Commission rules should be analyzed for their application and be rewritten if required, and the Commission should write rules for filing miscellaneous tariffs for all three utilities that they regulate; and

The Commission should write telephone filing rules.

Recommendation 17:

- There are several possible solutions that could accomplish the two objectives of providing timely rate decisions and provide the Commission sufficient time to perform its obligations.

1. The current statutes governing the timeliness of the Commission could be changed:

The current period of deciding interim rates could remain at sixty (60) days and the current criteria applied to the interim rates could also remain.

The period allowed to render final decisions could be increased to twelve (12) months.

2. The Commission could be given statutory authority to ask each utility it regulates whether or not the utility intends to seek a rate increase for the given calendar period. Utilities answering in the affirmative would then be assigned filing dates. Utilities responding in the negative would not, except in the case of bona fide emergencies, be permitted to apply for a rate increase during the period in question. (Wisconsin has a similar system in place; however, the Wisconsin system functions via a gentleman's agreement among the Commission and the utilities.)

The Commission in its rules could prescribe a similar filing date system as presented in Option 2 above; however, the legal authority of the Commission to prescribe such a system might be challenged.

Recommendation 18

- The Commission and the Office of Administrative Hearings should write a formal Memorandum of Understanding which would address the roles, responsibilities, duties, and administrative and procedural items not currently covered by statute. This formal memo would provide for consistent treatment of issues among the various Administrative Law Judges assigned to Commission cases.

Recommendation 19:

- X - The Commission should immediately dedicate the necessary staff resources to develop a precedent tracking system. Automation of this system would be the ideal; however, the Commission should not wait for the installation of the automated system before the precedent tracking system is developed. The design of the manual system should consider the eventual application of an automated system.

MINNESOTA PUBLIC UTILITIES COMMISSION

INTRODUCTION

The 1985 Legislature directed the Management Analysis Division of the Department of Administration, with the cooperation of the Public Utilities Commission to conduct a study of the Commission. Specifically, 1985 First Special Session Laws, Chapter 10, Section 9, states:

"The management analysis unit of the department of administration in cooperation with the public utilities commission shall conduct a study of the purposes, statutory obligations, procedures, and the utilization of staff that affect the efficiency of the commission's operation. The study should determine the effect of statutory requirements, continued deregulation of telephone service, and alternative ways of organizing commission and staff activities including the roles of the chair and the executive director on the work load and efficient operation of the commission...."

This report is not an evaluation of the quality of the Public Utility Commission's regulatory decisions. It provides recommendations to improve the capacity of the Commission to deal with the increasing complexity of utility regulation.

METHODOLOGY

The study was conducted from October, 1985 to January, 1986. It consisted of the following:

Literature Review:

review and analysis of state laws governing utilities, the Public Utility Commission, and Department of Public Service,

review and analysis of publications and studies concerning the role and scope of utility regulation,

Organizational analysis:

review and analysis of the Public Utility Commission's organizational structure, procedures, budgets, staffing and role of the Executive Secretary,

interviews with all Commission staff and selected staff of the Department of Public Service,

review of written materials concerning the Commission's stated role and function,

Review of the Commission:

historical analysis of the Commission's rulings, costs, and procedures,

interviews with current Commissioners,

interviews with representatives of utilities,

Review and analysis of Public Utility Commissions in other states:

composition, appointment process, procedures, rulings, budgets, role and function.

HISTORY OF THE MINNESOTA UTILITIES COMMISSION

The origin of regulation of industries in Minnesota began in 1871 when the Legislature created the Railroad Commission.

In 1895 the Legislature created the Railroad and Warehouse Commission.

From 1871 to 1911 the Legislature changed the composition and appointment process several times.

In 1911 the Legislature created a three-member commission for a term of six years with one member up for election every two years.

The Commission assumed the responsibilities of regulating telephone companies in 1915.

The Railroad and Warehouse Commission was renamed the Public Service Commission in 1968.

In 1975 the Commission began regulating gas and electric companies. The composition and appointment process also changed from three (3) elected Commissioners to five (5) Commissioners appointed by the Governor for staggered terms of six years.

Prior to 1980, all of the public utility regulatory functions were in the Department of Public Service. The Department was divided into two subdivisions: the Administrative Division and the Public Service Commission (PSC). The Department of Public Service was headed by a Director, appointed by and responsible to the Governor. The Director enforced orders and directives of the Commission and developed administrative policies and procedures. Additionally, the Director had total authority for and control over the entire department's budget, personnel, and other resources. The Commission, under the umbrella of the Department, had neither a staff nor a budget of its own. Without control over its own staff or resources, the Commission could not direct staff and budgetary resources in a rate case and policy areas as it saw appropriate without the concurrence of the Director.

A 1979 report by the Legislative Auditor found that this arrangement created strained relationships between the Director and the Commissioners. Staff was more often than not caught between the two, and the utilities petitioning the Commission were also confused in that staff roles changed between advocate, prosecutor, and clerk depending upon the assignment.

The Legislative Auditor recognized this problem in his Evaluation Report on the Department of Public Service and recommended three alternatives for legislative consideration:

1. "Appropriate funds to provide support staff to PSC and retain the current organizational structure."
2. "Change the statutes to provide PSC with a separate budget and authority to hire its own support staff. The department director's office would provide administrative services to both PSC and the department's staff."
3. "Reorganize the agency so that staff reports to an executive director of PSC. The executive director would be unclassified and serve at the pleasure of PSC or its chairman. The Governor could be permitted to select a chairman."

The 1980 Legislature responded by creating two separate organizations: the Department of Public Service and the Public Utilities Commission (PUC). The Public Utilities Commission, as an independent state agency, had its own budget and staff complement. It was also able to develop its own operating and policy agendas.

The Legislature also divided up the regulatory responsibilities. The functions of public utility regulation were divided into two distinct arenas:

- 1) The PUC retained its quasi-judicial role in utility regulation and also retained the authority to promulgate rules and regulations governing public utilities, thus fulfilling the Legislature's intent that the PUC be the state's policy body for public utility regulations.
- 2) The Department of Public Service was charged with intervening in the PUC's general rate cases and other matters, representing the broad public interest. The Department also assumed responsibility for reviewing and making recommendations to the Commission on all miscellaneous uncontested filings. Additionally, the Department also assumed responsibilities for the administrative elements of utility regulation such as: enforcement of PUC orders and directives, custodianship of utility tariffs and PUC orders, and investigation of matters subject to the jurisdiction of the Department or Commission.

The separation of duties and responsibilities in the public utility regulatory process is analogous to a judicial process in which the Commission acts as the judge and its staff serve as clerks. The Department functions as the advocate for the general public. This organization was unique among utility regulators in the United States; however, in 1983 North Carolina adopted a similar system.

The Minnesota Public Utilities Commission carries out its responsibilities to regulate the rates and practices of natural gas, electric and telephone utilities. The Commission also governs such matters as miscellaneous tariff changes, utility extensions of service, fuel and purchased energy adjustments, utility security issuances and capital structure, service area boundary changes, acquisitions/transfers of utility property, accounting practices, depreciation certification, formal and informal complaints, Cold Weather Rule appeals, certificates of need for large energy facilities, rates and conditions of service to cogenerators and small power producers, and conservation improvement programs for large gas and electric utilities. The Commission also monitors the participants in matters before federal agencies which may affect gas, electric, or telephone rates and service in Minnesota.

Two additional events have had a substantial impact on the Commission:

The divestiture of AT&T in 1984, and

The establishment of the Transportation Regulatory Board in 1985.

UTILITY REGULATION IN TRANSITION

It was not that long ago that most people did not know of the existence of the Public Utility Commission. There was little, if any, controversy in the utility arena; consequently the actions of the Commission went virtually unnoticed.

However, the energy crisis in the early 1970's and the subsequent rapid rise in the price of energy, plus the era of consumer activism, brought the Commission from relative obscurity to becoming a lead story on the evening television news.

The pressure on the Commission has continued as a result of the divestiture of AT&T in 1984, which introduced an era of deregulation and competition that is also beginning to affect the natural gas and electric industry.

Ironically, deregulation and competition have increased the complexity of the Commission's tasks.

Prior to deregulation, the Commission exercised its powers to create a delicate balance between the legitimate economic needs of utilities and the social needs and economic capabilities of consumers. This was not easy, but the Commission had a set of statutes, rules, past practices, and years of history to guide them in their decisions. However, the deregulation of the telecommunications industry has presented a myriad of problems previously not encountered such as: are low income people entitled to telephone service; or, are new firms entitled to some protection from the existing monopoly to give them the opportunity to compete.

Further complicating the decision making process of the Commission is the advancement of technology that is changing the complexion of the telecommunications industry. This change requires the Commission to understand an applied science whose lexicon is unable to keep up with the speed at which the scenario is moving.

The decisions of the Commission have a major impact upon the state's economy and the everyday life of the citizens of Minnesota. The Public Utility Commission's regulatory decisions and other actions have an effect on the quality, availability, and cost of essential services.

The quality of the people appointed to serve on the PUC, the staff, administrative efficiency of the Commission, and the laws and rules governing utility regulation will inevitably affect the quality of the decisions and actions of the Commission.

THE COMMISSIONERS

"This used to be a real sweetheart job. Not much controversy and a routine that was not too demanding. But, now the whole picture is changed. It is much more complex and demanding, much more difficult than anyone thought." (Current Minnesota Public Utilities Commissioner, 1985)

The above comment accurately portrays the changing nature of the job as a public utility commissioner in any state. And as the complexity of the job of a commissioner has increased so has the interest in the selection process, composition, qualifications, and number of commissioners increased. This section will address those issues as they relate to the Minnesota Public Utilities Commission.

Minnesota Statutes Chapter 216A.03 prescribes the composition and appointment process for the Public Utilities Commission. There are five (5) Commissioners appointed by the Governor with the consent of the Senate for overlapping terms of six (6) years. The Governor, according to the statute, shall consider appointing people with experience in law, engineering, public accounting, and utility valuation. The chair is elected annually from among the Commissioners.

Selection Process

Findings:

- There are two principal methods states use for the selection of public utility commissioners: election and appointment.

Election: As of 1983, eleven (11) states elect public utility commissioners. The Legislature elects the commissioners in one (1) of these states.

Appointment: In forty (40) states, including the District of Columbia, the members of the public utility commission are appointed by the Governor or Mayor.

- The issue of the selection process for public utility commissioners has come under considerable debate in many states. According to the National Association of Regulatory Utility Commissioners, twelve (12) states considered legislation in 1984 to change the selection process for public utility commissioners.
- The literature review indicates the major concern over the selection process is the issue of the quality and capabilities of the commissioners especially in light of the increasing demands on the people serving on commissions.

- A review of literature found that there is no empirical evidence which supports one method of appointment over another in terms of the quality of commissioners, the rates charged to consumers, or the rate of return for utilities.
- Two states, Florida (1979) and Ohio (1982), have adopted an alternative approach to the selection of commissioners. In both states an expert panel selects three (3) to four (4) potential appointees. From this group the Governor selects the person to fill the commission vacancy.
- Interviews conducted for this study found that the qualifications and the appointment process of the commissioners were a major concern.
- Comments received during interviews for this study indicated a common understanding that utility regulation was in a period of rapid transition and that extraordinary efforts are needed to assure that the highest quality people were appointed to the Commission.

Conclusion:

The underlying issue concerning the selection process of commissioners is whether one method of selection provides better qualified commissioners. As evidenced by the number of states which took legislative action in 1984 to address the issue of the selection of commissioners, the public is very concerned that the best possible people are appointed. The reasons for this increased public concern arise out of the uncertain future of the affordability and availability of utility services during this transition from traditional monopoly regulation to regulation of competition or of partial regulation of companies. The state should take extraordinary efforts during this transition period to assure that the best qualified people available are appointed to the Commission.

Recommendation 1:

- The current appointment process should be modified by the establishment of an expert review panel whose primary tasks would be to review any and all candidates for commissioner(s) and provide the Governor with a list of five (5) candidates from which the Governor would make his/her final selection. The expert panel could be drawn from such groups as former commissioners, former legislators, former judges and others. The panel would be appointed by the Governor.

- Current Minnesota Statutes 216A.03 could be amended to accommodate this recommendation, or the Governor could establish a panel without specific legislative authorization.

Number of Commissioners

Findings:

- Minnesota law has varied the number of commissioners from one in 1875 who served on the Railroad Commission, to three in 1911, to the current number of five in 1975.
- The establishment of the Transportation Regulatory Board created three (3) commissioners.
- Minnesota effectively has eight (8) commissioners, if the number on the Commission and Transportation Regulatory Board are combined.
- The number of commissioners vary from state to state:
 - o 30 states have three commissioners
 - o 14 states have five commissioners
 - o 5 states have seven commissioners
 - o 1 state has six.

Oregon is often cited as having one (1) commissioner, but the observation is not correct. Although the Governor appoints one person, the appointee in turn appoints six (6) additional assistant commissioners who serve at the commissioner's pleasure.

- The commissioners' duties are considered to be full time jobs in all except two (2) states, Delaware and Louisiana.
- An overwhelming majority of the people interviewed for this study stated that the number of commissioners currently on the Commission is an appropriate number during the transition period of utility regulation; however,
- The same people suggested that the number be reconsidered after the future role of utility regulation is determined.
- The interviews conducted for this study found that the schedules of various hearings, rate cases, miscellaneous tariffs, and other issues make it difficult for the commissioners as a body of the whole to attend all of the hearings.
- Comments received during the interviews conducted for the study indicate considerable concern that the commissioners

are absent during parts or all of the proceedings before the Commission.

- The statute governing the commissioners' duties provide for the opportunity for the Commission to form subcommittees.
- The Commission has utilized subcommittees for two or three years of its history.
- During the last several years the Commission has not exercised its option to utilize subcommittees.

Conclusion:

There is no evidence in the literature which suggests that a specific number of commissioners will provide for better decisions. The work load of the Commission and the degree of familiarity of an issue will affect the quality of the decisions made by the Commission; therefore, a sufficient number of commissioners is needed to assure that at least one commissioner is familiar with all of the details of an issue before the Commission.

Recommendation 2:

- During this transition period of utility regulation the number of members on the Commission should remain at five (5); however,
- If recommendation #14 on page 41 is adopted by the Legislature, and Minnesota Statutes Chapter 237 (Telephone and Telegraph Companies) is rewritten to respond to the affects of the introduction of competition into portions of the telecommunications industry, an orderly reduction of the number of commissioners to a total of three (3) should be considered.
- The Commission should utilize subcommittees to assure that at least one of its members attends all proceedings which will eventually require a decision by the Commission.

Chair

Current Minnesota Statutes 216A.03, Subdivision 3 states that the Commission shall elect one of their number, as chair for a term of one year at the meeting of the Commission in the second week of January.

Minnesota Statutes 216A.03, Subdivision 3a states that the chair shall be the principal executive officer of the Commission and shall preside at meetings of the Commission. The statute further states that the chair shall organize the work of the Commission and may make assignments to Commission members, appoint committees and give direction to the Commission staff through the executive secretary subject to the approval of the Commission.

Findings:

- Two (2) of the forty (40) states whose commissioners are appointed by the Governor elect their chair. The remaining thirty-eight (38) chairs are appointed by the Governor.
- The terms of office for twelve (12) of the appointed chairs are coterminous with the Governors', or the chairs serve at the pleasure of the Governor.
- The terms of office for the remaining twenty-eight (28) serve for the period of their stated appointments as commissioners.
- An informal tradition has been developed among the commissioners on the Minnesota Public Utilities Commission in which it is understood that the chair is elected on a rotating basis from the majority party.
- The commissioners interviewed for this study concur with the current method for selecting the chair.
- The vast majority of others interviewed for this study stated that the current method of the selection of the chair leads to:

Discontinuity in policy direction of the Commission,

Unwillingness on the part of the chair to assign work to his/her colleagues and hold them accountable for their performance,

Questions over who is accountable for the work of the Commission,

Lack of strong and consistent leadership which isolates the Commission from other state energy and telecommunication policy initiatives,

Confusion regarding the chair's relationship to staff,
and

Ineffective methods for conflict resolution.

Conclusion:

The current method for the selection of the chair, although convenient for the commissioners, has not produced the strong and consistent leadership needed especially during the transition from regulation to competition.

Recommendation 3:

- The chair of the Commission should be appointed by, and serve at the pleasure of the Governor. The chair should be given elevated status and additional remuneration. Statutory language should be clear with respect to the independence of the decisions made by the other commissioners; however, the chair should have the authority to assign work to the commissioners and hold them accountable for their activities.
- Minnesota Statutes 216A.03 will have to be amended to accommodate this recommendation.

Qualifications of the Commissioners

The era of changing regulation and competition has increased the demands upon the commissioners. The subject matter is becoming more complex. The policy decisions of the Commission go beyond the establishment of rates of return for utilities and the cost of service for consumers. They affect the competitive nature of new firms attempting to enter into what was previously the domain of one company, and they determine if the market place will avail the same services to all consumers at a price they can afford. The decisions by the commissioners have an effect upon the competitive position of the state as a whole in a world-wide market place. The people appointed to the Commission need to be prepared to address these policy issues.

Findings:

- Minnesota Statutes 216A.03, Subdivision 1 states that the Governor "...shall give consideration to persons learned in the law or persons who have engaged in the profession of engineering, public accounting or property and utility valuation...."

- Regardless of individuals' background and training, unless they have had previous experience in utility regulation, they cannot be prepared to immediately undertake the duties and responsibilities of a commissioner.
- Newly appointed commissioners are immediately involved in the activities of the Commission and expected to make decisions the day they are sworn into office.
- There does not exist an operating procedures manual for commissioners.
- There is no formal pre-service training for newly appointed commissioners.
- There is no formal in-service training program for commissioners.

Conclusion:

The specialized nature of the subject matter of utility regulation requires knowledge and skills not normally found among individuals appointed to serve on the Commission. Efforts are needed to educate the new commissioners prior to and during their tenure as commissioner.

Recommendation 4:

- The Commission should develop a formal training program for new appointees, who should be required to attend the training program prior to taking their oaths of office.
- The Commission should develop a formal in-service training program and allocate sufficient resources to carry out the plan.
- The Commission should develop a procedures manual for commissioners. The manual would outline the authorities and limitations of their office and relationship with staff and the Department of Public Service.

Code of Conduct

There is ample evidence to suggest that the actions of public utility regulators are coming under increased scrutiny. This study is one example plus the fact that twelve (12) states considered legislation in 1984 affecting their commissions. Commissions in other states have had their hearing rooms crowded with consumers concerned about the rise in utility rates. The very recent court action undertaken by one Minnesota citizen which

overturned a major Commission decision is another example of concern over the Commission's actions.

This scrutiny by citizens and state legislators reflects concern that utility regulators may be unduly influenced by the utilities which they regulate. This issue has been a concern since the very first regulatory body was established; however, the changing nature of utility regulation and its uncertain future has increased the concern over the integrity of the regulatory process.

Findings:

- Minnesota Statutes 216A.035 (Conflict of Interest) prohibits commissioners and employees from holding a financial interest in a public utility under the regulatory control of the Commission.
- Minnesota Statutes 43A.38 (Code of Ethics for Employees of the Executive Branch) provides guidance for a code of conduct for a broad range of activities.
- The permissibility of ex parte communication is ambiguous.*
- When the Commission functions in its quasi-judicial role its decisions and communications regarding matters before it are subject to specific laws that govern the type and substance of ex parte communication. The following Minnesota statutes govern such communications:

Chapter 14.60, Subdivision 2 states "no factual information or evidence shall be considered in the determination of the case unless it is part of the record."

Chapter 14.62 requires that every decision and order rendered by an agency shall be based on the record.

- When the Commission is functioning in its quasi-legislative role, broad policy matters based on generalized facts applicable to broad groups of people are permissible but must be placed on the public record.

* Ex parte communication is any communication, oral or written, made to the Commission's decision-making personnel which goes to the merits or outcome of a proceeding and is not made part of the record.

- Minnesota statutory language covering ex parte communication does not specifically cover the unique quasi-judicial and quasi-legislative role of the Commission.
- The Commission does not have a formal code of conduct for the commissioners or staff.
- Comments received from the interviews conducted for this study found considerable concern regarding clear and precise standards for ex parte communication.

Conclusion:

The dual role (quasi-judicial, quasi-legislative) of the Commission and the absence of clear and precise laws and guidelines regarding the code of conduct for the Commission may create a perception on the part of the public of improper conduct by the commissioners.

Recommendation 5:

- The Commission, through rules, should adopt a code of conduct similar to the judicial code of conduct for judges.
- Minnesota Statutes should be amended to clarify the language concerning ex parte communication as such communication relates to the dual role of the Commission. The statutory changes should be incorporated in the law that specifically relates to the Commission (Chapter 216A).

Post Commission Employment

As was stated previously, there has been, since the inception of the first regulatory body, general concern that regulators may be under the direct or indirect influence of the utilities they regulate. Commissioners going to work for a utility upon leaving their position on the Commission does little to dispel that concern.

Findings:

- Minnesota does not have laws or rules which prohibit a commissioner, upon leaving the Commission, to be employed or engaged by a utility which they had regulated.
- Some Commissioners, upon leaving their seat on the Commission, have performed services for utility companies which were under the jurisdiction of the Commission.

- Inquiries conducted for this study found no evidence of impropriety, but the issue of post commission employment with a utility was raised by many individuals.

Conclusion:

A person who accepts an appointment as a member of the Commission assumes an extraordinary responsibility of public trust. The oath of office for commissioners exemplifies this unique responsibility and provides assurances that a commissioner is not employed or have a pecuniary interest in a utility or affiliated firm under the jurisdiction of the Commission. The employment of commissioners upon leaving the Commission may give the appearance of impropriety therefore breaking the public trust.

Recommendation 6:

- Minnesota Statutes Chapter 216A should be amended to prohibit a Public Utilities Commissioner from accepting employment with a utility under the jurisdiction of the Commission for a period of two (2) years after leaving office.
- Employment would also include: contractual relationships, membership on the board of directors, consultant, and legal counsel to the utility.
- The utility under the jurisdiction of the Commission should also include: holding companies, subsidiaries, affiliated firms, corporations, and associations.

STAFFING AND ORGANIZATION

"I have a dedication to public service, that is why I am working here, but lately, I have become terribly frustrated. If it were not for the belief that I am doing something valuable I would leave." (Current employee, Minnesota Public Utilities Commission, 1985)

The Commission's ability to make informed decisions ultimately is a function of how well the Commission utilizes its available resources. The efficiency of the staff organization, work flow, use of technology, funding, communication and information systems, and relationships with the Department of Public Service and other organizations involved in the regulatory process will be discussed in this section.

First, it should be reiterated that the statutory division of responsibilities between the Minnesota Public Utilities Commission and the Minnesota Department of Public Service is nearly unique among public utility commissions. As a result of this division, comparisons of Minnesota with other states will take this fact into consideration.

Bifurcated System:

As stated previously, in 1980 the Legislature, following a Legislative Auditor's study of the Department of Public Service, divided the responsibilities of utility regulation and created two distinct state agencies, each with its own staff:

- 1) the Public Utilities Commission which has quasi-judicial and quasi-legislative authority to render final decisions on matters before the Commission, and,
- 2) the Department of Public Service which is charged to intervene on behalf of the broad public interest on matters before the Commission.

Findings:

- As of 1983, North Carolina was the only other state which has separated the regulatory responsibilities in a manner similar to Minnesota.
- Interviews conducted for this study found nearly unanimous support for the present divided system.
- Interviews conducted for this study found that the issues that were found by the Legislative Auditor, such as conflicting staff roles, managerial problems related to resource allocation, acrimony between the Commissioners

and the Director of the Department, have been resolved as a result of the establishment of two separate agencies.

- The Legislature provided the statutory language for the creation of the two agencies but left the division of administrative matters to the Director of the Department and the Executive Secretary of the Commission.
- The separation agreement between the two agencies was written in 1980.
- It was found that although the staff of the two agencies work well together, there are some administrative areas of responsibility which are not clear such as: the receipt of filings and subsequent assignment of docket numbers, scheduling of miscellaneous filings, and other minor administrative issues which were negotiated in the agreement but have not been implemented.

Conclusions:

The separation of the duties and responsibilities of utility regulation by the creation of the two agencies has resolved the internal conflicts which existed prior to the separation and is serving the public interest.

Recommendation 7:

- The current system of having two state agencies with their separate and distinct responsibilities for utility regulation should be maintained.
- The Executive Secretary of the Commission and the Director of the Department should re-examine the separation agreement of the two agencies to determine its current application and need for revision.

Staffing:

The decisions by the Commission are governed by state and federal laws, strict deadlines, strict rules of evidence, and close scrutiny by the courts and general public. The decisions can involve millions of dollars and have immediate and direct impact upon thousands of Minnesota citizens. The pressure to meet the statutory deadlines in the manner prescribed by law is intense, and pressure is felt acutely by the staff. The adequacy, number, and organization of the staff affects its ability to respond to the Commission's work load and the changing nature of utility regulation due to deregulation.

Findings:

- The Commission currently has twenty-nine (29) complement positions:

- o Commissioners (5)
- o Executive Secretary (1)
- o Clerical Staff (5)
- o Accounting/Personnel staff (1)
- o Professional/Technical Staff (14)
- o Consumer Services Unit (3)

See Figure 1 for a chart of the Commission's current organization.

- The professional/technical staff are as follows:

- o Telecommunications Rate Analysts (2)
- o Energy Rate Analysts (4)
- o Financial Analysts (4)
- o Certificate of Need Analysts (2)
- o Legal Assistant (1)
- o Vacancy (1)

- The staff at the Commission were found to be highly motivated and competent to perform the work required of them.
- The Executive Secretary directly supervises twenty-one (21) people: 14 professional/technical staff, 5 secretaries, 1 accounting/personnel staff, and the Customer Service Unit supervisor.
- The Executive Secretary assigns all utility related matters to the professional/technical staff, designating case managers and work teams for each general rate case and for miscellaneous tariffs.

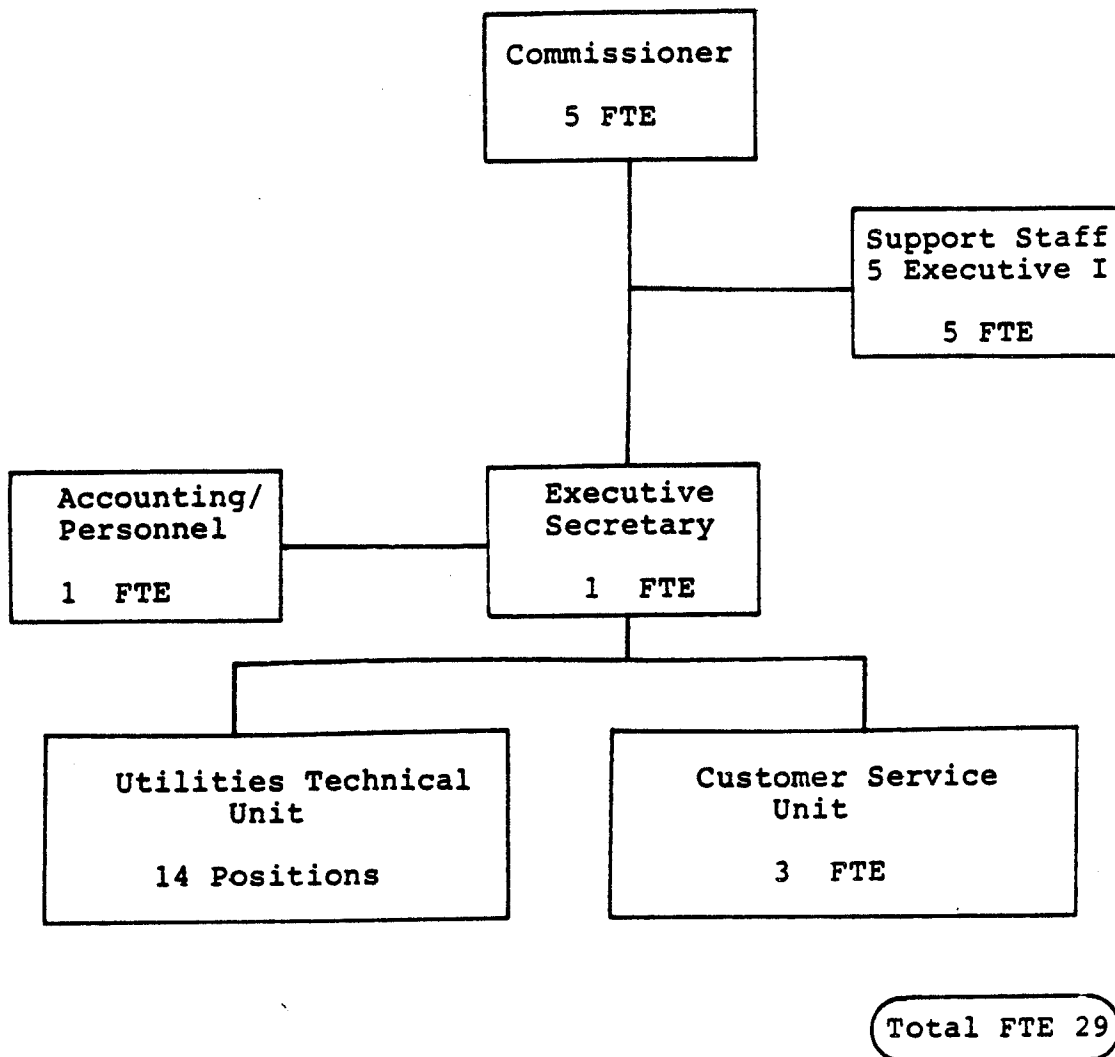
Professional/technical staff assigned as case managers have little or no authority to monitor the quality or timeliness of the work of their colleagues assigned to the case.

Communication among professional/technical staff is informal, there are no formal staff meetings to discuss issues related to particular cases.

- The current organizational structure provides little opportunity to senior level employees for career advancement.

Figure 1

Current Organization Chart



- One clerical support staff (Executive I) is assigned to each commissioner and serves as his or her personal secretary. The support staff also are assigned by the Executive Secretary to assist the professional/technical staff on an as-needed basis. Additionally, the clerical staff have routine functions such as handling mail and logging cases.

The clerical support staff thus formally report to at least three (3) individuals: The commissioner to whom they are assigned, the accounting/personnel person, and the Executive Secretary who in turn assigns them to work for professional/technical staff.

Work flow analysis for this study showed that the work performed by the secretaries for the commissioners to whom they are assigned accounted for about 20% of their work load.

- The three (3) professionals in the Customer Service Unit provide two basic services: the implementation of the Cold Weather Rule and handling complaints by consumers against the utilities.

The Customer Service Unit was transferred by executive order to the Commission at the time the two departments were created because it was thought to be a decision-making and policy-setting unit.

- Interviews conducted for this study indicated that the Customer Service Unit has changed since 1980 when the two departments were created. The unit now functions primarily as an advocate on behalf of consumers and has frequent contact and close working relations with the Information Section of the Department of Public Service.

The Customer Service Unit is in fact physically and programmatically isolated from the rest of the operations of the Commission.

- Utility requests for rate or tariff increases primarily fluctuate as a result of market conditions.

This phenomena of market driven rate or tariff increases means that the work load of the staff fluctuates accordingly and it also means that like utilities will seek rate or tariff increases at or about the same time.

- Interviews conducted for this study revealed a high level of staff frustration due to the "stacking" of rate or tariff increases and their inability to handle the work load and prepare for the future, causing them to always be reactive.

- Although it is difficult to compare the staff size of the Commission with other states because of the differences of regulatory responsibilities, number of utilities regulated and other regulated industries, such comparisons do provide a broad picture for comparison. The following data for surrounding states are derived from a 1983 report of the National Association of Regulatory Commissioners:

Iowa: Total number of staff 175. Annual budget - \$5,057,124.

Wisconsin: Staff size 162. Annual budget - \$5,780,000.

North Dakota: Staff size 60. Annual budget \$3,085,047.

These numbers should be compared with the combined number of staff of the Commission, staff at the Department dedicated to utility regulation and the Assistant Attorneys General, which totals sixty-eight (68) people.*

Conclusions:

The current organizational structure is problematic for several reasons:

- The flat organizational structure has created several distinct problems:
 - o career development opportunities for professional/technical staff are nonexistent;
 - o the span of authority for the Executive Secretary is too broad, causing a breakdown in communications and accountability;
 - o the "case managers" do not have the authority to hold their colleagues accountable for work performed;
 - o routine decisions must be decided by the Executive Secretary; and
 - o assignments to staff are uneven, causing some staff to perform more work than their colleagues.

* The 68 staff are as follows: Commission (29), Department of Public Service's Utility Division (30), Special Assistant Attorneys General staff assigned to the Commission (4), and Special Assistant Attorneys General assigned to the Department (5).

- The current organizational structure and size of the Commission, given the Commission's current rate making obligations, have prevented it from allocating staff resources to perform basic and needed activities including:

Rule making: The Commission has not made extensive use of rules in their rate-making process. The consequence has been that the appellate courts have remanded rulings back to the Commission for failure to have rules.

Precedent tracking: Currently there is no systematic written record of the Commission's decisions.

Policy development: The Commission does not conduct research in areas affecting the Commission in order to develop positions regarding issues and to propose legislative remedies.

Long-term or strategic planning: The Commission has failed to foresee or respond in an affirmative manner to the changing nature of utility regulation.

The staff have failed to perform these essential tasks for two reasons:

- 1) The rate making obligations, governed by statutory requirements and deadlines, preempt any and all other assignments;
- 2) The staff is too small to handle the current work load.

- Assigning each secretary to serve as a Commissioner's personal secretary as well as provide assistance to the professional/technical staff has created two major problems:

- 1) The secretaries are uncertain as to whom they are accountable, causing them to be caught between the commissioners' priorities, the priorities of the professional/technical staff, and those of the Executive Secretary; and

- 2) The work load of the secretaries is unpredictable and uneven, as they are assigned to perform the clerical duties for a rate making "team" and perform clerical duties for the commissioners.

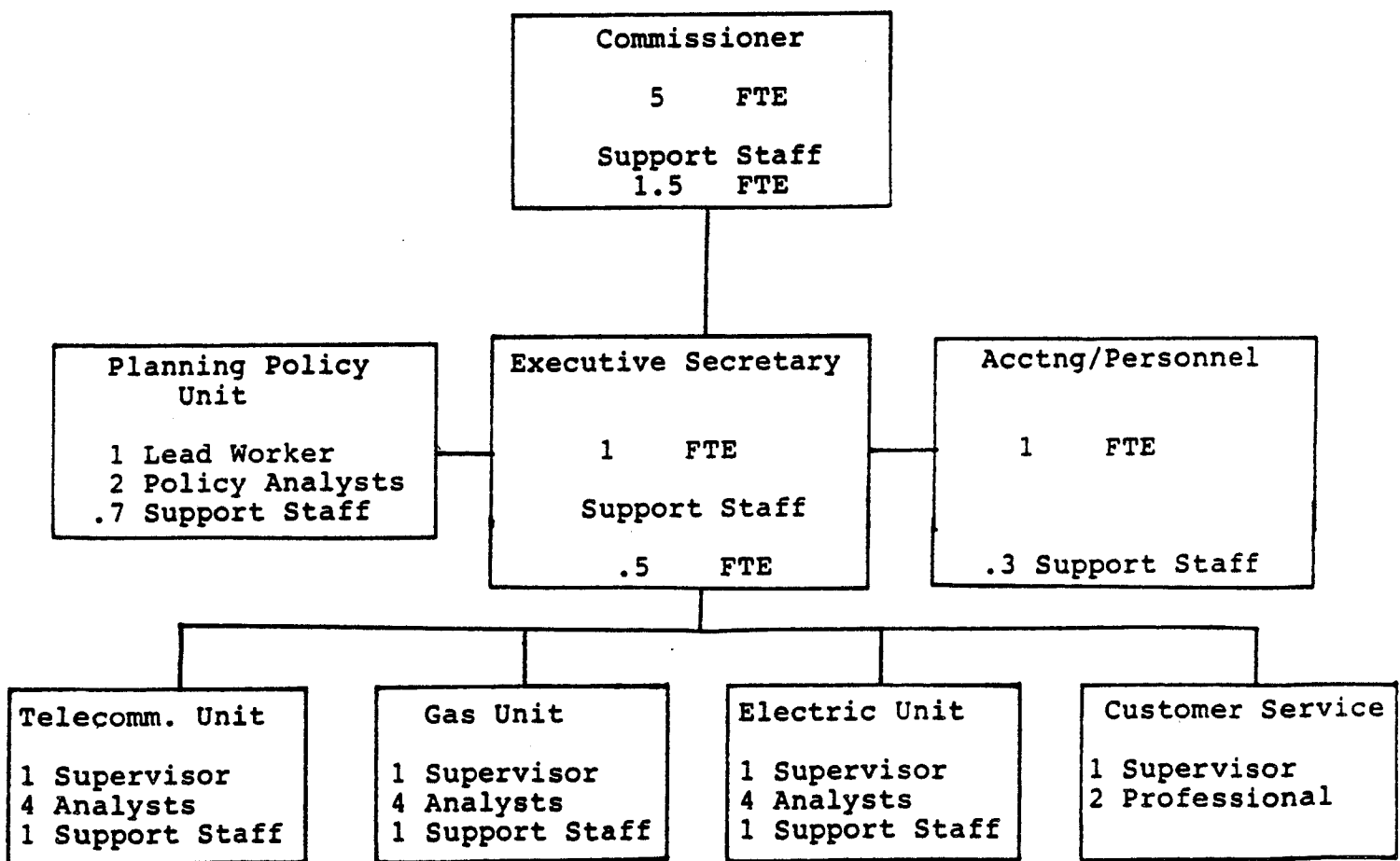
- In particular, the number of staff (two professionals) assigned telecommunications responsibilities is inadequate to meet work demands particularly in light of deregulation of the industry.

- The placement of the Customer Service Unit with the Commission may be problematic due to the changed role of the unit. The majority of its time is spent performing as an advocate for utility customers similar to Department staff. However, in certain cases the unit prepares new, policy related items for the Commission. As a result of this dual function the Unit could be placed in either the Department or the Commission.
- In summary, the organizational structure and staff size is not adequate to fulfill all of its regulatory requirements, develop rules and regulations, and conduct long term planning.

Recommendation 8:

- The staff size should be increased and reorganized as follows (see Figure 2):

Figure 2



- Creation of three (3) utility units:

The reorganization would create a Telecommunications Unit, a Gas Unit, and an Electric Unit. The establishment of three separate units organized around specific utilities would permit the staff to gain expertise in those areas since the criteria and methods for rate making for each of the three utilities is unique.

- Creation of a Policy and Planning Unit

It is recommended that a new unit be created to perform several related policy and planning functions including but not limited to: writing rules, creating and maintaining a precedent tracking and retrieval system, researching public utility policy areas (including telecommunications and energy), and analyzing the affects of federal initiatives on the state's regulatory practices and policies. The staff in this unit would not have any rate making responsibilities.

- Reassignment and increase of support staff:

The reassignment of the support staff to specific work units within the Commission will enable the support staff to become part of the work team and to develop expertise in matters for the team. The reassignment of the support staff would also reduce the number of people to whom the support staff report. The assignment of two (2) support staff to the Commissioners and Executive Secretary will permit them to exclusively serve the commissioners and Executive Secretary. The additional clerical support position, at a lower classification than the current Executive I's, would perform more routine functions such as mailings, copying, phone answering, and receptionist duties and would fill in for absent secretaries.

- Increase of staff:

The proposed reorganization would add five (5) professional staff and one (1) clerical staff to the Commission. Three (3) of the professional staff would be assigned to the newly recommended Policy and Planning Unit and the remaining two (2) would be added to the Telecommunications Unit. The additional clerical staff would be assigned to the Commissioners' and Executive Secretary's Office. The increase in staff would permit the Commission to be more responsive to the needs of the utilities and consumers with regard to rate making and would provide the Commission the opportunity to be affirmative instead of reacting to events that affect the Commission.

- In order to respond to the fluctuating work load, the Commission should utilize consultants or Rule 10 hires.
- Customer Service Unit: Two organizational options

The role of the Customer Service Unit has evolved since the creation of the Commission and the Department. Originally, the designers of the two agencies felt the role of the Unit was primarily one of policy development; however, the role has changed to becoming an advocate on behalf of consumers. There are legitimate arguments for the placement of the Unit in either agency. Therefore, as was recommended in Recommendation # 7, the Director of the Department and the Executive Secretary of the Commission should analyze the original separation agreement between the two organizations for its current relevancy and re-examine the best placement of the Customer Service Unit. The final placement of the Unit can be made by a Reorganization Order written by the Department of Administration.

In summary, the benefits of the proposed reorganization are:

- The span of control of the Executive Secretary would be reduced and more manageable.
- Career advancement opportunities would be available to staff.
- It would enable the development of expertise within a given utility area.
- The increase of staff in the telecommunications area would meet an increasing need.
- The secretaries would have one person to whom they are accountable instead of three.

Budget:

One of the driving forces of any organization is the financial resources available to that organization. The Public Utilities Commission is no different. The amount of money available to the Commission will have a direct affect on staff size and the use of consultants and office technology. During this time of fiscal shortfalls strong arguments or a very unique situation must be present to justify the increase of a public organization's budget.

The recommended increase in staff plus additional recommendations which will follow in this report require an

increase in funding. The following section details a change in the way the Commission is funded.

Findings:

- The Commission's budget was \$1,344,200 in FY 1984, in FY 1985 was \$1,241,100, and is \$1,574,400 for FY 1986.
- The utility regulation functions of the Commission are supported by fees assessed to the utilities.
- The revenue collected for the cost of utility regulation is deposited into the State General Fund.
- The Legislature allocates the Commission's budget as part of the regular biennial budget process.
- Administrative hearing costs are funded separately. Utilities are billed separately for these costs, and receipts are deposited in a revolving fund.
- Smaller public utilities are not charged 100% of the cost of regulation if:
 - 1) the direct costs exceed 2/5 of 1% of the gross operating revenues of the company in any calendar year; and
 - 2) the indirect costs exceed 1/8 of 1% of the gross operating revenue during the calendar year.
- The current method of computing the cost of utility regulation billed to the utilities is not a function of cost accounting but a function of simply pro-rating biennial budget costs across utilities.
- Analysis conducted for this study revealed that a cost-based system of billing for services would provide the Commission budgetary flexibility to respond to the fluctuating nature of utility regulation.

Conclusion:

Although the Commission generates nearly all of its revenues through fees it charges utilities, it still is dependent upon the regular biennial budget process for funding.

At a time when the Commission may need increased resources to effectively deal with the emerging issues of utility regulation, the public pressure to reduce taxes and government expenditures

may reduce the Commission's budget. Ironically, this same public may be increasing its pressure on the Commission to deal with the uncertainty of the delivery and affordability of utility services.

Recommendation 9:

- The Commission, through legislative action, should be financed through a revolving or special revenue fund account. This method of funding would enable the Commission to be responsive to the fluctuating nature of utility regulation.
- Additionally, the Commission should establish a cost-based billing system. A cost-based billing system would enable the retention of additional temporary staff or consultants during unusually high periods of regulatory activity.
- The cost of providing regulatory services to smaller public utilities, those granted the exception to 100% billing, should be funded by one of the alternatives presented below:
 - o charge the smaller utilities 100% of all costs, or
 - o pro-rate the cost of regulating the smaller utilities to the larger utilities and build the cost into the rate charged the larger utilities, or
 - o public utilities whose revenues qualify them for the exemption should be removed from the regulatory authority of the Commission except for quality of service and areas of service.

Duties of the Executive Secretary:

The Executive Secretary, as the chief administrative officer of the Commission, is responsible for overall administration including: financial management, personnel management, and other administrative matters required by law.

The Executive Secretary is also charged with preparing orders and reports and maintaining records of all proceedings of the Commission.

The Executive Secretary serves at the pleasure of the commissioners.

Findings:

- The current Executive Secretary has been employed by the Commission since September, 1985.
- The statutory language differentiating the duties and responsibilities of the Executive Secretary and Commissioners is explicit.
 - o The law prescribes that the Executive Secretary supervises and directs the activities of staff and
 - o That directions from Commissioners to the staff shall go through the Executive Secretary.
- There is no written job description for the position of Executive Secretary further specifying duties, responsibilities, and authorities.
- Interviews conducted for this study found that staff often received assignments directly from commissioners and that the Executive Secretary was not aware of such assignments.
- Interviews conducted for this study found that commissioners held meetings with staff without the knowledge of the Executive Secretary.
- Interviews conducted for this study found that the commissioners do not have a common understanding regarding the separation of duties and responsibilities between themselves and the Executive Secretary.
- Clear lines of authority and duties between the commissioners and staff is essential to develop and maintain organizational efficiency.

Conclusion:

Clear and precise lines of communication, authority, duties and responsibilities are essential to ensure the most efficient and effective operation of the Commission. This does not exist currently, in part because such divisions of duty and authority have not been formally delineated.

Recommendation 10:

- A job description which explicitly outlines the duties and responsibilities of the Executive Secretary should be immediately written and adopted by the Commissioners and Executive Secretary.

- The Commission and Executive Secretary should develop written procedures which outline those administrative and management issues that should be the prerogative of the Executive Secretary and those issues which should be brought before the Commission for decisions.

(The creation of the commissioners' procedures manual as recommended on page 17 will also address the issue of duties and responsibilities.)

Office Automation:

The technological revolution has made powerful and relatively easy to operate mini- and micro-computers affordable to most organizations. In addition to text processing, computers can calculate in a period of seconds complicated economic, statistical and accounting data, which used to take weeks to manually calculate. The work load of the Commission demands the use of automated systems.

Findings:

- The Commission has five (5) integrated dedicated text processors.
- The dedicated text processors utilize two (2) printers: one (1) letter quality printer and one (1) high speed dot matrix printer.
- The clerical staff have exclusive use of the dedicated text processors.
- The Commission also has three (3) software compatible early generation micro-computers.
- Each micro-computer has a dot matrix printer.
- A limited number of professional staff are trained to use the micro-computers.
- The principal use of the micro-computers is for text processing.
- The dedicated text processors and the micro-computers are not compatible or connected.

Conclusion:

Although the Commission has some office automation, it is not state-of-the-art and is of very limited use by the professional/technical staff. The productivity of the Commission would be greatly increased if the Commission would install totally integrated automated office systems.

Recommendation 11:

- The Commission should immediately make efforts to install a state-of-the-art office automation system. First, the Commission, with the assistance of the Department of Administration's Information Management Bureau, should conduct a systems analysis to determine their specific automation needs.
- At a minimum, the system should have text processing, data base management, statistical analysis, econometric modeling and accounting capabilities.
- The system should also be designed around the needs of the entire staff and the commissioners.

Office Procedures:

The Commission's work is extremely complicated and is subject to judicial review. Additionally, the rate making process of the Commission involves several other parties and requires the submission and creation of materials which will be a part of a legal record. The work load of the Commission plus the legal requirements requires that the management of work and documents be as efficient as possible.

Findings:

- Office procedures are not written.
- Interviews for this study found that because procedures are not in writing unnecessary time is sometimes spent determining what must be done.
- The time allotted for this study prevented the study team from conducting a more detailed analysis of specific office policies and procedures to determine their efficiency and effectiveness.

Conclusion:

The absence of written office policies and procedures has resulted in the duplication of effort and raises the concern that necessary work may not be performed.

Recommendation 12:

- The Commission should immediately analyze their current informal office policies and procedures, analyze their efficiency and effectiveness, and write and adopt a formal policies and procedures manual.
- The Commission should, upon the completion of the office policies and procedures manual, provide training for all Commission staff and commissioners on the contents of the manual.

Staff Training:

As has been repeatedly cited, utility regulation is an extremely complex and evolving field. Not only is each utility field different from the others, but the laws governing their regulation are also unique.

It is extremely difficult to find an individual who has both the academic background needed for utility regulation, (accounting, economics, statistics, engineering and law) and experience in any of the utilities regulated by the Commission. Short of finding such a person, training is the next best alternative.

Findings:

- The Commission does not have a formal training program for new staff.
- The Commission does not have an in-service training program for staff.
- The training that is provided takes the form of attending a conference or seminar.
- Employees and commissioners interviewed for this study strongly recommended the creation of a formal training program for staff.

Conclusion:

The complex and changing nature of utility regulation requires the staff to be as well informed and equipped as possible. A planned training program for staff is one effective way to assure the highest competency possible.

Recommendation 13:

- The Commission should establish a formal training program for new staff and should also develop an in-service training program.
- Funds should be budgeted accordingly.

REGULATORY AND RATE MAKING PROCESS

A detailed analysis of the current regulatory and rate making process of the Commission is beyond the scope of this study. A study outlining the process, analysis of the process, and recommendations for improvement should be the subject of a separate study and would require substantial resources to execute. Therefore, this section will not deal with the entire system of rate making but will address issues within the current system that were consistently raised during the data collection phase of the study.

"It is very difficult to balance public and private interest with horse and buggy laws in an information age." (A current Minnesota Special Assistant Attorney General, 1985.)

Laws are written to address perceived social, economic, technological, or political needs. As the needs for the laws change, laws can be amended, repealed, ignored, reinterpreted, or rewritten. The usefulness of any law is directly dependent upon its responsiveness to current needs and issues brought before it.

State laws are also affected by actions of the federal government and must comport with the standards and interpretation of federal laws.

The relevancy of Minnesota's regulatory laws to today's social, economic, technological and political needs have a direct bearing on the Commission's regulatory and rate making abilities.

Minnesota Public Utility Laws

Public utility regulation in Minnesota is governed by the following state statutes:

Chapter 14, Administrative Procedure. This law stipulates the process to be used in contested cases before the Commission.

Chapter 216A, Department of Public Service. This law creates the Department of Public Service and the Public Utilities Commission. The law further outlines the duties and authorities of each agency. Additionally, the law prescribes the selection process of the commissioners, their duties and responsibilities.

Chapter 216B, Public Utilities. This statute prescribes the gas and electric utilities that are under the jurisdiction of the Commission and details the Commission's regulatory authorities.

Chapter 237, Telephone and Telegraph Companies. The law determines the telephone exchanges that fall under the jurisdiction of the Commission and outlines the authority of the Commission to regulate the industry.

Laws Regulating Telephone and Telegraph Companies

Findings:

- Minnesota Statutes, Chapter 237 (Telephone and Telegraph Companies), was first written in 1915. Chapter 237 has been amended several times since it was initially written and was last amended in 1984. It has, however, not been amended to respond to the divestiture of AT&T and recent innovations in telecommunications technology.
- In interviews conducted for this study, attorneys representing utilities, the Commission, the Department and Special Assistant Attorneys General representing other intervenors before the Commission all expressed concern that Chapter 237 was no longer adequate to meet the needs of regulating or deregulating the telecommunications industry.

Commissioners and staff interviewed for this study expressed concern that the language in the law was archaic and did not meet the current needs of the Commission as a result of the dramatic changes in the telecommunications industry.

In fact, commissioners, staff, and attorneys interviewed for this study expressed concern that the Commission, in its rulings, may be exceeding its statutory authority.

- Nearly all parties interviewed for this study stated that extreme caution should be taken in writing new telecommunications legislation.

Nearly all parties interviewed for this study stated that the final "shake out" of the telecommunications industry is not complete.

A State Planning Agency sponsored task force is conducting an analysis of the affects of the changes in the telecommunications industry and the task force is expected to develop recommendations for legislative action.

- The review of the literature conducted for this study revealed five (5) major public policy issues that must be dealt with as a result of deregulation:

- 1) determining whether and to what extent competition in key segments of the intrastate telecommunications industry will be permitted,
- 2) establishing the charges that competitive intrastate long-distance service providers will pay for access to local telephone exchanges that originate and terminate their calls,
- 3) determining what premium AT&T should pay in access charges to reflect their superior network access pending implementation of the equal access provision of the divestiture order,
- 4) reevaluating traditional regulatory approaches in light of the newly competitive nature of the communications industry itself, and
- 5) maintaining basic telephone exchange service.

Conclusion:

The current law governing the regulation of the telecommunications industry is not as responsive as it should be to the changes that have evolved within the industry during the last several years. However, efforts to amend or rewrite the language regulating the telecommunications industry should proceed with extreme caution in order to adequately assess all of the technological, social, economic, and political implications of such revisions. Extensive further study is needed to assure that all of the issues are brought forward and dealt with in a reasonable manner.

Recommendation 14:

- The Legislature should establish a temporary joint commission to examine the affects of deregulation of the telecommunications industry and, in particular, determine the relevancy of Chapter 237 to the regulation of the telecommunication industry and to develop any needed legislative remedies.

Settlement Barred

Settlements are not uncommon in civil cases. They occur when all of the affected parties agree to the terms of the final judgement outside of the adversarial arena of a court room. In the instance of a rate case, all of the parties, the utility, the Commission, the Department, and other participants, negotiate and agree to all of the issues of a rate case.

Findings:

- Minnesota Statutes 216B.16, Subdivision 1a prohibits the settlement of a general rate case for gas and electric rate increases if the amount requested is more than \$500,000.

Minnesota Statutes 237.075, Subdivision 1a also prohibits the settlement of a general rate increase for telephone and telegraph companies if the amount of the increase is more than \$500,000.

- If the amount of the general rate case is more than \$500,000, both Minnesota Statutes 216B.16, Subdivision 1a and Minnesota Statutes 237.075, Subdivision 1a require a contested case proceeding as prescribed in the Administrative Procedures Act.

A general rate increase of less than \$500,000 can be settled without a contested case proceeding if all of the parties agree. If not, any one of the affected parties can ask for and receive a contested case proceeding.

- Most attorneys interviewed for this study thought that the sections barring settlements created unnecessary work and cost.

Commissioners interviewed for this study agreed that the prohibition against settlements was not serving the public interest because it created unnecessary work for the utilities, the Commission, the Department, and others.

Because of the requirements of the two aforementioned statutory provisions, contested case proceedings must be conducted even though all parties agree in advance to the terms of a proposed stipulation.

Conclusion:

One way to speed up and reduce the cost of the regulatory process would be through greater reliance on settlements. Settled or stipulated cases are common among a number of federal regulatory agencies, including the Federal Trade Commission, the Federal Energy Regulatory Commission, and the National Labor Relations Board. The bifurcated system in Minnesota, plus the presence of other organizations funded to intervene on behalf of the public, provides assurance that utility companies will be carefully scrutinized before the Commission enters into an agreement.

Recommendation 15:

- The Legislature should, at the initiative of the Commission and the Department, remove the statutory language requiring a contested case process for general rate cases exceeding \$500,000.

Rules and Regulations

Laws governing utility regulation are usually written very broadly. It is understood by authors of utility regulation laws that the complexities of regulation make it nearly impossible for the Legislature to compose language that would encompass all of the intricacies of a particular rate case. Therefore, the Legislature grants the Public Utility Commission powers to write rules and regulations governing the regulatory responsibilities of the Commission. Minnesota laws governing utility regulation grant the Commission the power to write rules and regulations concerning their responsibilities.

Findings:

- Minnesota Statutes, Chapter 216A recognizes the broad decision making role of the Commission by granting the Commission quasi-legislative and quasi-judicial functions.

Chapter 216A.02 defines quasi-legislative function as the "...establishment and promulgation of all rules, orders and directives of general or particular applicability, governing the conduct of the regulated persons or businesses....".

- The Commission has issued rules for telephone utilities (MCAR, Chapter 7810, 1983) and inter-exchange calling (MCAR, Chapter 7815, 1983).

The telephone rules were written prior to the divestiture of AT&T in 1984.

- The Commission has not issued telephone filing rules.

A Special Assistant Attorney General drafted telephone filing rules in 1979.

In 1985 the Commission conducted a public meeting to solicit comments on proposed filing requirements; however, the Commission has not attempted to formally establish telephone filing rules.

- The legal obligation and requirement of the Commission is not completely clear as evidenced by the following:

a) A 1979 report of the Legislative Commission to Review Administrative Rules stated:

"The PSC has made a case for the need for administrative discretion in such areas as the issuance of policy statements. The statutes are clear that the PSC functions in a manner which is unlike other agencies. It is given a legislative function which allows it to regulate public utilities in Minnesota. Yet it is also not exempt from the requirements of Chapter 15 (now Chapter 14) in terms of rule making."

b) The Minnesota Supreme Court in The Hanna Mining Company v. Minnesota Public Utilities Commission, May 28, 1985, ruled:

"Minnesota Statutes Subdivision 14.06 (1984) requires agencies to adopt procedural rules in certain circumstances:

'Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.'

"By order, the MPUC adopted procedures relating to the review of investments in energy conservation programs. It changed procedure several times during the course of its decision-making process. By doing so, it failed to give proper notice of the rules which were applicable to the public,.... The MPUC erred by not properly adopting rules relating to its procedures as required by Minnesota Statutes, Subdivision 14.06....

"The MPUC is required to properly adopt procedural rules."

- In FY 1984 the Commission ruled on 371 miscellaneous filings. A miscellaneous filing is, in effect, any issue brought forth by a utility that is not a general rate case.

The Commission does not have rules for the filing of miscellaneous tariffs.

- Some commissioners interviewed for this study indicated that they preferred to issue general policy decisions as opposed to the adoption of rules because they believed rules would limit their decision making options.

- The Commission has issued some rules; however, many of them were written prior to the establishment of the Transportation Regulatory Board and the required use of the Office of Administrative Hearings for contested cases.

Conclusion:

There clearly is not a consensus among the commissioners and other parties involved in the Commission as to the need for rules. However, there are several advantages that rule making has over case-by-case decision making. First, rule making encourages advance planning by both the Commission and the utilities. Clear administrative policy facilitates predictable behavior by regulators, regulated firms, and consumers. Second, rule making promotes consistency and evenhandedness in the application of the law. Third, rule making eliminates unnecessary overlap and duplication of effort.

Rule making is thought to be controversial and time consuming and therefore should be avoided at all cost; however, rule making in Minnesota needs not always to be controversial. Rule making can be broken into two (2) distinct parts: non-controversial and controversial. The submission of non-controversial rules, when applicable, will enable the Commission to comply with the basic requirements of the Administrative Procedures Act without the expenditure of an inordinate amount of resources.

Recommendation 16:

- The Commission should, with the assistance and cooperation of the Department, dedicate staff resources, including the retention of consultants if necessary, to the development of rules and regulations. The current set of Commission rules should be analyzed for their application and be rewritten if required, and the Commission should write rules for filing miscellaneous tariffs for all three utilities that they regulate; and

The Commission should write telephone filing rules.

Regulatory Lag

One of the major issues affecting utility regulators is regulatory lag. Regulatory lag is the time it takes for a regulatory agency to reach a decision. In a utility rate case, that is the time between a company's rate hike request (the filing date) and the Commission's action on that request (the decision date). The longer a rate case lasts, the greater the likelihood the cost estimates submitted by the company will be obsolete. Minnesota has specific language in law that addresses the concerns of regulatory lag.

Findings:

- Minnesota Statutes 216B.16 and 237.075 (Rate Changes) specifically prescribe the deadlines for the Commission's decisions on interim and final rates.

According to the statutes the Commission has sixty (60) days to issue its decision for interim rates.

Furthermore, the statute requires the Commission to reach its final decision within ten (10) months after the original filing date of the utility company.

- The statutes governing the deadlines in which the Commission must render its interim and final decisions were changed in 1982.

Prior to the changes made in 1982 the Commission had ninety (90) days in which to render the interim decision, and twelve (12) months from the initial filing date to render its final decision.

The 1982 Law also changed the variables used in the compilation of the interim rate request.

- Interviews conducted for this study with the Commission staff, the commissioners, Special Assistant Attorneys General, and Department staff found that the amount of work required to render interim and final rate decisions did not decrease with the decrease in time to perform the work. The respondents expressed concern that there was increased opportunity for error and insufficient time to verify the data submitted by the utilities.
- Utilities have complete discretion in determining when they will seek a rate increase; therefore, they have the opportunity to provide themselves as much time as they need to prepare before they submit their rate request.

The decision of a utility to file a rate case is primarily dependent upon the market forces that affect their particular industry. Therefore, it is not uncommon for like utilities to seek rate increases at or at nearly the same time as their industry counterparts.

Interviews conducted for this study revealed that the aforementioned phenomena adds to the burden of the Commission because it means that the Commission could have several general rate cases to conduct simultaneously.

- In interviews conducted for this study Commission staff, commissioners, Department staff and Special Assistant Attorneys General working in the area of utility regulation nearly unanimously agreed that one of the greatest pressures felt by all of them was the inability to control their own flow of work, due to the discretion given to utilities to determine their own filing date and the time restraints of the statutes.

Conclusion:

Minnesota statutes provide assurances to the utilities within the state that their requests for rate increases will be dealt with in a timely manner. However, the time requirements of the statutes, plus the possibility of more than one utility seeking a rate increase at or nearly at the same time as their industry counterparts, may place obligations upon the Commission it cannot responsibly meet. What is needed is an approach that assures timely rulings of rate requests and provides the Commission the time to carry out its duties in a complete and professional manner. The current statutory provisions satisfactorily addresses the issue of regulatory lag; however, they do not provide sufficient time for the Commission to perform its duties in the most comprehensive fashion.

Recommendation 17:

- There are several possible solutions that could accomplish the two objectives of providing timely rate decisions and provide the Commission sufficient time to perform its obligations.

1. The current statutes governing the timeliness of the Commission could be changed:

The current period of deciding interim rates could remain at sixty (60) days and the current criteria applied to the interim rates could also remain.

The period allowed to render final decisions could be increased to twelve (12) months.

2. The Commission could be given statutory authority to ask each utility it regulates whether or not the utility intends to seek a rate increase for the given calendar period. Utilities answering in the affirmative would then be assigned filing dates. Utilities responding in the negative would not, except in the case of bona fide emergencies, be permitted to apply for a rate increase during the period in question. (Wisconsin has a similar system in place; however, the Wisconsin system functions via a gentleman's agreement among the Commission and the utilities.)

The Commission in its rules could prescribe a similar filing date system as presented in Option 2 above; however, the legal authority of the Commission to prescribe such a system might be challenged.

Office Of Administrative Hearings

The Commission, as directed by statute, utilizes the Office of Administrative Hearings in contested case proceedings. Minnesota Statutes Chapter 14 outlines the provisions and procedures used by the Administrative Law Judges (ALJ's) assigned to hear the contested cases of the Commission.

Findings:

- Nearly all parties interviewed for this study stated the Administrative Law Judges were competent and performed a valuable service for the Commission.
- Interviews conducted with the commissioners, staff and Special Assistant Attorneys General assigned to the Commission indicated that the precise role and responsibilities of the ALJ's were not always clear.
- Interviews conducted for this study found the following problem areas:
 - Motion practices. The manner in which motions are handled differ with each Administrative Law Judge.
 - Cross-examination by Commission staff. The law requires the Commission staff to interrogate witnesses in order to complete the official record. The opportunity of staff to cross-examine witnesses varies with different ALJ's.

- Format of the ALJ Report. The Commission does not find the current format of the ALJ's report to be very helpful, consequently the Commission staff reformats the ALJ reports.
- Use of precedent. The Commission has discussed this with the Office of Administrative Hearings; however, there is still inconsistent treatment of precedents by different ALJ's.
- Participation of commissioners. The commissioners currently do not take an active part in the hearings conducted by the ALJ's. It is important that the commissioners attend and actively participate in the hearings.

Conclusion:

The role of the Office of Administrative Hearings is critical to the Commission in the execution of its responsibilities. However, there are minor administrative problems that could be resolved if the Commission and the Office of Administrative Hearings formally established procedures to address them as well as future problems as they surface.

Recommendation 18

- The Commission and the Office of Administrative Hearings should write a formal Memorandum of Understanding which would address the roles, responsibilities, duties, and administrative and procedural items not currently covered by statute. This formal memo would provide for consistent treatment of issues among the various Administrative Law Judges assigned to Commission cases.

Precedent Tracking System

The quasi-legislative nature of the Commission does not compel the Commission to render its decisions based upon past decisions. However, many of the issues that come before the Commission are similar in nature, thus, providing an opportunity to rely on previous decisions for guidance. The maintenance of a precedent filing and retrieval system would enable the Commission to review previous decisions and, where appropriate, apply a previous decision to a pending issue.

Findings:

- The Commission does not have a precedent tracking system.

- Commissioners and staff interviewed for the study indicated a need for a precedent tracking system.
- The current work load obligations of the staff have not afforded them the time to develop and maintain a precedent tracking system.

Conclusion:

As was stated above, the Commission is not compelled to render its decision based upon previous decisions. However, the easy access of previous decisions would enable the Commission to review its past decisions which may facilitate a more rapid decision making process, especially if the issue before the Commission has been dealt with previously.

Recommendation 19:

- The Commission should immediately dedicate the necessary staff resources to develop a precedent tracking system. Automation of this system would be the ideal; however, the Commission should not wait for the installation of the automated system before the precedent tracking system is developed. The design of the manual system should consider the eventual application of an automated system.

DEREGULATION

"The deregulation of the telecommunications industry is only a harbinger of things to come for the gas and electric industries." (Current Commissioner, Minnesota Public Utilities Commission, 1985).

The statement above represents the sentiment of experts in public utility regulation across the nation as well as in Minnesota.

The divestiture of AT&T on January 1, 1984 did not bring about deregulation but added fuel to an already burning public issue.

The divestiture and recent technological innovations have focused attention on deregulation of the telecommunications industry. However, a recent decision by the Federal Energy Regulatory Commission, October 9, Docket No. RM85-1, established a voluntary regulatory framework in which natural gas could be piped under a competitive pricing basis. This decision provides credence to the prognosis that deregulation will affect the gas and electrical industries too.

There are at least four major forces influencing this trend toward deregulation of utilities.

First, the public's perception of what government should and should not do is changing, there is growing skepticism about government's ability to perform. The movement toward deregulation is a natural outgrowth of these changing perceptions and this growing skepticism.

Secondly, the public's concern that regulation is not working, as evidenced by the number of states (12) who in 1984 changed the method of selecting their commissioners, has also provided energy toward the movement to deregulate.

The application of new technologies in alternative energy production as well as in telecommunications has changed the production and delivery methods of utilities. The application of these new technologies has provided the opportunity for other providers to deliver services which have been previously the domain of one company. These alternatives have spawned the desire for competition and less regulation.

As a result of the aforementioned phenomena the basic intellectual premise of monopoly theory is also coming under scrutiny by scholars and public policy makers. The economic theory supporting natural monopolies is being debated. The verdict is still out, but the once unquestioned natural monopoly theory is no longer sacred ground.

These trends in thinking and technology have set the stage for a fundamental re-examination of public policy toward the regulation of public utilities.

The Commission's Response to Deregulation

The consent decree between the U.S. Department of Justice and AT&T was entered into in 1982 and took effect on January 1, 1984. Although the terms of the consent decree were made public, no one could have predicted the affects of the divestiture of AT&T.

The Minnesota Commission, like other state commissions, has moved toward deregulation with caution, in part by design and in part due to basic organizational and legal inadequacies.

However, despite these inadequacies, the Commission has made several decisions that have brought about significant changes in the telecommunications industry in Minnesota.

Customer-owned, coin-operated telephones.

The Commission authorized the connection of customer-owned coin-operated telephones to local networks. This decision was the first of its kind in the country.

Northwestern Bell Telephone Company CENTREX/CENTRON

The Commission detariffed CENTRON. The decision allows Northwestern Bell to price CENTRON competitively and also assured that local customers were not subsidizing CENTRON.

WATS Billing.

The Commission ordered Northwestern Bell and AT&T to file cost-based WATS tariffs. This order was in response to increased service costs to WATS customers as a result of reduced discounts available to them.

Intrastate Intercity Telecommunications Competition.

The Commission, in response to petitions from telecommunication companies, granted limited authority to inter-exchange carriers to provide interlata intrastate toll service.*

* LATA (Local Access and Transport Area): the term, derived from the judgement ordering the divestiture of AT&T, defines the territory in which a Bell Operating Company may offer its services.

Specialized Customer Premise Equipment.

In accordance with a provision of the consent decree, Northwestern Bell had to transfer to AT&T all of its customer premises equipment (CPE), including specialized CPE used by hearing and disability impaired people. AT&T was free to charge any amount to rent or sell the equipment. The complainants were concerned that the equipment would be priced above their ability to pay. The Commission ordered AT&T to transfer back to Northwestern Bell the specialized CPE.

Barriers to Effective Deregulation

The preceding list is not inclusive but represents some of the unique decisions the Commission has made as a result of the divestiture of AT&T. The decisions listed above are significant for four reasons:

- 1) They were decisions the Commission would not have made prior to divestiture,
- 2) The Commission established public policy with each decision,
- 3) The decisions were made without legal or historical references, and
- 4) The decisions were made without reference to an overall plan for the deregulation of the telecommunications industry.

Deregulation of the telecommunications industry has dramatically changed the role of the Commission from regulating a monopoly to one of fostering competition. There are three fundamental problems that have kept the Commission from being as responsive to the changing needs of deregulation as it could:

1. Leadership

The current method of selecting the Chair of the Commission, an informal agreement among the commissioners to elect the chair on a rotating basis from the members of the majority party, has not provided strong and continuous policy direction for the Commission. Recommendation # 3 on page 16 recommends that the method of selecting the chair be changed: the chair should be appointed by the Governor for a term coterminous with the Governor's, and the chair should also have increased status and authority.

2. Commission's Staffing and Organization

The Commission, given its current number of staff and organizational structure, cannot address the issues of deregulation adequately. Recommendation # 8 on page 28 recommends that the staff be increased by six (6): three (3) staff assigned to a policy and program development unit, two (2) additional staff assigned to a Telecommunications Unit (which would have a total of four (4) professional staff), and an additional clerical support person.

3. State Statutes

The current statutes governing telecommunications are obsolete and do not address the current competitive and technological nature of the telecommunications industry. Recommendation # 14 on page 41, recommends that a temporary joint commission of the House and Senate examine the current statutes and write new laws governing the telecommunications industry.

All three (3) of the above recommendations require legislative action. However, the rewriting of a law is not an easy task as there are major public policy issues to be considered.

Public Policy Considerations in the Rewriting the Telephone Laws

Although the Commission has been granted unique decision making powers and authorities, it still must function within the statutory framework provided to it by the Legislature. As was stated previously, Minnesota Statutes Chapter 237 (Telephone and Telegraph Companies) is the law that authorizes the Commission to decide regulatory matters relating to telephone and telegraph companies.

Chapter 237 was first written in 1915 and has not been substantially changed since then. In 1978 the Minnesota State Supreme Court in Arvig Telephone Company v. Northwestern Bell Telephone Company stated:

"In fairness to the litigants, it must be observed that at the heart of the difficulty posed by this case is the somewhat antiquated nature of the statutes with which we must deal. It seems plain to us that much of the language in the existing statutes is descended directly from a time when the structure of the telephone industry in Minnesota was vastly different from its present state."

This opinion was written prior to the divestiture of AT&T and even before some of the major advances made in telecommunications technology.

The Commission has been performing its regulatory functions and attempting to foster competition in the telecommunications industry with statutes that were written before the United States' involvement in World War I.

The laws, as stated above, are not applicable for today's telecommunications technology nor do they consider the affects of the divestiture of AT&T.

As the movement toward deregulation of the telecommunications industry has made the task of the Commission more complex, it will also present the authors of any new legislation a new set of public policy issues to be resolved.

The following is a listing of some of the issues which will confront public policy makers in the writing of new telecommunications legislation:

1. Universal service. Universal service means equal and affordable access to the telephone network for all citizens. There are two subissues:
 - A. Affordable telephone service. The debate will focus around: a) Is telephone service a basic necessity for all citizens regardless of their economic status, and b) If it is a basic necessity, how will this service be provided.
 - B. Equal telephone service. Experts predict telecommunications companies will only install the latest telecommunications technology for large corporate and government customers and in densely populated areas due to the high cost of installation. Less densely populated areas and small businesses will not be as profitable areas in which to install state-of-the-art telecommunications technology. Therefore, there is concern that rural areas and small businesses will suffer long term negative economic affects.
2. Cross subsidization or "gold-plating". Deregulation has opened the door of opportunity for companies that previously had their entrepreneurial activities limited to those areas under the regulation of public utility commissions. However, now as the market place is open to these companies, there is concern that they could use the portions of their businesses still under the jurisdiction of public utility commissions, and hence guaranteed a profit, to subsidize the cost of their unregulated businesses.
 - A) The potential for cross-subsidy is compounded in the telecommunications industry by the very nature

of the industry. A dominant firm that provides an entire array of telecommunications services via a single, integrated network involving extensive use of common facilities, personnel, management, and marketing resources could mis-allocate the cost of these services to the regulated part of the firm.

B) Additionally, a regulated firm now can enter the competitive market place in an area unrelated to the telecommunications industry. There is the opportunity to subsidize the new enterprise with the guaranteed return of the regulated industry.

3. Fostering Competition or Semi-deregulation. It is a misnomer to state that the telecommunications industry is deregulated. Semi-deregulation is a more appropriate description. There are, at the federal level as well as the state level, restrictions as to what AT&T and local phone companies can and cannot do. One of the underlying concerns of many experts is that during this transition period from regulation to a competitive structure, the old Bell companies will engage in predatory pricing and cross-subsidization to destroy their new competitors. The challenge is to apply the right amount of regulation to assure fair competition as market conditions continue to change. This requires a delicate and continuing balancing act that will severely test any new law written to take the place of Chapter 237.
4. Bypassing. New technology permits companies to bypass current local and long-distance telephone networks. As large telecommunication users take advantage of this technology, remaining customers will have to pay for the imbedded costs of existing local and long-distance telephone networks. The removal of large customers from the telephone system will mean that the remaining users of the system will have to pay higher charges for services. This issue will directly affect the affordability of universal service.
5. Local service regulation and cable television. Some experts in public utility regulation argue that some basic telephone services will always have to be regulated and that a monopolistic company will be required to provide universal service at an affordable price. However, other experts believe that cable television can compete with telephone companies. Cable television has two-way voice, data, and video transmission capabilities which are greater than the current technological capabilities permitted, under regulation, for telephone companies. As of January, 1985, there were 308 cable television companies operating in Minnesota. These companies could reach 1,169,000 households or 3,063,000 people.

The rewriting of Chapter 237 will present a unique challenge to the Legislature. In summary, the Legislature should write new laws governing telecommunications that should:

1. Maintain and advance the efficiency and availability of telecommunications services,
2. Ensure that customers pay only reasonable charges for telecommunications services,
3. Ensure that rates for noncompetitive telecommunications services do not include costs associated with the competitive ventures of regulated telecommunications companies,
4. Promote diversity in the supply of telecommunications services and products and the development of competition in telecommunications markets throughout the state, and
5. Permit flexible regulation of competitive telecommunications companies and services.