


REPORT TO THE MINNESOTA LEGISLATURE


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This Report is submitted in compliance with Minnesota Statutes

INTRODUCTION

This report is submitted in response to the directive in the Omnibus Government Reorganization Act requiring the Commissioner of the Department of Public Service and the Chair of the Public Utilities Commission to submit a joint recommendation on whether the two agencies should remain separate and independent or should merge.

The two agencies have had many meetings and have discussed at length the benefits and drawbacks of a unified structure, including the concerns listed in the statute. We have also taken a hard look at the effectiveness and the efficiency of the current two-agency structure. Our review and discussions have led us and the Governor's Office to conclude that uniting the two agencies would seriously impair their advocacy, enforcement, regulatory and quasi-judicial functions.

STATUTORY CONSIDERATIONS

The Omnibus Government Reorganization Act required the two agencies to address eight issues, listed and considered below.

- *Developing an administrative structure that maximizes the independence of the Commission when it acts in its quasi-judicial capacity*

Minnesota led the way in maximizing the independence of public utilities commissioners when it created separate and autonomous advocacy and decision-making agencies in 1981. Since then, Vermont and Utah have followed suit. Both the Commission and the Department receive calls every year from other states considering the Minnesota model.

The Minnesota model is, without question, the organizational model providing maximum independence to commissioners acting in their quasi-judicial capacity. Any other model requires constructing artificial barriers between commissioners and staff members assigned to advocacy and, potentially, enforcement duties, as well as between advocacy and advisory staff.

- *Developing guidelines to prevent employees who are acting in an investigative or advocacy role from playing a decision-making role in the same or factually related cases*

Structural separation prevents this from happening at present. Detailed guidelines would be necessary if Minnesota adopted a unitary structure. Ensuring that advocacy and advisory staff don't change roles or share information on the same or factually related cases is a major issue in unitary agencies, consuming considerable time and resources.

- *Assigning quasi-judicial duties to the Commission*

This is the current practice, and it is working well. The attached statutory summaries demonstrate that the two agencies have separate and distinct roles.

- *Joint provision of administrative and support services, including personnel, purchasing, budgeting, information systems, and similar services*

The Department and the Commission have historically worked together to eliminate duplication and cut costs. These efforts include sharing the kinds of administrative and support functions specified in the statute, as well as sharing substantive duties to the extent that this can be done without compromising either agency's independence or integrity.

The two agencies share docketing and record keeping functions, eliminating the need for duplicate paper flows. The Department catalogs, stores, microfilms and preserves Commission Orders, minutes and files. The Department responds to requests for documents or file research received by either agency, and bills requesting parties when appropriate.

The two agencies prepare joint quarterly assessments to the regulated utilities. The Department then prepares and mails a single invoice to each utility, eliminating unnecessary duplication for both billed and billing parties.

The Commission operates a Consumer Affairs Office which responds to all consumer complaints received by either agency.

The Department's Personnel Director works with Commission managers to develop, administer and score civil service exams for staff vacancies, eliminating the need for a personnel director at the Commission.

The two agencies often intervene jointly in federal regulatory proceedings. They conduct joint staff training sessions. They are working together to implement improved computerized management information systems.

The Commission shares, at no charge, a library jointly operated by the Department and the Department of Trade and Economic Development. This eliminates the need for duplicate holdings and duplicate subscriptions to professional journals.

The Commission defers to the Department for initial regulatory work-up of all filings and refers cases requiring preliminary factual development to the Department for investigation.

While both agencies are pleased with current joint efforts, we continue to look for opportunities to share functions and reduce costs.

- *Cutting staffing levels to achieve savings*

As the attached statutory summaries demonstrate, the two agencies have separate and distinct roles. Combining them is unlikely to reduce costs, due to the redundancy a unified agency must build in to assure effective separation of advocacy and advisory staff.

Furthermore, combined staffing levels at the two agencies have held steady since 1988, when the Legislature merged the Minnesota Energy Agency into the Department, the last legislative restructuring affecting either agency. In fact, Department-only employment figures show a 5.92 percent decline, while overall state employment grew by 15.74 percent during this period.

During the same period workload increased, as both agencies assumed new environmental responsibilities and new responsibilities for managing an orderly transition from traditional regulation to a more market-based model. In short, restructuring does not hold serious potential for savings from reduced staffing levels.

- *Redrafting and recodifying statutes to effectuate restructuring*

Given the conclusion that restructuring holds no realistic potential for improving regulatory efficiency or effectiveness, the two agencies have not devoted the resources necessary to develop an alternative statutory scheme for an alternative regulatory structure.

- *Determining the number of Commissioners in a restructured agency*

This issue, too, is relevant only to restructuring, which the two agencies and the Governor's Office have concluded offers no significant advantage to Minnesota ratepayers. The agencies note, however, that the five-commissioner configuration is optimal in terms of ensuring quorums and permitting professional interaction between Commissioners. (With three Commissioners, two can never meet and exchange views without violating the Open Meeting laws.)

- *Transferring intervention staff to the Attorney General's Office*

Both agencies and the Governor's Office endorse the existing structure and believe ultimate control of the state and federal intervention process should remain with the agencies and the policymaking branches of government to which they are accountable.

CURRENT REGULATORY ISSUES

In the past decade, utility regulation has been transformed from a complex but static venture into a forum for the debate and resolution of major economic and public policy issues. Listed below are the most significant and pressing projects currently facing Minnesota regulators:

- **Electric Competition** -- examining the potential benefits of wholesale and/or retail competition in Minnesota's electric industry;
- **Environmental Externalities** -- quantifying the environmental costs of different methods of generating electricity and finding meaningful ways to factor those costs into utility decision-making;
- **Stray Voltage** -- probing the scientific basis of the ground currents phenomenon and establishing procedures (through rulemaking) to examine individual claims that stray voltage has damaged dairy operations;
- **Nuclear Issues** -- working with other state and federal authorities to site interim and permanent storage facilities for high level radioactive waste from nuclear power plants;
- **Telephone Competition (AFOR Legislation)** -- rulemaking to introduce competition in local telephone service and to establish flexible, streamlined regulatory procedures for local carriers;
- **Utility Mergers** -- examining proposed mergers in energy and telecommunications to protect the long-term interests of Minnesota ratepayers and ensure the continuing effectiveness of Minnesota regulation; and
- **Gas Industry Restructuring** -- perfecting new regulatory tools, such as gas purchasing incentives, to prod local distribution companies to develop the entrepreneurial skills necessary to purchase gas at the lowest possible prices, passing savings on to consumers.

EFFICIENCY AND EFFECTIVENESS OF CURRENT STRUCTURE

Both agencies are prepared to continue their established track record of efficiency into the future as they address the previously listed major projects. And Minnesota regulation already ranks among the most efficient and effective in the nation.

Since the cost of regulation is rolled into rates, utility rates are a good baseline measure of regulatory efficiency, as well as effectiveness. In fact, rates are one of the best measures available, since differences in jurisdiction and organizational structure make meaningful comparison of the regulatory budgets of different states difficult.

Minnesota utility rates have long been, and continue to be, among the lowest in the nation and among the lowest in the Midwest. In a publication for businesses, the Minnesota Department of Trade and Economic Development lists low energy rates as one of the top ten reasons to locate in Minnesota.

That agency's analysis indicates that Minnesota's commercial and industrial electric rates are as much as 18 percent below the national average, with commercial electric rates the lowest in the Midwest. The agency reports that the state's natural gas rates are 15 percent below national averages and industrial rates the second lowest in the Midwest. Residential rates compare favorably as well. (See Attachments 1 through 4.)

Low rates have been achieved while enhancing environmental quality. While Minnesota enjoys low energy rates, it is also recognized as a state with environmental laws equal to or more stringent than those across the country.

Telephone rates are harder to rank because rates can vary dramatically with the size of local calling areas and the number of enhanced services included in local rates. Perhaps the most accurate measure of telephone rate levels is what the Federal Communications Commission (FCC) calls "penetration rates," the percentage of households in each state which subscribe to telephone service.

The FCC reports penetration rates tri-annually. Its latest report ranks Minnesota seventh in telephone penetration and fifth in telephone availability. (Availability measures the number of households that can be contacted by telephone, whether or not they themselves subscribe to service.) As of March 1995, some 96.8 percent of Minnesota households subscribe to telephone service, compared to 93.9 percent of households nationally. Some 98 percent of Minnesota households can be contacted by telephone, compared to 95.2 percent of households nationally. (See Attachment 5.)

CONCLUSION

The two-agency regulatory model which Minnesota pioneered is working well. The two agencies have a demonstrated ability to identify and eliminate duplicate costs and efforts. They should and will continue to do so in the future.

The remainder of our report sets forth the statutory responsibilities and functions of the two agencies. Each agency, being most familiar with its own statutes, has prepared its own summary.

STATUTORY RESPONSIBILITIES OF THE MINNESOTA PUBLIC UTILITIES COMMISSION

NATURE AND SCOPE OF DUTIES

The Public Utilities Commission is a regulatory agency with jurisdiction over Minnesota's natural gas, electric and telecommunications utilities. The Legislature has divided the Commission's functions into two categories, legislative and quasi-judicial. *Minn. Stat. § 216A.05.*

Legislative Responsibilities

Legislative functions are essentially policymaking functions -- promulgating rules, issuing general orders and directives, investigating industry conditions and practices. The Commission's legislative responsibilities are comprehensive. As the Legislature directs, the Commission is to investigate, hold hearings, make determinations, and issue rules and orders to the same extent as the Legislature itself. *Minn. Stat. §§ 216A.02, subd. 2; 216B.05, subds. 1 and 4.*

Quasi-judicial Responsibilities

Quasi-judicial functions are the responsibilities connected with hearing and deciding individual cases on their merits -- holding hearings, making findings of fact and findings of law, issuing orders binding specific persons. *Minn. Stat. § 216A.02, subd. 4.* Like all judicial and quasi-judicial officers, Commissioners are subject to strict rules prohibiting ex parte contacts and conflicts of interest. *Minn. Stat. § 216A.037.*

Recent examples of the Commission acting in its quasi-judicial capacity are the pending Minnegasco and Interstate Power Company rate cases, and the pending request for approval of the merger between NSP and Wisconsin Energy Corporation.

ENERGY REGULATION

The Commission regulates the retail provision of natural gas and electricity to Minnesota consumers. Cooperative and municipal utilities are exempt, except when specifically included by statute, because they are assumed to be effectively regulated by their members and constituents. Franchised utilities providing natural, manufactured, or mixed gas and electric service to 650 or fewer customers are also exempt upon request by the franchising municipality. Utilities operating in

bordering states and serving fewer than 200 customers in Minnesota are exempt under most circumstances. 1995 Minn. Laws ch. 224, § 75, subd. 12a. All other gas and electric utilities are subject to Commission regulation. Minn. Stat. §§ 216B.05; 216B.02, subd. 4.

The Commission has jurisdiction over contracts between intrastate pipelines and their customers, and over the types and quality of service intrastate pipelines provide. Minn. Stat. § 216B.045.

The Commission's regulatory responsibilities in the energy field are summarized below.

Ratemaking

No regulated gas or electric company may charge any rate not approved by the Commission. Minn. Stat. §§ 216B.03; 216B.05; 216B.16. General rate schedules are set after extensive evidentiary proceedings described in Minn. Stat. § 216B.16.

The Commission is also responsible for setting specialized rates for targeted customers under statutes enacted to further public policy goals. These rates include area development rates, competitive rates for large electric customers, flexible rates for large gas customers, and low-income rates. 1995 Minn. Laws ch. 10, § 1; 1995 Minn. Laws ch. 6, §§ 1 and 2; Minn. Stat. § 216B.16, subd. 15.

Depreciation and Accounting Procedures

To make ratemaking as reliable as possible, the Commission is required to establish uniform accounting procedures for gas and electric utilities and to set proper and adequate depreciation rates and methods. Minn. Stat. §§ 216B.10; 216B.11.

Resource Planning

Electric utilities, broadly defined to include any entity capable of generating 100,000 kW of electric power and serving 10,000 Minnesotans, must periodically file resource plans with the Commission. Resource plans forecast the future energy needs of a utility's service area and describe proposed strategies for meeting those needs. Minn. Stat. § 216B.2422. The resource planning process is designed to assure consideration of the long-term effects of resource choices and to ensure that the potential for conservation and renewable energy to meet need is fully explored in every case.

The Commission is to approve, modify or reject the resource plans of rate-regulated utilities. For other utilities, the Commission's recommendations are advisory only. Minn. Stat. § 216B.2422, subd. 2.

Certificates of Need

The Commission is responsible for acting on applications for certificates of need for power plants, high voltage transmission lines, pipelines, gas storage facilities, nuclear fuel processing facilities, nuclear waste storage or disposal facilities, and combustible fuel conversion facilities. *Minn. Stat. §§ 216B.2421; 216B.243.*

To grant a certificate of need, the Commission must find that conservation and load management measures cannot meet need more cost-effectively than the proposed facility. Environmental costs must be considered in reaching this decision. *Minn. Stat. §§ 216B.243, subd. 3; 216B.2422, subd. 3.* Non-renewable energy facilities cannot be approved unless the utility shows that a renewable energy facility is not in the public interest. *Minn. Stat. § 216B.2422, subd. 4.*

Environmental Externalities

The Commission is required to quantify, to the extent practicable, the environmental costs of generating electricity. The Commission must establish a range of cost values to be used in resource planning dockets, certificate of need applications, and other proceedings involving resource selection. *Minn. Stat. § 216B.2422, subd. 3.*

The statute required a two-step process. Interim values were to be set immediately and were to be used while permanent values were being determined. The Commission set interim values on March 1, 1994 and is applying them pending the conclusion of its contested case proceeding to set permanent values.

Financial Incentives for Conservation

The Commission may establish financial incentive programs to strengthen utilities' commitment to conservation. Programs may include adjustments to rates of return, recovery of earnings lost due to conservation, and sharing of net savings attributable to conservation between ratepayers and shareholders. *Minn. Stat. § 216B.16, subd. 6c.*

Conservation Improvement Program (CIP)

To the maximum extent reasonable, the Commission is to set rates to encourage conservation and to further the goals of the Conservation Improvement Program (CIP), administered by the Department of Public Service. *Minn. Stat. § 216B.03.* Any appeals from the Department's CIP decisions are to be heard by the Commission. *Minn. Stat. § 216B.241, subd. 2.*

Gas Purchasing Incentives

The Commission is responsible for acting on performance-based gas purchasing plans proposed by gas utilities. These plans provide financial incentives for gas utilities to seek the lowest priced reliable gas supplies available. Proposed plans must include benchmarks based on reasonably achievable cost levels and a plan for sharing the difference between benchmark costs and actual costs during the life of the plan. *1995 Minn. Laws ch. 17, § 1.*

Cogeneration and Small Power Production

The Commission is responsible for practical implementation of the federal Public Utility Regulatory Policies Act, 16 U.S.C. § 724a-3, which encourages cogeneration and small power production as a matter of national energy policy. Federal law sets standards cogenerators and small power producers must meet to become "qualifying facilities." Utilities are required to purchase all the electricity qualifying facilities produce, generally at "avoided cost," the amount it would cost the utility to generate the electricity itself. *18 CFR 292.304.* Determination of avoided cost, and implementation of the Act generally, are delegated to state regulatory commissions. *16 U.S.C. § 824a-3 (f); 18 CFR 292.401-403.*

The Commission establishes uniform contracts for small qualifying facilities, determines avoided costs, sets wheeling rates, and resolves disputes between utilities and qualifying facilities. *Minn. Stat. § 216B.164; Minn. Rules, parts 7835.0100-7835.9910.*

Stray Voltage/Ground Currents

The Commission is responsible for appointing and convening a team of science advisors to examine the extent to which Minnesota's utility distribution systems use the earth as a conductor of electric current. The team will also examine the risks ground currents may pose to dairy animal health and productivity. *Act of May 3, 1994, ch. 573.*

The Commission must also set standards and requirements on current or voltage originating from the practice of grounding electrical supply systems. These rules are to apply to cooperative and municipal utilities that serve agricultural customers, as well as to utilities normally subject to Commission regulation. *Minn. Stat. § 216B.09, subd. 2.*

Mergers, Acquisitions and Property Transfers

Utilities may not buy, sell or rent property used as an operating system without Commission approval, unless the purchase or rental price is \$100,000 or less. No utility may merge or consolidate with another utility without Commission approval. The Commission is to approve such transactions upon finding that they are consistent with the public interest. *Minn. Stat. § 216B.50.*

Transactions Between Affiliates

Transactions between utilities and their affiliates involving \$50,000 or more are not valid without written Commission approval. Written approval does not guarantee rate recovery of their costs. The Commission has continuing jurisdiction over affiliate transactions and may disallow rate recovery whenever experience with the transaction shows that its costs were or are unreasonable. *Minn. Stat. § 216B.48.*

Securities Issuances/Stock Purchases

Utilities organized under the laws of this state may not issue securities or otherwise alter their capital structures without written Commission approval. Utilities organized under the laws of other states may not encumber property in this state without written Commission approval. *Minn. Stat. § 216B.49.*

No utility may purchase voting stock in another public utility operating in Minnesota without written Commission approval. *Minn. Stat. § 216B.51.*

Assigned Service Areas

The Commission enforces the assigned service area provisions of the Public Utilities Act. Those provisions give electric utilities exclusive service rights in assigned geographic areas, alterable only by Commission order. *Minn. Stat. § 216B.37-.43.*

The Commission also resolves disputes between municipal utilities, which may extend their service areas within their municipal boundaries, and neighboring utilities whose property and service territory they seek to acquire. If the utilities are unable to agree on acquisition terms, the Commission determines the compensation due the displaced utility and decides which utility should serve the area being acquired while compensation is being determined. *Minn. Stat. § 216B.44-.47.*

Cold Weather Shut-off Protection

Under legislative direction, the Commission has established and continues to administer a program to protect customers who are unable to pay their full utility bills during cold weather. Among other things, the program prohibits disconnection of any low-income household during any month in which the household applies 10 percent of its income to energy bills. *Minn. Stat. § 216B.095.*

TELECOMMUNICATIONS REGULATION

The Commission regulates the provision of intrastate telecommunications service to Minnesota consumers. The extent of regulation varies with the size of the carrier, the nature of the service and, increasingly, the regulatory regime the carrier has chosen under Minnesota statutes. The Commission's regulatory responsibilities in the telecommunications field are summarized below.

Large Local Exchange Carriers

Local exchange carriers serving 30,000 or more subscribers are the most tightly regulated Minnesota carriers. Their service quality, accounting methods, and depreciation rates and methods are subject to Commission review and approval. They cannot raise rates for noncompetitive services without prior Commission approval. *Minn. Stat. §§ 237.075; 237.081; 237.22.*

Independent, Municipal and Cooperative Carriers

"Independent" carriers (those serving under 30,000 subscribers), municipal carriers and cooperatives may generally change their rates, including rates for noncompetitive services, without prior approval. Their rates are subject to Commission review, however, on complaint or on the Commission's own motion. Independent carriers must meet quality of service, accounting and depreciation standards set by the Commission. *Minn. Stat. §§ 237.01, subd. 3; 237.075, subd. 9; Minn. Stat. § 237.081.*

Long Distance Carriers

Long distance carriers, other than those providing centralized equal access or deriving most of their revenues from operator services to transient locations, are exempt from rate regulation. They are also exempt from most other requirements applicable to local exchange carriers. *Minn. Stat. §§ 237.01, subds. 2, 6; 237.74.*

They are, however, subject to Commission certification requirements and basic service quality and range of service requirements. *Minn. Stat. §§ 237.74, subds. 4, 12.* They are prohibited from charging unreasonably discriminatory rates. *Minn. Stat. § 237.74, subds. 2, 4.*

Interconnection

The Commission is responsible for ensuring that all telecommunications providers within the state maintain the interconnections necessary for a fully integrated, interconnected communications system. No provider may sever an existing connection with another provider without Commission approval. *Minn. Stat. §§ 237.12, subd. 2; 237.74, subd. 9.*

Access Charges

The Commission sets the rates long distance carriers pay local exchange carriers for access to the local network. These rates must cover the costs of connection and provide contribution to the common costs of providing local telephone service. *Minn. Stat. § 237.12, subd. 3.*

Extended Area Service/Local Calling Scope

The Commission acts on subscribers' petitions for Extended Area Service (EAS), toll-free local service to areas beyond the immediate exchange. These petitions place the interests of different sets of ratepayers in conflict. They also raise questions about the long-term effects on long distance competition of converting the busiest, most potentially lucrative toll routes into local routes.

To explore these issues, the 1994 Legislature directed the Commission to hold public hearings and investigate the direction Extended Area Service should take in the future. The Commission is to complete these proceedings by June 1, 1996. It is to accept no new EAS petitions in the interim, but is to continue processing pending petitions. *Minn. Stat. § 237.161, subd. 6.*

Local Competition Rulemakings

The Commission is to conduct two rulemakings to establish the terms and conditions under which competition will be introduced to the provision of local service. One will focus on all telephone companies and telecommunications carriers; the other will address issues unique to areas with fewer than 50,000 subscribers.

Among other things, the rules will set entry and exit requirements, establish minimum service quality standards, require existing providers to make specific facilities available to competitors, determine how interconnection fees will be set, and mandate local number portability. The rules are also to ensure continued operation of the 911 emergency telephone system and establish a universal service fund, underwritten by local providers, to preserve universal service throughout the state. *1995 Minn. Laws ch. 156 § 5, subd. 8.*

Competitive Entry into Local Service Market

Before adopting rules, the Commission must act on petitions for competitive entry into the local service market on an interim basis. 1995 Minn. Laws ch. 156, § 5, subd. 11.

Alternative Regulation Plans

Alternative regulation plans designed to capture the benefits of emerging competition among local carriers are now allowed. These plans replace rate of return regulation with more flexible pricing procedures. Carriers operating under these plans must classify all their services as "price-regulated," "flexibly priced" or "non-price regulated," and may change rates for all but price-regulated services with minimal regulatory oversight. In return, they must unbundle their intrastate services and facilities and permit interconnection with local competitors to the same extent that the Federal Communications Commission requires unbundling and interconnection for interstate services. 1995 Minn. Laws ch. 156.

Incentive Plans

Incentive plans remain an option to rate of return regulation for local carriers until 1999. Under incentive regulation a carrier is allowed to earn amounts in excess of its authorized rate of return and is required to share a specified percentage of those amounts with ratepayers. The purpose of incentive regulation is to increase companies' incentives to achieve operating efficiencies.

While new incentive plans are unlikely with alternative regulation plans now available, the Commission continues to administer the provisions of the incentive plan statute as it oversees U S WEST's completion of its incentive plan. Minn. Stat. § 237.625.

Local Exchange Sales

As of December 31, 1995 telephone companies with annual revenues exceeding \$100,000,000 will be subject to new requirements for the sale of any exchange. The Commission will be required to poll subscribers in the exchange on service quality over the preceding twelve months. The Commission must also hold public hearings within the exchange to determine local concerns.

Proposed sales must not be approved unless service quality has complied with Commission rules for the past twelve months and the buyer demonstrates an ability to maintain service at those levels. The Commission must require from the buyer binding commitments to maintain the investment and staffing levels necessary to maintain service quality. 1995 Minn. Laws ch. 191.

Mergers/Acquisitions

No telephone company may acquire the property, stock, bonds, securities or franchises of another telephone company without Commission approval. Both buyer and seller must join in the petition for approval. *Minn. Stat. § 237.23.*

Call Tracing Services

Under legislative direction, the Commission promulgated rules governing how telephone companies must respond to requests for call tracing services from persons receiving harassing or threatening calls. The Commission continues to administer these rules, acting on call tracing tariffs from companies using traditional technologies and on proposals to substitute CLASS Call Trace for traditional call tracing technologies. *Minn. Stat. § 237.069.*

Telecommunications Services for Communication-Impaired Persons (TACIP)

The TACIP program was created by the Legislature to make Minnesota's telecommunications system fully accessible to persons with communication impairments. The Department of Public Service, as program administrator, supervises the distribution of specialized telecommunications equipment to eligible persons with communication impairments and maintains a statewide message relay service.

The Commission reviews the program's annual budget for reasonableness and sets the monthly per-line surcharge necessary to fund program operations. 1995 *Minn. Laws ch. 190, § 5.*

Telephone Assistance Plan (TAP)

The Telephone Assistance Plan provides credits to the telephone bills of elderly or disabled Minnesotans with incomes at or below 150 percent of federal poverty guidelines. The Commission coordinates the program, which is jointly administered by the Commission, the Department of Human Services, and the telephone companies.

Each year the Commission sets the level of the bill credit for program participants and the monthly per-line surcharge necessary to fund the program. The Commission also disburses funds to reimburse telephone companies for credits they have extended to program participants and for related administrative expenses. *Minn. Stat. § 237.70.*

Link-Up America

The Federal Communications Commission (FCC) has established a program, Link-Up America, to help defray the costs of telephone installation for low-income households. The program is federally funded and state-administered. The Commission's Consumer Affairs Office acts as Minnesota's administrator and liaison with the FCC. 47 CFR §§ 67.711; 67.721.

911 Emergency System

The Commission examines telephone companies' claims for reimbursement of 911 costs and certifies for payment those found appropriate and accurate. The Department of Administration disburses the funds. *Minn. Stat. § 403.11, subd. 3.*

CONSUMER MEDIATION SERVICES

To administer the cold weather shut-off protection program, to ensure adequate service and fair dealing by utilities, and to monitor the level of customer satisfaction among utility consumers, the Commission maintains a Consumer Affairs Office. That office handles cold weather disconnection appeals, mediates disputes between customers and utilities, and apprises the Commission of consumer issues requiring Commission attention.

GENERAL REGULATORY RESPONSIBILITIES AND POWERS

To carry out its regulatory duties effectively, the Commission has broad investigatory authority. It is also authorized to work with other state and federal agencies to accomplish its regulatory objectives.

Subpoena Power

The Commission is authorized to require the attendance of witnesses and compel the production of documents when necessary to perform its duties. Noncompliance is punishable by the district court in the same manner as contempt in a civil action pending in that court. *Minn. Stat. §§ 216.18; 216A.05, subd. 3.*

Right of Entry and Inspection

The Commission is authorized to enter the premises of any company subject to its jurisdiction and conduct any necessary inspection of its books, records or property. *Minn. Stat. §§ 216B.12; 237.11.*

Federal and Interstate Cooperation

The Commission may cooperate with the Federal Communications Commission, the Federal Energy Regulatory Commission and other federal agencies for the purpose of coordinating federal and state regulatory efforts. The Commission may hold joint hearings with federal agencies, appear in federal regulatory proceedings, and nominate members to joint federal/state boards. *Minn. Stat. §§ 216A.05, subd. 6; 216B.09, subd. 4; 216B.19.*

The Commission may cooperate with other state commissions, hold joint hearings and make joint investigations. *Minn. Stat. § 216B.19.*

Cooperation with Other State Agencies

The Commission is authorized to cooperate, formally and informally, with the Department of Public Service and other state agencies. Cooperative efforts may include sharing services, conducting joint projects and investigations, and sharing staff. No cooperative effort is to interfere with the independence and integrity of the cooperating agencies. *Minn. Stat. § 216A.095.*

STATUTORY RESPONSIBILITIES OF THE MINNESOTA DEPARTMENT OF PUBLIC SERVICE

OVERVIEW

The Department of Public Service is a regulatory agency charged with the responsibility for enforcement of statutes regulating Minnesota's electric, gas and telecommunications utilities. *Minn. Stat. § 216A*. The Department's functions are principally administrative.

Administrative functions are related to the execution and enforcement of the laws, rules, orders, directives, duties and obligations regulating the energy and telecommunications industries. The administrative role of the Department includes its advocacy role. The Department intervenes in proceedings before the Commission and bodies outside the state to advocate for interests of Minnesota citizens, businesses and governments.

As an advocate for the public interest, the Department takes positions on both policy issues and factual disputes before the Commission. As such, it is active in both quasi-legislative and quasi-judicial issues before the Commission. For example, in rate cases, the Department will typically advocate positions regarding rate design (an essentially quasi-legislative matter), as well as positions on the recovery of disputed costs (a matter which calls upon the Commission to act in its quasi-judicial mode).

In certain areas, the Commissioner of Public Service performs quasi-legislative and quasi-judicial roles as well, such as in approving conservation improvement programs. The Department's Energy Division carries out statutory mandates regarding energy conservation and the development of indigenous energy resources. The Department's Division of Weights and Measures has supervision and control over all weights, weighing devices and measures in Minnesota. The Department also has certain responsibilities for administering the program to provide telecommunication access for communication-impaired persons.

POWERS OF THE DEPARTMENT OF PUBLIC SERVICE

The Department is established by Minnesota Statutes section 216A.01, and vested with certain powers by section 216A.07. The Commissioner of Public Service is the executive and administrative head of the Department, and she/he has all the rights and powers relating to the execution and enforcement of the laws, rules and orders imposed for the government of the electric, gas and telephone industries. *Minn. Stat. §§ 216A.02; 216A.07, subd. 1*. The Commissioner is responsible for the

enforcement of the laws and orders governing these industries. *Minn. Stat. § 216A.07, subd. 2.* The Department may, on its own initiative, investigate any subject matter within its jurisdiction, and it may enter the premises of a public utility and inspect the documents of any person or depose any person concerning the affairs of any regulated business. *Minn. Stat. §§ 216A.07; 216B.12.*

The Department has the right to intervene as a party in all proceedings before the Commission. In energy proceedings, the Department must prepare and defend testimony designed to encourage energy conservation improvements. *Minn. Stat. § 216A.07, subd. 3.* The Department also has authority to make rules to implement the statutes regulating energy and telecommunications industries. *Minn. Stat. § 216A.07, subd. 5.*

ENERGY REGULATION

Scope

The Department's jurisdiction extends to the same scope of energy providers as does the Commission's. *Minn. Stat. § 216B.02.* In the event that an electric cooperative association seeks to become subject to rate regulation by the Commission, the Department must administer the election as provided by *Minn. Stat. § 216B.026.*

Ratemaking

The Department intervenes in all cases where a company files for a rate increase pursuant to *Minn. Stat. § 216B.16.* The Department closely examines a company's rate request and the supporting evidence, and consolidates and conducts prehearing discovery of state agency intervenors. *Minn. Stat. § 216B.16, subd. 2.* In many cases, the Department investigates and presents testimony on particular issues which the Commission has directed it to address. The Department develops its own comprehensive proposal for rates it views as just and reasonable. The Department prepares extensive testimony articulating its positions, and defends this testimony in a hearing before an administrative law judge. The Department ultimately advocates its rate case positions before the Commission. The Department also negotiates settlements with other parties, which must be submitted to the Commission for approval. *Minn. Stat. § 216B.16, subd. 1a.*

Many aspects of utility rates are determined outside of the traditional rate case structure. The Department actively reviews company filings for energy cost adjustments (*Minn. Stat. § 216B.16, subd. 7*), performance-based gas purchasing plans (1995 *Minn. Laws ch. 17, § 1*), area development rate plans (*Minn. Stat. § 216B.161*), competitive rates for electric utilities (*Minn. Stat. § 216B.162*), and flexible tariffs for gas utilities (*Minn. Stat. § 216B.163*).

Participation in Other Commission Dockets

The Department is active in its role of executing regulatory laws and advocating for the public interest in the entire range of energy regulatory dockets before the Commission. The Department reviews and critiques depreciation and accounting procedures (*Minn. Stat. § 216B.10-216B.11*), integrated resource plans (*Minn. Stat. § 216B.2422*), certificate of need applications (*Minn. Stat. § 216B.243*), implementation of the federal Public Utility Regulatory Policies Act, 16 U.S.C. § 724a-3 (*Minn. Stat. § 216B.164*), and proposals for financial incentives for conservation (*Minn. Stat. § 216B.16, subd. 6c*). The Department is an active intervenor in the Commission proceeding to establish environmental cost values, and the Department has proposed and advocated certain environmental cost values.

The Department also participates when utilities seek Commission approval for mergers, acquisitions, property transfers, transactions between affiliates, or securities issuances or stock purchases. *Minn. Stat. §§ 216B.48-216B.51*. The Department represents the public interest in cases of disputes between public utilities or municipal utilities regarding assigned service territories. *Minn. Stat. §§ 216B.37-216B.47*.

Energy Conservation Improvements

Each public utility, as well as certain cooperatives and municipalities, must invest certain percentages of gross operating revenues in conservation improvements. *Minn. Stat. § 216B.241*. A utility's program for meeting this obligation must be approved by the Commissioner of Public Service, and the Commissioner's decision may be reviewed upon appeal to the Public Utilities Commission. *Id.* Department Staff evaluate the conservation improvement programs filed by the utilities and propose a decision on each one. *Minn. Rules pt. 7690.1000*. Following a comment period, the Commissioner approves, disapproves or modifies the program. *Minn. Stat. § 216B.241, Minn. Rules pts. 7690.1200-1400*. As the Commissioner acts on conservation improvement programs in both a fact finding role and a policy setting role, her/his functions in this area are quasi-judicial and quasi-legislative.

Intervention Office

The Department's Intervention Office represents the interests of Minnesota residents, businesses and governments before bodies outside the state that make, interpret or implement national and international energy policy. For example, the Department is currently involved in dockets before the Federal Energy Regulatory Commission (FERC) on matters such as restructuring of the wholesale market for electricity and the rates of Northern Natural Gas, an interstate gas pipeline which supplies many Minnesota local distributing companies. The Department also intervenes in proceedings before the Nuclear Regulatory Commission, the Department of Energy, and the Federal Communications Commission.

ENERGY REGULATION AND RESOURCE MANAGEMENT DIVISION

The Energy Regulation and Resource Management Division carries out the legislative directive to review, analyze and encourage energy programs that will minimize the needs for increases in fossil fuel consumption. *Minn. Stat. § 216C.051*. The Commissioner of Public Service has sole authority and responsibility for the administration of Chapter 216C of the Minnesota Statutes, which creates certain programs and policies for encouraging energy conservation and developing alternative energy resources. *Minn. Stat. § 216C.08*. In this role, the Commissioner consults with other state departments and agencies in matters related to energy and coordinates all related activities of state agencies and subdivisions. *Id.*

Through the Energy Regulation and Resource Management Division, the Department carries out energy conservation measures specified by the legislature and designs and implements a state program for the conservation of energy. The Department evaluates the relationship between state energy conservation policies and policies governing prices for energy, as well as international, national and regional energy policies. It also adopts plans for the event of an energy shortage and designs programs for the development of indigenous energy resources. *Minn. Stat. §§ 216C.09; 216C.16*.

The Department collects, analyzes, disseminates and publicizes information on energy conservation and renewable energy resources. *Minn. Stat. §§ 216C.09-216C.12*. For the purpose of disseminating such information, the Department maintains an Energy Conservation Information Center which is open to the public and accessible by toll-free telephone lines. *Minn. Stat. § 216C.11*. The Department also assists in the development and implementation of post-secondary energy education programs (*Minn. Stat. § 216C.13*), and programs to provide education and training to contractors, engineers and architects on the design of buildings which maximize energy efficiency (*Minn. Stat. § 216C.32*).

Another important area of responsibility for the Department involves administration of programs that grant assistance for the development of energy conservation and renewable resources. The Commissioner has authority to apply for, receive and spend money and grants from other government agencies and private sources. *Minn. Stat. § 216C.02*. The Department administers programs of financial assistance and loans for energy conservation investments, and it has adopted rules to implement these programs. *Minn. Stat. §§ 216C.34-216C.37; Minn. Rules pts. 7606.0010 et. seq., 7607.0100 et. seq.* The Department makes grants to counties and cities for the purpose of improving the energy planning capabilities of local governments. *Minn. Stat. § 216C.14*.

Other programs administered by the Department's Energy Division include the state Petroleum Set-Aside Program (*Minn. Stat. § 216C.16; Minn. Rules 7615.0100 et. seq.*), adoption of standards for solar energy systems (*Minn. Stat. § 216C.25*), the Minnesota Biomass Center (*Minn. Stat. § 216C.33*), the development of a state plan for alternative fuel vehicles (*Minn. Stat. § 216C.40*), and the hydropower production incentive (*Minn. Stat. § 216C.41*).

TELECOMMUNICATIONS REGULATION

Scope

The Department is charged with the enforcement of statutes regulating intrastate telecommunications service in Minnesota, to the same extent as the Commission. *Minn. Stat. § 237.05*. Different regulatory arrangements are in place for different kinds of telecommunications companies.

Rate Filings

The Department is responsible to keep files of every telephone company's rates and charges for noncompetitive services and price lists for services subject to emerging competition, together with rules used by the telephone companies. *Minn. Stat. § 237.07*.

Ratemaking

The rates of local exchange carriers serving more than 30,000 customers are determined by the Commission in rate cases under Minnesota Statutes section 237.075, except for local exchange carriers that obtain approval of an incentive regulation plan under Minnesota Statutes section 237.625 or an alternative regulation plan under 1995 Minn. Laws Chapter 156. In traditional rate cases, the Department intervenes, closely examines a company's rate request and the supporting evidence, and presents testimony regarding just and reasonable rates. The Department advocates its views in a hearing before an administrative law judge, and ultimately before the Commission. *Minn. Stat. § 237.075*. The Department also negotiates settlements with other parties, which must be submitted to the Commission for approval. *Minn. Stat. § 237.076*.

In other forms of ratemaking under Minnesota Statutes which do not require hearings before an administrative law judge, the Department intervenes and participates actively in all telephone rate proceedings before the Commission.

Complaint Dockets and Miscellaneous Filings

The Department participates in dockets investigating complaints against telephone companies for inadequate service or unreasonable rates. *Minn. Stat. § 237.081*. The Department also advocates for the public interest in numerous other types of miscellaneous filings, including Extended Area Service/Local Calling Scope petitions, service area changes, and petitions for Custom Local Area Signaling Services.

Certification Proceedings

The Department investigates petitions for certification of telephone companies and telecommunications carriers, and enforces statutes prohibiting the provision of service without authority. *Minn. Stat. §§ 237.16; 237.74*.

Rulemakings

The Department has the responsibility to promulgate rules in certain matters, such as regarding the crossing or paralleling of utility wires. *Minn. Stat. § 237.04*.

Telephone Access for Communications-Impaired Persons (TACIP)

The Department administers a program to distribute communications devices to eligible persons with speech or hearing impairment and contracts with a local consumer group to maintain a telecommunications relay service, so that communication-impaired persons can send and receive telephone messages. *Minn. Stat. § 237.50 et. seq.*

WEIGHTS AND MEASURES DIVISION

The Department's Division of Weights and Measures has supervision and control over all weights, weighing devices, and measures in Minnesota. *Minn. Stat. § 239.01*. The Department's powers in this area include the power to carry out inspections, to adopt rules, and to enforce the laws pertaining to weights and measures. *Minn. Stat. §§ 239.011; 239.012*.

1993 U.S. AVERAGE ELECTRIC RATES*
ALL SECTORS

	State	Cents per Kilowatt Hour
1.	Washington	3.65
2.	Idaho	4.00
3.	Wyoming	4.25
4.	Kentucky	4.32
5.	Montana	4.36
6.	Oregon	4.43
7.	Indiana	5.17
8.	West Virginia	5.22
	Tennessee	5.22
10.	Utah	5.33
11.	Wisconsin	5.52
12.	Nebraska	5.54
13.	Minnesota	5.60
14.	South Carolina	5.64
15.	Alabama	5.67
16.	North Dakota	5.83
17.	Nevada	5.87
18.	Oklahoma	5.96
19.	Iowa	5.97
20.	Colorado	6.05
21.	Mississippi	6.18
22.	South Dakota	6.20
23.	Ohio	6.22
24.	Virginia	6.23
25.	Louisiana	6.26
26.	Missouri	6.33
27.	Texas	6.39
28.	Kansas	6.60
29.	Arkansas	6.62
30.	North Carolina	6.63
31.	Georgia	6.71
32.	District of Columbia	6.78
33.	Delaware	6.98
34.	Maryland	6.96
35.	Michigan	7.14
36.	Florida	7.20
37.	New Mexico	7.23
38.	Illinois	7.75
39.	Pennsylvania	7.92

	<u>State</u>	<u>Cents per Kilowatt Hour</u>
40.	Arizona	8.21
41.	Vermont	9.04
42.	Maine.....	9.10
43.	California.....	9.69
44.	Massachusetts	9.98
45.	New Jersey	9.99
46.	Alaska.....	10.12
47.	Connecticut	10.26
48.	Rhode Island.....	10.40
49.	Hawaii	10.66
50.	New York.....	10.72
51.	New Hampshire.....	10.85
	NATIONAL AVERAGE.....	6.93

* Source: U.S. Department of Energy, Energy Information Administration "1993 Annual Electric Utility Report," the most recent national data available.

1993 U.S. AVERAGE NATURAL GAS RATES-RESIDENTIAL*

State		Dollars per Thousand Cubic Feet
1.	Alaska.....	3.96
2.	Colorado.....	4.52
3.	Wyoming.....	4.77
4.	Kansas.....	4.91
5.	Montana.....	4.92
6.	Oklahoma.....	4.94
7.	Nebraska.....	4.96
8.	Michigan.....	5.04
9.	Utah.....	5.13
10.	North Dakota.....	5.23
	Mississippi.....	5.23
	Washington.....	5.23
13.	Kentucky.....	5.25
14.	South Dakota.....	5.30
15.	Minnesota.....	5.31
16.	Missouri.....	5.37
17.	Arkansas.....	5.38
	Idaho.....	5.38
19.	New Mexico.....	5.46
20.	Iowa.....	5.48
21.	Illinois.....	5.52
22.	Nevada.....	5.69
	Tennessee.....	5.69
24.	Ohio.....	5.71
25.	Indiana.....	5.76
26.	Texas.....	5.91
27.	Louisiana.....	6.09
28.	Vermont.....	6.19
29.	California.....	6.23
30.	Wisconsin.....	6.23
31.	Oregon.....	6.42
32.	West Virginia.....	6.45
33.	Delaware.....	6.70
34.	Georgia.....	6.80
35.	Pennsylvania.....	6.84
36.	New Jersey.....	6.99
	North Carolina.....	6.99
38.	Maryland.....	7.08
39.	Alabama.....	7.10

State	Dollars per Thousand Cubic Feet
40. South Carolina	7.14
41. Arizona	7.20
42. Maine.....	7.47
43. Virginia.....	7.51
44. New Hampshire.....	7.66
45. New York.....	8.15
46. Rhode Island.....	8.17
47. Massachusetts	8.33
48. District of Columbia	8.34
49. Florida	9.41
50. Connecticut	9.43
51. Hawaii	17.51
NATIONAL AVERAGE.....	6.16

* Source: U.S. Department of Energy, Energy Information Administration "1993 Natural Gas Annual," the most recent data available.

1993 U.S. AVERAGE NATURAL GAS RATES-COMMERCIAL*

	State	\$ per 1,000 cu. ft.
1.	Alaska.....	2.78
2.	Texas	3.91
3.	Colorado.....	4.04
4.	Kansas.....	4.06
	Utah	4.06
6.	Wyoming.....	4.23
7.	Nebraska	4.31
8.	New Mexico	4.37
9.	South Dakota	4.38
10.	Mississippi.....	4.40
11.	Nevada.....	4.40
12.	Arkansas	4.42
	Oklahoma.....	4.42
14.	Minnesota.....	4.52
	Iowa.....	4.52
16.	Washington	4.53
17.	Idaho.....	4.65
18.	Michigan.....	4.66
19.	Montana.....	4.67
20.	North Dakota.....	4.75
21.	Missouri.....	4.76
22.	Kentucky	4.82
23.	Indiana	4.99
24.	Oregon.....	5.04
25.	Arizona	5.06
26.	Illinois	5.10
27.	Wisconsin.....	5.16
28.	Ohio	5.24
29.	Vermont	5.25
30.	Tennessee	5.27
31.	Louisiana	5.33
32.	Delaware.....	5.46
33.	North Carolina.....	5.51
34.	New Jersey.....	5.60
	Virginia.....	5.60
36.	Maryland.....	5.72
37.	District of Columbia	5.75
38.	Florida	5.81
39.	South Carolina	5.82

	State	\$ per 1,000 cu. ft.
40.	Georgia	5.83
41.	West Virginia	5.87
42.	Pennsylvania	5.99
43.	California	6.03
44.	Massachusetts	6.04
45.	New York.....	6.16
46.	Alabama	6.19
47.	Maine.....	6.76
48.	New Hampshire.....	6.83
49.	Connecticut	7.02
50.	Rhode Island	7.10
51.	Hawaii	12.90
	NATIONAL AVERAGE.....	5.16

* Source: U.S. Department of Energy, Energy Information Administration "1993 Natural Gas Annual," the most recent data available.

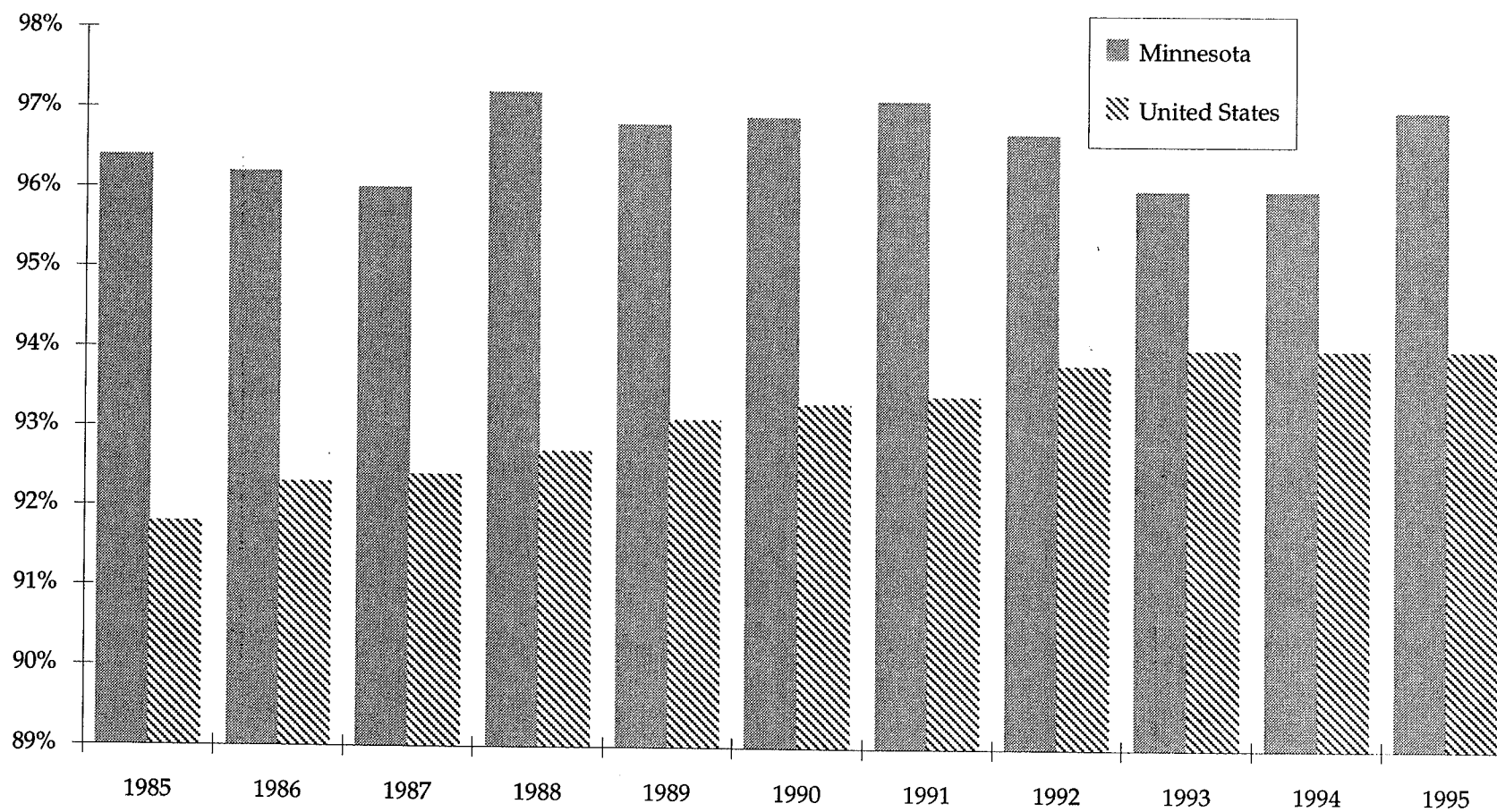
1993 U.S. AVERAGE NATURAL GAS RATES-INDUSTRIAL*

State	\$ per 1,000 cu. ft.
1. Alaska.....	1.29
2. Oklahoma.....	2.20
3. Louisiana.....	2.30
4. Colorado.....	2.35
5. Texas.....	2.53
6. Kansas.....	2.64
7. West Virginia.....	2.66
8. Montana.....	2.76
9. California.....	2.82
10. Mississippi.....	2.99
11. Idaho.....	3.02
12. Nebraska.....	3.09
13. Minnesota.....	3.20
14. Washington.....	3.22
15. Arkansas.....	3.31
16. South Carolina.....	3.35
17. Alabama.....	3.37
18. Delaware.....	3.40
19. North Dakota.....	3.42
20. Oregon.....	3.48
21. Wisconsin.....	3.52
22. Vermont.....	3.57
23. Maryland.....	3.59
24. Wyoming.....	3.62
25. Kentucky.....	3.66
26. Utah.....	3.67
27. New Jersey.....	3.70
28. Indiana.....	3.71
29. North Carolina.....	3.74
30. Iowa.....	3.77
31. South Dakota.....	3.76
32. New Mexico.....	3.82
33. Florida.....	3.83
34. Pennsylvania.....	3.85
35. Virginia.....	3.88
36. Tennessee.....	3.89
37. Michigan.....	3.91
38. Arizona.....	4.02
39. Georgia.....	4.10

State	\$ per 1,000 cu. ft.
40. Missouri.....	4.25
41. Nevada.....	4.30
42. Illinois	4.44
43. Ohio	4.64
44. Maine.....	4.65
45. New Hampshire.....	4.68
46. Connecticut	4.77
47. Massachusetts	5.08
48. Rhode Island	5.11
49. New York.....	5.17
NATIONAL AVERAGE.....	3.09

* Source: U.S. Department of Energy, Energy Information Administration "1993 Natural Gas Annual," the most recent data available. Industrial gas rates for District of Columbia and Hawaii were not listed.

Telephone Penetration Rates Comparison of U.S. and Minnesota



Source: Bureau of The Census, Current Population Survey Branch, December 1995.