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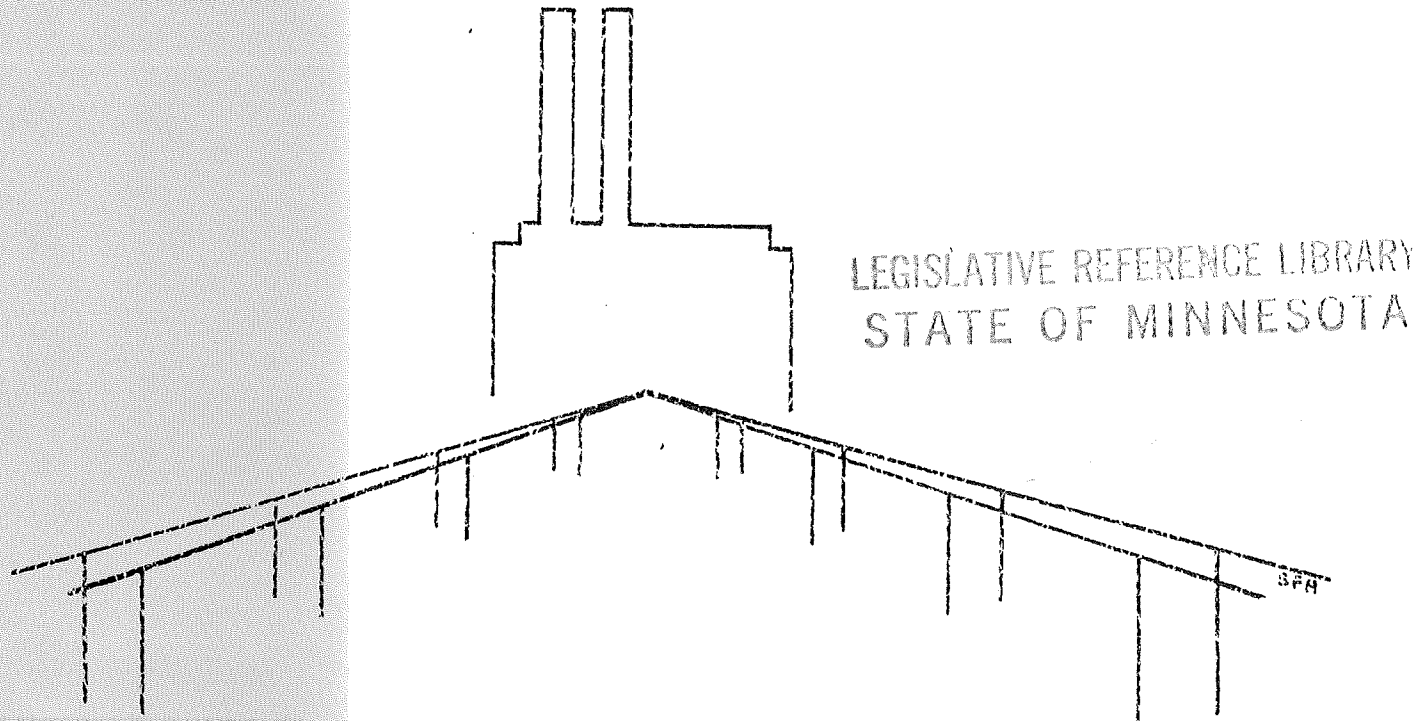
# REGULATING ELECTRICAL

# UTILITIES IN MINNESOTA

## PART III:

## Reviewers' Comments on the Draft Report

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REGULATING ELECTRICAL UTILITIES IN MINNESOTA:

PART III: COMMENTS ON THE DRAFT REPORT

By

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STATE OF MINNESOTA

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D I S C L A I M E R

The author is solely responsible for the content of this report. The recommendations do NOT necessarily reflect the views and opinions of the Joint Legislative Committee on Science and Technology, the Science and Technology Research Office, or the Minnesota Legislature.

# TABLE OF CONTENTS

Table of Contents .....	v
Preface .....	x
Executive Summary (Final Report) .....	xv
Author's Note .....	1
Comments on the Draft Report:	
Paul Stolen (Presently with the Montana Department of Natural Resources working on the Northern Border Pipeline EIS. Formally with the Minnesota Environmental Quality Board as staff to the Power Plant Siting Advisory Council and the Minnesota Legislature State Science, Engineering, and Technology Program.) .....	7
Professor Donald Geesaman (Presently associate director of the H.H.H. Institute of Public Affairs and teaches courses in energy policy and technology planning. Formally with the California Institute of Technology at Lawrence Livermore Laboratory.) .....	10
Professor Thomas Dewar (Presently on sabbatical with the public policy study group Minnesota Project. Professor Dewar normally teaches at the H.H.H. Institute of Public Affairs and teaches courses in policy analysis and technology planning.) .....	12
Dr. Rodney Loper (President of Clear Air, Clear Water, Unlimited and is a psychologist on the faculty of the School of Public Health.) ....	14
Russell Hatling (President of the Minnesota Environmental Control Citizens Association.) .....	15
Luther Gerlach (Professor of Anthropology and teaches courses in social movements.) .....	20
Vonny Hagen (Assistant Commissioner, Office of Planning, Minnesota Department of Natural Resources.) .....	31
Krista Sanda (Director, Office of Consumer Services, Minnesota Department of Commerce.) .....	41
Henry Foelschow .....	46
Paul Skjervold (An attorney in private practice and Vice-Chairman of Eminent Domain Committee of the Hennepin County Bar Association.) .	48
Leland Frankman (An attorney in private practice and Chairman of the Eminent Domain Committee of the Hennepin County Bar Association.) .	51
Paul Ims .....	52
John Malinka (Director, Science and Technology Research Office.) .....	91



Merle Anderson (General Manager State Public Affairs, Northern States Power Co.) .....	101
David M. Martin (General Manager, Owatonna Public Utilities and Chairman of the Minnesota Municipal Utilities Association.) .....	109
Minnesota/Wisconsin Power Suppliers Group .....	115
Thomas A. Micheletti (Minnesota Power & Light Company.) .....	128

## PREFACE

Energy policy and energy-related issues have become controversial in recent times. Moreover, such issues are increasingly becoming politicized. This politicization is viewed with suspicion and alarm by many of the energy players. Indeed, one of the questions asked by the various interests groups that were sent a questionnaire asking for input into this study was: "Why is the Joint Legislative Committee on Science and Technology doing a study about the administrative processes relating to energy decision making?" In anticipation of this question by others, this preface explains some of the impetus behind the study, the study's objectives, the organization of the report, and the approach taken in preparing the study.

Over the last several years there has been increased vocalization about and opposition to electrical power in Minnesota as well as the rest of the United States and, indeed, the world. The most obvious example in Minnesota is the ongoing opposition by farmers to the United Power Association/Cooperative Power Association Three + 400 kilovolt electric transmission line. This situation has become increasingly more militant and no quick resolution, if any, to the conflict is foreseen. There has been continuous opposition to Northern States Power's nuclear plants (Monticello, Prairie Island, and the now defunct Tyrone plant in Wisconsin) as well as the proposed expansion of the Sherco facilities (one or two 800-megawatt plants). Minnesota Power and Light has seen opposition to the Floodwood-Fine Lakes project (an 800-megawatt plant). This opposition to plants and power lines is not new and opposition to the now defunct Henderson site is still remembered by many.

The Minnesota Legislature has responded by enacting new laws, amending these laws, introducing numerous bills, holding numerous hearings, and still no resolution to the conflicts is foreseen. These conflicts, which are about differing values in the utilization of scarce resources, center around plant size and

type; water pollution, air pollution, and health hazards posed by plants and lines; agricultural and other land impacts; fuel transportation; costs; rates; the siting of plants and lines; and damage awards in the condemnation proceedings. The focus of these conflicts is on the administration processes which make the decisions on these issues. Because of these conflicts and for other reasons, the Joint Committee has responded to requests by some of its members and the Chairman of the now defunct House Select Committee on Energy by authorizing this study.

There were four principal legislators responsible for identifying the issues or issue areas to be addressed in this study: Representatives Gordon Voss, Ken Nelson, and Delbert Anderson, and Senator Wayne Olhoft. The issues were determined through informal discussions between the author and the legislators and between them and others. The issues do not necessarily reflect a consensus on the part of the principal legislators about what is at issue in electrical energy policy. Rather, these issues reflect some of their individual views.

The specific issues with which the study is concerned and the limitations which were placed upon it include

1. The study would be limited to electrical utilities;
2. Public participation would be a primary focus;
3. The interrelationships of the state agencies which regulate electrical utilities including the Minnesota Energy Agency, the Minnesota Environmental Quality Board, permitting agencies and the Public Service Commission would be examined as they are involved in the following issues:
  - a. Public participation;
  - b. timing agency decision making;
  - c. delay in energy facility development;
  - d. the relationship of size, type, and location in siting new facilities;
  - e. the nature and timing of the environmental review process;
  - f. conservation of electrical energy;
  - g. the poor and the cost of electrical energy;

- h. the certificate of need and the certificate of site compatibility in the determination of "necessity: in eminent domain proceedings; and
- i. the "taking" of agricultural land for power plants and lines;
- 4. Eminent domain would be a primary focus;
- 5. Recommendations for change would be offered as a catalyst for debate; and
- 6. A survey of all parties including interest persons, government agencies, and electrical utilities would be undertaken to determine if a consensus of opinion on the problems or solutions could be obtained.

After extensive research and analysis, the principal legislators involved approved a survey that was sent to all electrical utilities, the key seven regulatory agencies, and over 350 people. Of the nearly 600 questionnaires sent out, only 34 were returned--a number insufficient to draw any conclusions from or to determine if a consensus on the problems or their solutions existed.

The report is divided into five chapters. Chapters One and Two provide background information on electrical energy use and the law, regulations, and the administrative processes affecting electrical energy with judicial interpretations thereof. Chapters Three, Four, and Five discuss many of the issues noted above and offer recommendations. These recommendations are not offered in the sense of being absolute solutions to the many problems relating to electrical energy policy. Rather, they are offered as a focal point to debate electrical energy policy and the tools of that policy. The recommendations represent the judgment of the author and should be evaluated on their merits. They do not necessarily reflect the views and opinions of the Joint Committee, the Science and Technology Research Office, the Minnesota Legislature, or the principal legislators involved.

In addition, several appendices are included in the report. Appendix one summarizes the 34 responses to the questionnaires on ten selected questions relating to electrical energy policy. Appendices two through six summarize the recommendations of other legislative and administrative reports on energy policy conducted in the last six years.

This study is designed to be a public administration or process study. The charge that the legislature gave in addressing the issues of this study can be best summed up by the following question: "What in the administrative and regulatory processes contributed to the anger, frustration, and militancy of citizens over power plant and line need, siting, permit, and condemnation decisions?" Consequently the principal concern of the study was whether citizens have the opportunity to effectively participate in the administrative processes which make state decisions involving energy policy. The study does not, for example, address esoteric questions of how participation affects group behavior and attitudes, nor does it address a litany of specific instances where the processes have been used. Rather, the study analyses decision making processes by (1) examining the factors that the decision making process is required to consider, (2) determining the underlying values implicit within the process, (3) identifying conflicting, unbalanced, or skewed procedures which result in a de facto administrative bias, and (4) examining the process to determine if all interests have the opportunity to participate equally.

The goal of the report is to improve the process by which agencies make decisions. Improving the decision making process should result in decisions that are more acceptable and less frustrating. The key to making better decisions and decisions that are more acceptable to the parties and less frustrating is to design administrative processes that provide for fair and effective opportunity for all interests to participate in the decision. Recognizing that the participants in the administrative process have conflicting value systems and notions of what they feel is important, the major basis for unity among these participants is the way decisions are made. The major element of stability in our political system is that the decision making process is agreed upon prior to the knowledge of the specific outcome of that process. All parties have an interest in preserving a decision making process or political system which they believe is fair. The alternative is the use of force to maintain what is believed to be the majority conviction.



There were two assumptions used in approaching this study. First, the only values that would be considered in evaluating decision making processes were those inherent within the constitutional or statutes enacted by the legislature. There are a number of values, often conflicting, inherent within the decision making processes governing energy policy. Some of these include the following: (1) electricity shall be provided to all who wish it, regardless of end use or waste; (2) conservation is the foremost energy policy of the state; (3) effective and fair public participation shall be provided at all steps in the decision making processes; (4) the health, safety, and welfare of the citizens and protection of the environment shall be preserved and maintained; (5) the poor should be helped and protected; and (6) those citizens who lose their land due to condemnation shall be made whole again in the form of money.

The second assumption rests on the premise that the existing political institutions only need to be refined, that the underlying structure is sound, and no major or fundamental changes in our political structure are needed. It has been suggested that society is presently in too great a state of flux to set up a set of procedures to resolve controversies. Yet, when examining the legislative history and judicial interpretation of statutes, as well as the clarifications provided by the courts about the constitution, it becomes clear that the result of most changes is the continued refinement of existing administrative processes. Generally, the underlying structure of the process remains constant. The specific procedures refine the structure, fine-tune-it, to align it with today's values. Consequently, the study's recommendations attempt to fine-tune the process, rather than offer recommendations which greatly change the underlying structure. This does not mean that the recommendations, if implemented, would not result in significant changes in present practices. Most recommendations are being implemented, in some way, shape, or form now. But, none of the recommendations are designed to alter the underlying political or administrative structure. They are designed to refine the process based upon existing legislatively and constitutionally stated values.

## EXECUTIVE SUMMARY

This report (Regulating Electric Utilities in Minnesota: The Reform of Legal Institutions) was funded by the Joint Legislative Committee on Science and Technology of the Minnesota Legislature. A variety of factors contributed to the funding of this study including (1) the increasing cost of electricity; (2) the decrease in supply of cheap, easily accessible fuels to generate electricity; (3) the conflict over the utilization of scarce resources such as air, water, and land; and (4) the controversy over the power line in west-central Minnesota. The report is divided into five chapters. The first two chapters provide background material necessary to the understanding of Minnesota's electric energy policy and tools. The remaining three chapters analyze several important variables in electric energy policy. These last three chapters focus on decision making by agencies and utilities by examining (1) public participation in energy related decision making; (2) how decisions are made which allegedly balance power plant siting with environmental and public health concerns; (3) the impact of a conservation policy on the need for new power plants; (5) the protection of the poor from the rapid rise in the cost of electric energy; and (6) the eminent domain process, the final step in siting power plants and lines.

### CHAPTER ONE: SETTING THE STAGE

In recent years the United States and the world have awakened to a new problem involving the conflict of competing public interests both in assuring a reliable supply of electrical energy and in achieving and maintaining a safe, healthful, and pleasing human surrounding. Until a decade or so ago, the public did not perceive these two interests as conflicting. The practice was to promote a rapid growth in the demand for electricity. This attitude was widely accepted after the publication of the National Power Survey in 1964 conducted by the then Federal Power Commission. This document urged "maximum growth" in electrical demand and recommended that this be "encouraged by reductions in rates and steady improvements in service." Such an approach was characterized as a "far-sighted philosophy."<sup>1</sup>

With the Northeast Power Blackout in 1965 and the decision of the second circuit court of appeals in Scenic Hudson Preservation Conference v. Federal Power Commission, which required the Federal Power Commission (FPC) to consider the environmental consequences of its decisions in licensing facilities, the nation became aware that potential conflicts existed between maintaining a reliable supply of electricity and the environmental consequences of doing this.<sup>2</sup> In sum, the public has perceived limits upon the common air, water, and land resources and possible limits on the primary energy resources.

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<sup>1</sup> Federal Power Commission, National Power Survey, Washington, D.C.: USGPO, 1964.

<sup>2</sup> Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F.2d 608 (2d Cir. 1965). See also: 384 U.S. 941 (1966), 453 F.2d 463 (2d Cir. 1971), and 407 U.S. 926 (1972).

Without question electric power is an integral, pervasive element of American society and economy. All sectors of society including industrial, commercial, and personal sectors are dependant upon electricity. Clearly, "without electricity, our twentieth-century civilization--as we know it--cannot survive."<sup>3</sup> However, there is strong disagreement over how much electricity is needed or advisable. There is extensive debate over the factual relationships of electricity to the economy and to the environment. The importance accorded to these economic and environmental values differs substantially. And, obviously, solutions proposed range from faster growth of electricity to intentional, immediate cut-backs depending upon the importance to the individual of the values held. The effect of this debate, which is still continuing, places decision makers in the difficult role of reexamining or creating energy policies on a national and state level.

Minnesota in response to increasing shortages of liquid energy fuels and an increasing demand for electricity has enacted a series of laws creating tools for implementing an energy policy. The only discernible energy policy, however, is that of conservation. Minnesota Statutes, §116H.01, summarizes this policy:<sup>4</sup>

116H.01 FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems; economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.

The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring state-wide environmental protection consistent with an adequate, reliable supply of energy.

No comprehensive energy plan exists. The Final Report of the Legislative Commission on Energy summarized the situation:<sup>5</sup>

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<sup>3</sup> Remarks by J.N. Nassikas, "Meeting Energy Demands in a Changing Society," Annual Meeting of the Association of Edison Illuminating Companies, Boca Raton, Florida, December 4, 1969.

<sup>4</sup> Minnesota Energy Agency Act, Minnesota Statutes §116H.01.

<sup>5</sup> "A Minnesota Energy Plan--Proposed, "Final Report of the Legislative Commission on Energy, Minnesota State Legislature, June 10, 1975.

The Legislative Commission on Energy is aware of no existing statement of an energy policy plan for Minnesota. Because serious energy problems are apparently at our doorstep--curtailed deliveries of natural gas and Canadian crude oil, greatly increased prices for traditional energy fuels, etc.--it is deemed by Commission members to be intolerable that the state is leaving virtually all energy policy decisions to energy suppliers, federal authorities, and the marketplace. Leaving major energy decisions in these quarters is to run the serious risk of allowing the state to slip into consumption patterns that will eventually be altered only at the time of crisis and will probably be accompanied by widespread social and economic dislocations. How much better it would be to use a degree of foresight and prepare an energy policy plan that will minimize or eliminate serious dislocations.

No state energy plan has been enacted by the legislature since this report was issued in 1975. A number of questions need to be addressed in any energy plan relating to electrical energy. Some of these questions are (1) Which energy fuel(s) will be developed and used to meet long-range energy demands?; (2) How will conserving electricity and reducing fluctuations (peak demands) in electrical use be met?; (3) Will electrical growth be limited to critical uses or will all who demand electricity be supplied?; and (4) What limits will be placed upon the development of alternative fuels and technologies for providing electricity and who will develop them?

Section 1.1 reviews past and projected electric energy use. There are a number of different perspectives from which electrical energy use may be viewed including (1) electricity as a fraction of the total energy mix; (2) the growth of electrical use; (3) the control of generating systems; (4) generating capacity of fuel type; and (5) sales of electricity. First, a substantial proportion of U.S. energy (17.03 of 79.40 quadrillion Btu's) goes into the generation of electricity and the various sectors of the economy are increasingly relying on electricity as the most popular form of energy to be used. Second, the United States' consumption of electrical power has grown exponentially with a doubling time of about ten years, which translates into an annual growth rate of about 7.4% through 1973. Since 1973, the growth rate has dropped to less than % per year. Generally, the growth of per capita electricity consumption has increased faster than total per capita energy consumption, and while the cost of energy consumption per \$1.00 of GNP has decreased, the cost of electricity per \$1.00 of GNP has increased since 1920. Third, privately owned utilities (basically NSP) generate most of the electricity in Minnesota. Fourth, most electricity in Minnesota is generated by steam plants. Finally, the urban residential sector consumed 30% of all electricity in 1976, with the commercial, manufacturing, and mining sector consuming over half of the electricity.

The 1976 Advance Forecasting Report submitted to the Minnesota Environmental Quality Board (MEQB) by the Minnesota/Wisconsin Power Suppliers projected winter and summer peak demand growing at a rate of 6.6 and 6.8 percent, respectively. In the 1978 report this was revised downward to 5.1 and 5.0 winter and summer peak demand growth rates respectively. This reduction in the rate of growth is equivalent to a doubling time of about 14 years. These revised figures appear to be unrealistic and probably not more than one new plant will be needed before 1990.

As noted earlier, one energy policy that has been articulated by the state is that of conservation. Some people argue that as one form of energy is conserved another form will be used in its place. Electricity is often suggested as a viable substitute for other energy sources. Electrical energy demand and peak demand would rise if electricity was substituted to meet the projected decline in petroleum supplies.

At some point this growth in electrical demand must be translated into new generating plants. If electricity is substituted for diminishing petroleum supplies, then, as estimated by the Minnesota Energy Agency, anywhere from 17 to 20 new plants and their associated transmission lines would be needed between 1987 and 1995. Others have suggested that anywhere from 12 to 25 (1,600-megawatt) plants may be needed in the next 25 years though still others have suggested "demand is not growing rapidly now."<sup>6</sup> On a short-term basis, the MEA estimates between four and six plants will be needed in the state by 1990, though probably not more than one new plant will be needed by 1990. At present, a number of new facilities have been proposed as well as a number of retirements.

However, many people doubt Minnesota's ability to build four new plants let alone the 17 to 25 that may be necessary by the turn of the century. A number of constraints can affect the state's ability to build new plants. These include (1) fuel availability; (2) water supply; (3) environmental constraints such as air and water pollution and their impacts on public health; (4) the availability of capital for financing new plants, and (5) social constraints such as land use and public acceptability.

One of the more interesting aspects about the use of energy in the United States and, indeed, the industrialized portion of the world is that energy growth rate is exponential. This means that the rate of growth is itself increasing. Some have suggested that the growth process is self-accelerating, which means that the very use of energy seems to encourage the use of more energy. Nature is full of these self-propelled processes. However, none of them are perpetual. One may conclude, therefore that exponential growth rates are an indication that the process has not yet encountered the forces which will change it, for example, the constraints noted above and the ability of the consumer to pay the increased prices for energy. Perhaps the revision of utility forecasts downwards is an indication that these forces are finally being felt.

Section 1.2 reviews the rationale for regulating electric utilities. Public utilities are regulated, limited monopolies. They are monopolies because in most instances the government awards a market franchise to only one utility (called a "certificate of public convenience and necessity") to provide a particular service in a specific locality. They may be limited as monopolies where there is inter-industry competition such as product substitution (e.g., natural gas for electricity) and under certain circumstances competition between the types of a public service industry. An example of this competition is that for services between investor owned, government owned, and cooperatively owned electric utilities. In addition, in most states, including Minnesota, utilities are regulated by public commissions.

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<sup>6</sup> Minnesota State Planning Agency et al., Future Electric Resource Demands Pilot Study, December 1976, and Personal Communication with Allan Jaisle, Manager, Power Plant Siting Staff, June 5, 1979.



Prior to World War I, the public believed that competition would keep electrical prices down and that, therefore, there was no need for regulation. Operating under this assumption, municipalities and states granted franchises and issued licenses for the formation of many small power companies. The result was not healthy competition to keep down the cost of electricity, but the emergence of one large strong company buying or forcing out the smaller companies; this led to the formation of monopolies within service areas. As a result of this trend, governments and economists began viewing electrical utilities as "natural monopolies". The government responded by regulating utilities through public commissions.<sup>7</sup>

Section 1.3 summarizes federal regulation of electric utilities. Federal, state, and local governments make many decisions which affect energy policy. The laws and regulations enacted by legislative bodies and promulgated by agencies were established over a period of about 60 years. These regulatory activities were in response to a wide variety of social problems, from monopolistic corporate practices to the availability of electricity to environmental concerns—not because of any national recognition for the need to establish an energy policy.

Since 1935 the federal government has enacted a wide variety of laws regulating electrical utilities and created a host of federal agencies to implement the policies established. Each of these laws has varying degrees of impact on the state's ability to regulate electrical utilities. There are five functional areas of agency responsibility: (1) policy development and program coordination; (2) regulation of the energy sector including economic controls, fuels allocation, and import controls, facility siting, land use, and environmental and safety regulations; (3) research and development; (4) energy resource development; and (5) energy conservation.

## CHAPTER TWO: THE ENERGY PLAYERS

There are numerous processes affecting the generation, distribution, and cost of electricity in Minnesota. While many of these processes are guided or controlled by federal laws (see Chapter One), a number of the key decisions affecting the utilities and the ultimate consumers of electricity still reside at the state level. These processes include determining the need for large electrical generating facilities and high voltage transmission lines (HVTLs), conservation policies, advanced planning for new facilities, siting facilities, environmental policies, permitting new facilities, determining service areas, establishing rates, and a host of other activities. The Minnesota Legislature has created a number of agencies to govern these processes and implement its policies.

The energy players who implement the Minnesota regulatory processes that affect and govern electrical utilities and the role the public, which is defined as non-governmental, non-utility people, can play in affecting the decision making process of the agencies and utilities are many. These energy

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<sup>7</sup> Hellman, R., Government Competition in the Electric Utility Industry, New York: Praeger, 1972.

players include the electrical utilities, the Minnesota Energy Agency (MEA), the Environmental Quality Board (MEQB), the permitting and pollution control agencies (primarily MPCA and DNR), the Public Service Commission (PSC) and its related agency, the Department of Public Service (DPS), the public's advocate in rate proceedings (Residential Utility Service Unit (RUSU) within the Office of Consumer Services), and the public (i.e., those "interested persons" affected by a decision and who wish to get involved in the issue).

The two major concerns of the electrical utilities are the authorizations for siting for new facilities and the rate of compensation permitted from the sales of the power generated. Sections 2.2 through 2.4 of Chapter Two describe the agencies that affect siting. The authorizations for siting overlap many agencies. In addition, many agencies have responsibilities involving energy policy beyond siting decisions.

Section 2.1 reviews electrical utilities' organizational structures and laws governing their existence. The electrical utility industry within the United States is generally made up of vertically integrated companies that generate, transmit, and deliver electricity to consumers. There are about 3,500 utility systems supplying electricity in the United States. Of these, about 400 are investor-owned with an aggregate generating capacity of 263,000 megawatts or 77% of the total generating capacity in the United States. Forty systems are federally owned with an aggregate capacity of 39,000 megawatts or 11% of the total. About 2,000 systems are municipally or state-owned with an aggregate generating capacity of 34,000 megawatts or 10% of the total. Finally, the remaining 1,000 cooperatively owned systems have an aggregate capacity of about 5,000 megawatts or less than 2% of the total U.S. generating capacity. Minnesota's electrical utility industry consists of 8 privately owned utilities, 129 municipal utilities, and 56 cooperative utilities.

Most electrical utilities act together to interconnect their transmission systems into regional transmission grids that permit the flow of power among utilities and regions. The development of the grid system is due in large part to a change in perception by government, utilities, and the public of the reliability of electrical power generation. In November 1965, the Northeast Power Blackout demonstrated the disparity between the demand for electricity and the reliability problem of meeting that demand by the industry. The need for increased electrical transmission and generation capability was due to an increasing demand growth rate which rose to 7 to 8% per year. In order to maximize efficiency the industry began interconnecting its systems and relying upon fewer, but larger, generating facilities. Because of this change in direction toward interconnection and larger plants, the opportunity for system failure increased. The Federal Power Commission, recognizing the consequences if such a failure should occur, urged the formation of area reliability councils within the industry. At the same time, state and local governments became more interested in regulating the construction of new energy facilities.

The electrical utilities, recognizing their responsibility to provide consumers with reliable service, formed the National Electric Reliability Council (NERC) in 1968. This national council is divided into nine regional reliability councils. The regional council for Minnesota is called the Mid-Continent Area Reliability Coordination Agreement (MARCA). MARCA is the council which provides the "reliability overview" for the upper midwest region. A

complementary organization to MARCA is the Mid-Continent Area Power Pool (MAPP), which is basically the U.S. portion of MARCA.

While area councils formed by the utilities were originally designed to ensure the reliability of the power system, new factors began to play a major role. The most important factors were due to the growing national concern about environmental deterioration. Along with this growing concern was the development of environmental policy as expressed in the National Environmental Policy Act of 1969:<sup>8</sup>

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

This act introduced the concept of environmental impact in the regulatory process. It established that power plants and all other industry should meet environmental protection standards enacted by federal and state government and that adverse environmental effects of facility siting should be minimized.

The Minnesota utilities within MAPP, MARCA, and the NERC derive their existence from the state. The three types of utilities that service Minnesota exist because of many laws enacted by the legislature.

The first type of utility authorized by the legislature is the public service corporations organized under the General Provisions of Corporations, Minnesota Statutes §300.03 et. seq. These corporations are investor or privately owned utilities which furnish power for public use. The General Provisions permit the state to supervise and regulate the business methods and management of the corporations and fix the compensation they may receive for their services. These corporations are subject to many restrictions not placed on other corporations organized under other provisions of Minnesota Statutes, Chapter 300. These sections also define a public utility to mean any corporation that generates electricity and which is neither a municipality nor any person that furnishes electricity services to less than 50 people including cooperative associations (M.S. §300.11, Subdivision 1 and 4).

The second type of utility authorized by the legislature is the electrical cooperative association organized under Minnesota Statutes, Chapter 308. These utilities are subject to most provisions of the public service corporations.

The third type of utility authorized by the legislature is the municipal utility organized under Minnesota Statutes, Chapter 453 and Chapter 455. Utilities organized under Chapter 453 are municipal corporations consisting of two or more cities formed to acquire and finance electrical facilities. This law extends powers to Municipal Power Agencies (MPAs) to assure an adequate supply of electricity to cities. Chapter 455 provides that city of the second, third, or fourth class, acting alone, may construct or purchase electric light plants.

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<sup>8</sup> National Environmental Policy Act, 42 U.S.C. §4321 35. seq.

Minnesota has developed a set of laws and regulations for the development of large electrical power generating plants and large high voltage transmission lines (HVTLS). The laws, which include the Minnesota Energy Agency Act, the Power Plant Siting Act, and the Environmental Policy Act, require a sequential review of proposed energy facilities. The process basically consists of four steps. First, the utility must obtain a certificate of need from the Minnesota Energy Agency (MEA). Second, after establishing the need for a new facility, the utility must obtain a certificate of site compatibility from the MEQB. The third step is the compilation in an environmental impact statement (EIS) of information necessary for decision making. The final step requires the utility to obtain permits from various agencies for the construction and operation of the proposed facility.

Section 2.2 reviews the function of the Minnesota Energy Agency. The MEA is divided into four divisions: conservation, administration, data and analysis, and alternative energy development. These four divisions oversee the nine major activities of the agency. The MEA employs over 90 people (38 state plus federal and legislative), three times the 1976 level. The four activities that this report is primarily concerned with are the conservation program, forecasting activity, certificate of need activity, and the research program. The most important function of the MEA, with regard for ensuring the reliability of our electrical supply, is the certificate of need activity. The certificate of need process results in the decision for size, type, and timing of new energy facilities.

Section 2.3 reviews the two principal activities of the Environmental Quality Board--power plant siting and environmental policy. The MEQB is composed of seven agency heads, a representative of the governors office, and four members of the citizen advisory committee. The director of the State Planning Agency is the chairman of the MEQB. There are three other laws relating to energy overseen by the MEQB in addition to its enabling legislation. These laws include the Environmental Coordination Procedures Act, the Power Plant Siting Act, and the Environmental Policy Act.

The purpose of the Power Plant Siting Act (PPSA) is to find the most environmentally acceptable locations for large power plants and large HVTLS. This Act is the second step in the sequential process for locating new facilities. The policy of the act was spelled out clearly by the legislature:<sup>9</sup>

The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the board shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

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<sup>9</sup> Power Plant Siting Act, Minnesota Statutes §116C.54.

The Minnesota Environmental Policy Act was enacted in 1973, four years after NEPA (the National Environmental Policy Act of 1969). Both laws sought to establish a new policy that would make environmental and public health values factors in governmental decision making. These values have been ignored by decision makers for many reasons. Environmental values are what economists call exogenous variables (i.e., external factors which cannot easily be assigned dollar amounts). Because of the difficulty, if not impossibility, of assigning dollar amounts to values, environmental and public health concerns were often ignored or considered unimportant in many decisions made by government (i.e., low dollar amounts were assigned to these values). MEPA, both in policy and action, set a new tone for the consideration of these values. The Minnesota Supreme Court has recognized that the purpose of all environmental legislation, at both the state and federal level, is to force agencies to make their own impartial evaluation of environmental considerations in decision making. The purpose of the Minnesota Environmental Policy Act (MEPA) are:<sup>10</sup>

(a) to declare a state policy that will encourage productive and enjoyable harmony between man and his environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

Section 2.4 reviews the organization and laws of the permitting agencies. The fourth and final step in securing the necessary authorizations for siting new energy facilities is the securing of permits from federal, state, and local agencies. The principal purpose of the EIS process is to secure sufficient information for government agencies to determine whether a new facility should be constructed at a particular location. During the permitting step, the government agencies review the environmental information on the major effects and design of the proposed facility to determine whether it meets the applicable health, environmental, and safety standards. During the process, public hearings are held to solicit public comments and information. If the permitting agency determines that the proposed facility meets the requirements of its laws and regulations, then the permit is issued. If one or more of the agencies determine that its regulations will be violated, permits are denied and the utility must either redesign the facility to obtain compliance or abandon its proposal. In the case involving Sherco 3 & 4 (NSP's proposed addition of two 800-MW plants near Becker, Minnesota) the hearing officer for the MEQB determined that 26 permits from nine government bodies must be obtained. In addition to these permits, the Minnesota Pollution Control Agency (MPCA) must review the plant for compliance with New Source Performance Standards which specify maximum air pollution emissions, and Significant Deterioration Standards (SDS), which specify the maximum allowable degradation of ambient air quality attributable to the new facility, under the Clean Air Act, as amended.

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<sup>10</sup> Environmental Policy Act, Minnesota Statutes §116D.01.



Section 2.5 reviews the function of the Public Service Commission. The second major concern of the electrical utilities, besides obtaining necessary authorization for new facilities, is the rate of compensation permitted from the sales of the power generated. Minnesota began to regulate electrical utilities in 1974 under the Minnesota Public Utilities Act, and became the 48th state in the nation to do so. The principal purpose of this act is to fix rates of compensation for the sales of electric power. The act does not apply at all to municipal utilities; it applies only to those cooperative utilities that choose to become regulated. In addition to fixing rates, the PSC establishes exclusive service areas for utilities.

There are three agencies which have statutory obligations to get involved in rate cases: the Department of Public Service (DPS), the Public Service Commission (PSC), and the Residential Utility Consumer Unit, Office of Consumer Services (RUCU/OCS), which is part of the Commerce Department. Minnesota Statutes, Chapter 216A created the Department of Public Service and the Public Service Commission and provides for the usual administrative responsibilities. Minnesota Statutes, Chapter 216 sets forth the procedures for the Department of Public Service. Minnesota Statutes §45.17, Subd. 2 sets forth the responsibilities of the Residential Utility Consumer Unit:<sup>11</sup>

Subd. 2. The consumer services section shall be responsible for representing and furthering the interests of residential utility consumers through participation in matters before the public service commission involving utility rates and adequacy of utility services to residential utility consumers. The consumer services section shall expend a reasonable portion of its efforts among all three kinds of utility services and shall identify and promote the needs of each class of residential consumers with respect to each of the utility services.

Section 2.6 examines the role and rights of the public to participate in the process. The role of the people in government decision making has changed substantially over the last two hundred years. In the early years of this country the primary forum for public participation was the local town hall meeting, where most decisions affecting the people were made. The public elected additional representatives to perform such tasks as run the post office, collect tariffs, and provide for the common defense, which were beyond the scope of the town meeting. But government has changed drastically over the last two hundred years and in many ways beyond the projections of Alexis de Tocqueville. Government has become more and more centralized and the public's input into the decision making process has diminished in proportion to and at the same rate as this increased centralization. Today, government affects and controls much of the day-to-day behavior of its citizens.

Since the Civil War, civil government has altered dramatically. No longer does the legislative branch spell out the do's and don't's for American society; rather, it delegates authority to administrative agencies which spell out the do's and don't's. These administrative agencies are run by people who are not elected and who are generally unaffected by their decisions and unaccountable

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<sup>11</sup> Consumer Services Section Act, Minnesota Statutes §45.17, Subd. 2.

for their actions. The legislative branch, by giving up its decision making authority to these agencies, has diminished its role as an equal branch of government and has relegated the executive branch to a superior position. The problem is compounded by little, if any, oversight capability within the legislative branch, particularly on the state level.

However, the administrative agencies are not totally unaccountable for their actions. The long-standing tradition of public participation in agency decision making is still present. The fifth and fourteenth amendments to the U.S. Constitution provide for due process in agency decision making. Since World War II, the Congress and most state legislatures have passed administrative procedures acts and other laws, which provide for public input and accountability and which specify the due process requirements for agency decision making.

Minnesota Statutes, Chapter 15 sets forth provisions relating to the administration of state departments and agencies. Chapter 15 contains the Administrative Procedures Act (APA), M.S. §15.0411-.052. The APA establishes procedures relating to (1) the adoption of rules; (2) petitioning for the adoption of rules; (3) judicial review of validity of rules, agency review of licenses and registrations, agency decisions; and (4) the scope of review. The APA also provides for the publication of rules, the creation of a state register, and the creation of the Office of Hearing Examiners.

Although Congress and the states have passed numerous laws recognizing and encouraging public participation, the idea of public involvement is stated best in the National Environmental Policy Act of 1969. This act emphasized the importance of citizen involvement in enhancing the quality of the environment:<sup>12</sup>

The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Minnesota put teeth in this statement when it enacted the Minnesota Environmental Rights Act (MERA) in 1971. The purpose of MERA is spelled out in its opening section:<sup>13</sup>

The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which man and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land, and other natural resources located within the state from pollution, impairment, or destruction.

<sup>12</sup> National Environmental Policy Act, 42 U.S.C. §4323(c).

<sup>13</sup> Minnesota Environmental Rights Act, Minnesota Statutes §116B.01.

Prior to the passage of MERA, the people of Minnesota were unable to protect the environment effectively through judicial action. Any person whose property was injuriously affected or whose personal enjoyment was lessened by a nuisance such as environmental pollution could maintain a private nuisance action. If the nuisance affected a considerable number of people, then the right to recover damages was modified. Under this circumstance an individual had to show that he or she suffered an injury that was special or peculiar to him or herself and not common to the general public before he or she could recover damages. In many circumstances this was difficult; if not impossible to do.

In addition to the above two laws, the enabling legislation for the energy-related agencies provides additional rights, procedures, and aid in facilitating citizen participation in these administrative processes. Some of these rights, procedures, and aids include (1) a citizen advisor notifies citizens and explains the processes for siting power plants and lines; (2) a citizen advocate for residential utility customers in rate requests by PSC regulated utilities is housed in the Office of Consumer Services; (3) the EIS process provides for public review and comment on site specific EISs; and (4) a host of other procedures relating to planning, rulemaking, hearings, and judicial review.

Table E.S.-1 summarizes the present electric utility regulating process and the role and rights that each "energy player" has in participating in the process.

### CHAPTER THREE: PUBLIC PARTICIPATION IN ENERGY RELATED DECISION MAKING

This chapter, while focusing on energy decision making, is entirely applicable to most, if not all, technological decision making. It is an understatement to recognize that technology has impacts (both positive and negative) on the day to day lives of most people. Few, if any, people are immune to the consequences of technology and the impact that technology may have on human values. As the awareness of the role that technology plays in the quality of life has grown, so too has the demand by the public for the opportunity to play a significant role in the decision making processes which underlie technological policies and investments. Because the applications of technology involve considerations of human and societal values, citizens have begun to seek a greater voice and vote. "It is not difficult to see citizen dissatisfaction with nuclear power as a symbol of increasing dissatisfaction among some segments of the population with the economic and technological determinism that they feel has characterized governmental management of limited environmental resources and a broader and more pervasive dissatisfaction with governance itself."<sup>14</sup>

In a general sense, this entire chapter is aimed at assessing the implications (i.e., the pros and cons) of increased public participation in technological decision making, and energy related decision making in particular, and offering recommendations to provide for and assure effective public participation. Section 3.1 examined the role of technological decision making in a democratic republic. It set the stage by examining the characteristics of technology generally, how these characters affect values, which in turn generates conflict,

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<sup>14</sup> Ebbin, S. and Kasper, R., Citizen Groups and the Nuclear Power Controversy, Cambridge, Mass.: MIT Press, 1974, p. 253.

TABLE E.S.-1

## THE ELECTRICAL UTILITY REGULATORY PROCESS -- PRESENT PROCESS

	ELECTRICAL UTILITIES	MINNESOTA ENERGY AGENCY	ENVIRONMENTAL QUALITY BOARD	PERMITTING AGENCIES	PUBLIC SERVICE COMMISSION
RESPONSIBILITIES/ DECISIONS	PLANS SIZE, TYPE, TIMING, LOCATION, AND RATE DECISIONS	MAKES SIZE, TYPE, AND TIMING DECISION	MAKES LOCATION, EIS DECISION; PLANT DECISION MADE INDEPEND- ANT OF LINE DECISION; CONDUCTS INVENTORY OF STUDY AREAS	ISSUE PERMITS FOR CONSTRUCTION AND USE	GRANTS RATE REQUESTS; DETERMINES SERVICE AREAS
TIME ALLOWED FOR DECISION	NO TIME LIMIT; USUALLY 5-7 YEARS	6 MONTHS	SITING: 1 YEAR + 6 MONTHS ROUTING: 1 YEAR + 90 DAYS DRAFT EIS: 120 DAYS	SINGLE AGENCY: NONE EPCA: 185-205 DAYS	RATES: 1 YEAR SERVICE AREA: 12 DAYS
RIGHTS OF PUBLIC TO PARTICIPATE: 1. ALLOWED 2. FUNDED 3. PUBLIC ADVOCATE 4. OTHER	1. NO 2. NO 3. NO 4. NO	1. YES 2. NO 3. NO 4. NO ADVISORY COMM. NO POLICY	1. YES: SITING, ROUTING, EIS 2. NO 3. CITIZEN ADVISOR - NO ADVOCATE 4. PPSA ADVISORY COMMITTEE; PARTICIPATION POLICY; EIS: 500 SIGNITURES	1. YES 2. NO 3. NO 4. NO	1. YES 2. YES 3. YES 4. NO
ENVIRONMENTAL REVIEW	NO	ENVIRONMENTAL REPORT ON PLANT AND ON LINE	ENVIRONMENTAL REPORT ON PLANTS AND LINES; DRAFT EIS FOR SITES AND LINES	FINAL EIS	NO
COMMENTS:	PLANNING PROCESS IS UNDERTAKEN IN SECRET; BURDEN FOR SIZE, TYPE TIMING, LOCATION, AND RATE DECISIONS ON UTILITIES: NO PUBLIC INPUT INTO PLANNING PROCESS	CONSERVATION IS THE STATED POLICY, BUT IS NOT REFLECTED IN NEED DECISION; MAKES DECISIONS WITHOUT AN EIS; PLACES ALTERNATIVE TECHNOLOGY BURDEN ON OTHERS; INADAQUATE PUBLIC PART- ICIPATION MECHANISMS	CONDUCTS AN INVENTORY OF SITE STUDY AREAS, BUT AS AN INDEP- ENDANT AND UNRELATED FUNCTION OF SITING DECISIONS; MAKES SITING AND ROUTING DECISIONS WITHOUT A COMPLETE EIS; REQUIRES REPEAT OF NEED, SITING, EIS PROCESS BY SEPARATING PLANTS AND LINES; INADAQUATE PUBLIC PARTICIP- ATION MECHANISMS	EIS IS USED ONLY FOR PERMITTING DECISION -- NO ACTION PLANNING POTENTIAL IS DERIVED FROM EIS; INADAQUATE PUBLIC PARTICIPATION MECH- ANISMS	CONSERVATION POLICIES AND POLICIES TO PROTECT THE POOR ARE NOT REFLECTED IN THE RATE STRUCTURES; INADAQUATE PUBLIC PARTICIPATION MECHANISMS

resulting in the need for dispute resolution, and the relationship of technological decision making processes to a democratic society. A number of conclusions which set the stage for examining specific decision making in the next two sections may be drawn from this section. First, choices or decisions about technology and the regulatory processes that govern them generally reflect the values and concerns of a small group, rather than the values of the society at large. Second, the disparity of values between those reflected in the decision making process and the components of society at large can and do generate conflict. Third, that western society is pluralistic in nature and contains a wide variety of values which are often at odds with each other. Fourth, the existing process that permits technological decision making by scientists or engineers or regulated interests alone is incompatible with any notion of a democratic society. Finally, any notion of a democratic pluralistic society requires that all values, no matter how extreme, must be reflected and considered in all decision making processes which affect the society at large.

Section 3.2 of this chapter examines ways to improve public participation mechanisms. Section 2.6 of Chapter Two showed that public participation is an integral policy of Minnesota administrative law. Section 3.2 addresses defects in the law identified in the literature as obstacles or barriers to public participation. The literature indicates that there are a number of pre-adjudicative obstacles which have effectively inhibited participation by the public. These include (1) that inadequate notification exists for the public to discover forums to express their concerns about decisions that affect them; (2) that information and technical expertise needed by the public to present their cases and held by the government or regulated interests is unavailable, unknown or denied to public participants; (3) that the administrative process has placed limits on the ability of the public to participate as "parties" in decision making process by inhibiting or prohibiting the public's opportunity to initiate, to testify, to intervene in agency decision making, or to seek review of agency decisions; and (4) that no mechanism presently exists which facilitates public participation of unrepresented interests in the decision making process. The following recommendations are offered to remove these barriers:

RECOMMENDATION 1: Notification procedures both under the Administrative Procedures Act and enabling legislation for energy related decision making should include paid advertisements and press releases to state-wide and local newspapers, wire services, and radio and television stations for each and every hearing. Further, all energy related agencies should develop special public service announcements as part of their notification procedures for all official hearings.

RECOMMENDATION 2: The content of the notice should be explicit enough to provide information on the nature, type, and location of the hearing. Further, the notice should explain a citizen's rights and responsibilities for participating in the hearing.



- RECOMMENDATION 3: The notice of hearing should provide adequate time, at least 90 days prior to the start of the hearing, for the citizen to organize and prepare his case. Consequently, the notice of hearing should run at least once a week for eight weeks.
- RECOMMENDATION 4: The Public Advisor citizen involvement tool should be extended to the certificate of need, environmental impact statement, permitting rates, and designated service area processes. Further, this should be accomplished by the creation of an office of public advisor to be established in a manner similar to the Office of Hearing Examiners.
- RECOMMENDATION 5: The primary energy related decision making agencies (MEA, MEQB, PSC, and PCA) should coordinate their information gathering and provide a joint information clearinghouse to give citizens easy access to energy related information.
- RECOMMENDATION 6: Minnesota Statutes §15.1611 et. seq. should be amended to give citizens an unqualified right of access to energy related information of a nonpersonal nature.
- RECOMMENDATION 7: Minnesota Statutes §15.1611 et. seq. should specify access to information procedures which include time limits, uniform fee schedules, a right to judicial review, a regulation and notification requirement, an indexing requirement, and a right to see all disclosable information.
- RECOMMENDATION 8: Transcripts of agency hearings should be provided at little or no cost; multiple file requirements should be removed; and citizens should have open access to agency experts as advisors and witnesses.
- RECOMMENDATION 9: Standing as requirement for judicial review of agency decisions should be removed, except for the case or controversy requirement of Article III of the U.S. Constitution. The Administrative Procedures Act, in particular Minnesota Statutes sections 15.0423, 15.0424, and 15.0426 should be amended to reflect this policy.
- RECOMMENDATION 10: The Minnesota Administrative Procedures Act should be amended to guarantee any citizen the right to intervene in any agency action regardless of the nature of the citizen's interest. In particular, no qualification of the right to intervene shall be considered in decisions involving the siting of any kind of facility.
- RECOMMENDATION 11: The Minnesota Administrative Procedures Act should be amended to require agencies to have an affirmative duty to consider all interests in arriving at a decision. Further, the courts in reviewing agency activities should evaluate whether or not the agency adequately and fully considered the interests of all parties and participants.

**RECOMMENDATION 12:** The Minnesota Administrative Procedures Act contested case procedure should be amended to permit the public to petition to initiate formal contested case procedures where informal procedures may now be used. The petition should be specific as to what action is requested and the need for the action. Denial of the petition should be subject to judicial review.

**RECOMMENDATION 13:** The legislature should create a variety of institutional mechanisms to effectively provide representation for unrepresented interests in governmental decision making. Three mechanisms should be enacted: (1) an office of public counsel should be created in each regulatory agency to represent nonregulated clients in adjudicatory or rule-making proceedings under the jurisdiction of the Attorney General; (2) an department of citizen advocate should be created on the cabinet level to augment the representation of unrepresented interest in agency decision making; and (3) a center for intervention and technical assistance or group of centers should be created to assist interested persons and groups who wish to intervene in agency decision making or in judicial review of agency decisions.

The office of public counsel, the department of citizen advocate and the center for intervention and technical assistance should (1) be statutorily established and be provided with a separate appropriations budget line; (2) the director of each office should have complete administrative authority over the office; (3) each office should be empowered to intervene with full party status in agency proceedings; (4) each office should be empowered to seek judicial review of agency decisions; (5) the office of public counsel should have public complaint handling responsibilities; (6) the office of public counsel and the center for intervention and technical assistance should be permitted to advise and assist, including the undertaking of studies and information dissemination, independent groups and individuals who seek to represent broad interests before governmental agencies; (7) each office or center should possess adequate authority to obtain information needed to carry out their functions; and (8) each office or center should have adequate funding to assume these responsibilities.

Section 3.3 of the chapter examines additional aspects of the administrative process necessary to assure public participation by those who wish to represent themselves. While the recommendations offered above are important in that they remove barriers in the process to public participants, they are insufficient by themselves to assure effective public participation. Since many of the decisions with which the public may want to participate involve complex technologies, adequate time and resources are essential for the public to effectively present its case. A review of the literature indicates that these two components (timeliness and resources) are crucial for public interest involvement. The following recommendations are offered to assure that timeliness and lack of resources do not constitute insuperable barriers to public participation.

RECOMMENDATION 14: The public should be permitted to become involved in the planning decisions relating to energy decision making at an early date. Applications for certificates of need and site compatibility as well as designation should take place at least two to five years earlier than at present. Notification of the application should be undertaken as recommended earlier (see recommendations 1-4). Ex parte communication with agency decision makers should be prohibited. All documents filed should be a matter of public record as recommended earlier (see recommendations 6 and 8).

RECOMMENDATION 15: The Minnesota Public Utilities Act should be amended to prohibit rate increases until after the Public Service Commission makes a decision.

RECOMMENDATION 16: It should be the policy of the State of Minnesota to provide financing to nonprofit citizen organizations and unincorporated citizen groups in order to assure that the public can participate in adjudicatory or rulemaking proceedings. Whenever possible, the legislature should provide funding through application fees in adjudicatory cases. Otherwise, funding should be provided via a direct appropriation, either through the center for intervention and technical assistance (see recommendation 13) recommended above or through the agency itself. The criteria for eligibility should be limited to the technical quality and importance of the group's proposal and the need for the funds. The amount of funding provided to any individual or group should be flexible with the criteria being the complexity of the issues, the number of groups to be funded, and the amount of funds available.

RECOMMENDATION 17: The Minnesota Administrative Procedures Act should be amended to empower agencies to order "fee shifting" in cases of bad faith, willful violation of an agency order, or other egregious conduct.

RECOMMENDATION 18: The Minnesota Administrative Procedures Act should be amended to require the courts to provide legal fees to any plaintiff who brings an action against an administrative agency compelling the agency to do its job or challenging the agency's decision for being arbitrary and capricious, and wins, or in the opinion of the presiding justice has a legitimate issue, but still loses. Agencies should not be able to collect fees under any circumstances from the plaintiff.

Emotions run high on the wisdom of facilitating broader public participation in agency proceedings and in particular of subsidizing private individuals or groups at the regulated interests or at the taxpayers expense. The primary argument against broadening public participation is that of delay. Yet, as section 3.3 notes, public participation is responsible for little, if any, delay in administrative decision making. Further, many commentators believe that increased, effective public participation will reduce delay by raising legitimate issues early, thereby avoiding prolonged court cases.

As an NRC study observed, "most of those observed believed that these issues [nuclear power plant licensing] could and should be determined. A decision one way or another would neither bring the nuclear industry to its knees, nor wipe out intervenors. After all, what is under discussion is a concordant procedure for dispute resolution--not a clandestine plan for revolution."<sup>15</sup> We need, as attorney Mark Massel suggested, to take a fresh look at the regulatory process:<sup>16</sup>

... government regulation has been treated as an insulated, technical activity of government. Much of the discussion has been founded on the implication--stronger because unstated--that regulation is a legal function that can be protected from the contamination of other government activities. This academic assumption has been so imbedded that most of the debating gambits have overlooked three significant features of the regulatory process: first, it is inherently a political activity that is a substantial element in modern economies; second, the regulatory functions are too intertwined with a host of other government activities to be set as a class apart; and third, while procedural problems are important, they are subsidiary to the objectives and accomplishments of the regulatory functions.

Adequate consideration of the policy issues that are inherent in the regulatory process will depend upon a continuing awareness of our traditional anxiety about government regulation, an anxiety that stems from our inability to make clear-cut decisions about what functions we want government to undertake. Our ultimate public policy goals are an interesting compound of social, economic, political, and international aims. Many of these aims conflict with each other. At least, they give such an appearance. For social and political reasons, we want many independent private enterprises because we believe that they will insure the effective working of the democratic process and equality of opportunity; at the same time, we look to large corporate aggregations to satisfy certain economic and military objectives. Many look to government for the solutions to broad economic and social problems; but others are restive about government interference. We want to assure everyone of his day in court; yet, we are unhappy with the lengthy administrative hearings that this objective entails.

Public participation in administrative agency decision making is, of course, not an end in itself. Rather, it is a means of insuring that regulation does in fact further the "public interest." Attacks on the process that the agencies too often favor and accommodate the desires and ends of the regulated interests are often voiced. If the response is to admit only the most well organized and financed groups to a position of influence (i.e., the regulated interests), the

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<sup>15</sup> Office of State Programs, Improving Regulatory Effectiveness in Federal/State Siting Actions, Vol. 8: Nuclear Power Plant Licensing: A New England Perspective, Washington, D.C.: Nuclear Regulatory Commission, NUREG-0202 1977, p. 207.

<sup>16</sup> Massel, M. "The Regulatory Process," 26 Law and Contemporary Problems 179, at 181-2, 1961.

ultimate decisions will reflect the values of only a subset of the society. If the public interest is truly defined through process, then the public must be able to effectively participate in the process.

#### CHAPTER FOUR: SELECTED ISSUES IN ELECTRICAL ENERGY POLICY

Chapter Four focuses on three aspects of electrical energy policy: (1) power plant siting and the environment (section 4.1); (2) conservation of electrical energy (section 4.2); and (3) electric rates and the poor (section 4.3). As noted in the preface to this report, there were a number of limitations placed upon this study. The effect of these limitations greatly restricted the scope of inquiry which this report could address. The purpose of this study is to address process questions, i.e., is the process structured so that technological and value factors can be considered.

Section 4.1 focuses on the conflict between electric power and the environment. The building of electrical energy facilities has and continues to generate substantial conflict. The conflict centers on the competition between many important social interests. Two interests that this report is concerned with include (1) the need to provide an adequate, reliable supply of electricity and (2) the need to protect the public health and to prevent further environmental degradation. The competition between these two interests is over the utilization of scarce resources: air, water, and land. Because disputes arise over the competition for these resources (a competition that reflects differing values), dispute resolution mechanisms in the form of decision making authorities are necessary. The two principal decision making authorities in Minnesota which are charged with making decisions about energy facilities, are the Minnesota Energy Agency (MEA) under the Energy Agency Act and the Minnesota Environmental Quality Board (MEQB) under the Power Plant Siting Act (PPSA) and the Environmental Policy Act (MEPA).

An analysis of these decision making authorities reveal that the conflicts still exist. First, the inherent conflict of values in the legislative policies existing prior to the establishment of the decision making authorities noted above is not resolved by these authorities. Second, the decisions that arise from the certificate of need process and the power plant siting process do not result in a balanced decision of the competing interests. Rather, the defacto policies inherent in the site-by-site decisions, made pursuant to these laws, result in a random solution, if any, to the fundamental conflicts that exist between economic, environmental, and social considerations.

Recognizing that the planning process for the need, size, type, and location of electrical energy facilities rests almost completely with the utility and that the primary concern of the utility is to maintain an adequate and reliable supply of electricity, how are environmental values reflected in the process? Because the planning process of the utilities is made in secret, no one other than utility executives knows how environmental factors influence a utility's choice for size, type, and location in its applications to the MEA or MEQB. Environmental factors in the decision making processes of government are reflected through the environmental review procedures established under MEPA. These processes and procedures provide that the MEA make a decision on size and type with an environmental report (ER) as the mechanism to provide public health and environmental information for "planning" the decision. In addition, the location decision for a specific size and type of facility made by the MEQB also utilizes an environmental report (ER) as the mechanism to provide environmental information in "planning" its location decision.

An analysis of the process reveals that size, type, and location decisions are inseparable in anticipating the environmental and public health consequences of the decisions. Using a series of guidelines developed by the Rand Corporation for the California State Assembly on power plant siting, this report analyzed the Minnesota decision making mechanisms to determine if the present design for decision making and division of agency authority adequately coordinated the size, type, and location decision. The analysis revealed that (1) functions which are naturally linked, such as size, type, and location of power plants and lines, were not grouped together; (2) the existing decision making process failed to provide separate institutions for separate roles, such as balancing size, type, and location with the environmental consequences of the decisions; (3) the existing process failed to take into account the natural tendencies of institutional behavior, such as a bias toward one side or the other; (4) many members of the public are upset with the results of the agencies decision making; and (5) the MEA does not have the proper balance of responsibilities to provide technical competence and impartiality in making its size and type decision.

The following recommendation is offered to overcome the present design flaw in agency decision making and the division of agency authority, which results in an adequately coordinated size, type, and location decision.

RECOMMENDATION 19: Size, type and location decisions should be made together in one agency. The Agency best suited to making this decision is the MEQB. The MEA should continue to issue a certificate of need based on factors that affect demand without regard to the size(s) and type(s) of facilities necessary to meet that demand.

Environmental factors are considered in an environmental review process created by the Minnesota Environmental Policy Act (MEPA). The purposes of MEPA are many and include an intention to alter the decision making processes of administrative agencies in two ways. First, the environmental impact statement (EIS) process is an information gathering procedure, an "environmental full disclosure law", to inform decision makers about how their policies affect the quality of the air, water, and land before they make their decision. Second, the EIS process is an action planning procedure, i.e., it permits an agency to make a rational choice from a set of alternatives with full information about the environmental consequences of both the preferred choice and the alternatives.

A retrospective review of the National Environmental Policy Act (NEPA) reveals that NEPA and the federal EIS procedure have improved coordination and effectiveness in decision making. Since NEPA and MEPA are nearly identical in terms of their policies, their disclosure requirements, the impact statement criteria, and in many other ways, an analysis of MEPA procedures for the environmental review of the size, type, and location decision was made. The analysis was based on a comparison of state procedures with those factors which were shown to improve coordination and effectiveness in decision making for federal agencies. The analysis revealed that the existing environmental review process for determining the environmental consequences for power plants and lines defeated the purpose and intent of MEPA in six ways. In particular, the existing process fails to (1) consider all possible environmental effects at each stage of the process where decision making affects the environment; (2)

provide adequate staff to independently review the environmental impact of the proposed action and its alternatives; (3) permit adequate consideration of other agency mandates in the decision making process for determining the size, type, and location of power plants and lines; (4) provide timely consideration of the environmental impact of the proposed action and its alternatives; (5) provide reasonable public review of environmental information documents necessary to meet the purposes of MEPA; and (6) provide adequate consideration of alternatives by excluding certain alternatives and by failing to provide equal treatment of the few alternatives considered with the proposed action.

The three key problems associated with the environmental review process established by the regulations promulgated pursuant to MEPA are the timing and scope of the EIS procedure and the secrecy associated with the planning process. The problems that have arisen with respect to EIS timing and scope can be traced to a common conceptual difficulty on the part of agency personnel. What is involved is not merely "bad faith" or administrative lethargy on the part of the agencies, but a deeply ingrained bureaucratic orientation to focus on goals, rather than on process. Process refers to the methodology or procedures of decision making. The secrecy problem is an inherent part of both utility and agency behavior, which is compounded by an administrative process that is not presently designed to foster openness, since it informs the public of a basically predetermined decision at the eleventh hour.

The EIS action planning mechanism created by MEPA is the procedure by which environmental concerns are made a part of agency decision making. The effective utilization of MEPA EIS procedures by the MEQB can make significant strides toward achieving a more efficient facility siting determination. It must be noted that the EIS procedure is not the cause of duplication of laws and procedures. On the contrary, the EIS procedure can serve to reduce unnecessary overlap of environmental review as well as help agencies to make intelligent decisions.

Since the purpose and intent of MEPA and its associated EIS procedure is to provide an environmental full disclosure law and to improve agency decision making, the following recommendations are offered to accomplish these ends.

**RECOMMENDATION 20:** The environmental review process should be revised to reflect both the intent and spirit of the Minnesota Environmental Policy Act (MEPA). This should be accomplished by undertaking the following: (1) an environmental impact statement (EIS) should be mandatory for any power plant or transmission line which is subject to the jurisdiction of the Power Plant Siting Act (PPSA); (2) power plants and transmission lines should be considered together whenever possible; (3) the environmental reports required to be prepared at the certificate of need stage and the power plant siting and route designation stage should be abolished; (4) the environmental assessment worksheet required to be prepared at the power plant siting and route designation stage should also be abolished; (5) the public should be given 60 days to review and comment on the draft EIS; (6) all environmental impact statements (whether plants and lines or just lines should be prepared by the MPCA; and (7) the Minnesota Environmental Quality Board (MEQB) should receive additional funds to hire staff necessary to make an independent evaluation of an EIS prepared pursuant to MEPA.



RECOMMENDATION 21: The EIS process for power plants and transmission lines should be revised. First, a "planning EIS" should be prepared and finalized prior to the MEQB decision on size, type, and location. The "planning EIS" should review alternative sizes and types and study areas identified in the MEQB inventory of study areas program. The "planning EIS" would evaluate other planning activities including air quality, water quality, water resources, land use, economic, and transportation planning activities for the purpose of evaluating alternative sizes and types and the demand that they place in choosing a study area. All agencies which are involved in air, water, land, economic, and transportation planning, should participate in the preparation of the draft EIS and submit written comments on the draft EIS. Upon completion of the final EIS, the MEQB should choose a type(s) and size(s) and a study area for the plant(s). Second, upon completion of the "planning EIS" and the size, type, and study area decision, the MEQB would identify two or more sites within the study area for the location of the plant(s). Once these sites have been identified a "project EIS" would be undertaken to analyze in detail the environmental consequences of the MEQB size, type, and location decisions on the local environment. The "project EIS" would be completed and finalized by the MEQB prior to the issuance of any permit or construction authorization.

RECOMMENDATION 22: A generic EIS should be prepared and updated at periodic intervals on (1) the environmental and economic consequences of alternative and conventional energy technologies of different sizes; (2) the relationship of these technologies to the end use energy requirements; (3) the impact of these technologies on the goals and plans of environmental protection in the long-run; (4) the impact of energy demand projections upon the depletion of natural resources; and (5) the impact of altering the tax structure, electric rates, rationing and retrofitting more energy efficient products, in short conservation, as an alternative to building more power plants and lines.

RECOMMENDATION 23: The timing of decision making processes should be significantly altered so that all interested parties to the decisions can rely on a specific time table for making the decision. The following time frames offer definite limits on agency decisions, but within realistic time periods:

- (1) The certificate of need decision should remain at six months;
- (2) The draft planning EIS should be finished within one year;



- (3) The final planning EIS should be completed within 90 days after completion of the draft planning EIS;
- (4) The size(s), type(s), and study area(s) decision should be made within six months of the approval of the final planning EIS;
- (5) The draft project EIS should be completed within 450 days of the size(s), type(s), and study area(s) decision;
- (6) The final project EIS should be completed within 90 days after completion of the draft project EIS;
- (7) The final location(s) decision should be made within six months of the approval of the final project EIS; and,
- (8) Permits issued by a single agency should be issued within one year of the date of application, but no applications should be accepted until after the completion and approval of the final project EIS and after the location decision(s) have been made by the MEQB.

RECOMMENDATION 24: Minnesota Statutes, Chapter 110C (The Environmental Quality Board Act) should be amended to clarify the Minnesota Environmental Quality Board's responsibilities including the responsibility to act as an advocate of environmental values in all proceedings in which the Board is involved.

Section 4.2 focused on the conservation of electrical energy. The need for increased energy conservation is based upon four principle arguments. First, the "energy crisis" is "not a temporary interruption of supply but a more fundamental change caused by our moving from an era of abundant energy to an era of scarce, expensive energy. . ." (Emphasis not added).<sup>17</sup> Second, while not offered as a total solution to the energy problem, conservation can (1) slow the growth rate of energy consumption; (2) stretch the remaining life of fossil fuels; (3) reduce the environmental impacts of energy production and use; (4) hold down the U.S. foreign trade deficit; and (5) help to keep the price of energy within peoples' reach. Third, energy conservation is "a strategy [that] is not in competition with the present energy industries nor with the present efforts to increase the supply capacities of these industries. Rather it is a common-sense effort that offers substantial promise for helping to meet anticipated demand requirements, and for minimizing the economic and social costs resulting from unexpected supply problems."<sup>18</sup> Finally, the amount of energy that can be conserved without interfering with lifestyles is considerable.

There are many problems in the U.S. in attempting to achieve significant energy conservation. Energy consumption is dependent on (1) the energy efficiency of existing products and equipment that use energy, and (2) the way consumers operate or use the existing stock of products (traditional use patterns), altering energy consumption patterns requires changing one or both of these

<sup>17</sup> American Institute of Architects, Energy and the Built Environment: A Gap in Current Strategies, Washington, D.C., 1974.

<sup>18</sup> Ibid., p. 8.

factors. Energy consuming products can be modified in two ways. In the short term these products can be made more efficient through retrofit. In the long run these products can be replaced with more energy efficient products. In both instances efficient energy products or retrofit devices must be available in sufficient quantities and consumers must choose these products over less-efficient ones before energy consumption can be reduced. Altering traditional energy use patterns involves the way individuals, businesses, and others carry out their daily activities. These types of changes are difficult because of the sheer number of consumers that need to be affected and because the change in daily activities may, from a consumer viewpoint, be in a less convenient fashion. The change in consumer behavior required is compounded because "the growing demand for energy as a matter of either public policy or private practice runs contrary to the trend of the last several decades."<sup>19</sup>

There are a number of policy options available to encourage the conservation of electricity. First, policies can be designed to elicit voluntary responses from consumers by creating an awareness of the benefits of energy conservation, both in terms of dollar and energy savings. Specific policies would center around consumer education, appliance labeling, and providing financial incentive for the development and use of energy saving devices. Second, policies can be designed which indirectly affect the market. This involves either raising the effective price of energy and/or lowering the real cost of implementing energy conservation measures, such as more energy efficient products. For example, specific programs, which provide financial incentives to conserve energy, include tax credits, grants, low interest loans or loan guarantees to businesses or individuals, and other tax relief for users who install more efficient equipment or manufacturers who make such equipment can be enacted. Financial disincentives can also be enacted through the taxing power by providing taxes on the energy, taxes on the energy user (such as a sales tax), or taxes on those who use disproportionate quantities of energy (i.e., taxes based on the estimated average annual electricity use of the equipment, elimination of promotional rebates to builders and users). Third, policies can be designed which directly affect the market, i.e., involves governmental regulation or restriction of energy use for energy-using products. These are basically proscriptive policies which include changes in the building code; bans on the manufacture, sale, or installation of certain types of equipment; restrictions on wattages or minimum efficiency of electrical equipment or appliances; restrictions on new building permits; and explicit rationing of electricity and other forms of energy. Finally, policies can be designed which change the user cost of electricity, either through taxes as noted above or through changes in the overall price mechanism, i.e., changing the rate schedule.

The question that Chapter Four, section (4.2) addresses is whether the process permits the consideration of these conservation policy options. A review of the statutes relating to conservation (see Chapter Two, section 2.2A) shows the following (1) energy conservation is the policy of the State of Minnesota; (2) the primary function of the MEA is to promote and elicit voluntary energy conservation functions from consumers and to enforce specific, statutory energy conservation measures; and (3) the PSC must, under the National Energy Act of 1978, in particular sections 111 and 113 of the Public Utilities Regulatory Policies Act,

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<sup>19</sup> Hammond, A. L., et al., Energy and the Future, Washington, D.C.: AAAS, 1973.

hold hearings to determine the appropriateness of implementing energy conservation measures which may affect the rate schedules.

The present conservation policies do not generally address direct or indirect market approaches, to energy conservation. These approaches include little in the way of a taxing policy, a tax relief policy or tax credits, loans, etc. for electric energy conservation. They do not restrict the use of energy inefficient equipment or provide specific authority for the agencies to restrict such equipment (require retrofitting or minimum efficiency rating other than for air conditioning and lighting), nor do they address the rationing of electrical energy. Since many of these issues were addressed in the Final Report of the House Select Committee on Energy and the MEQC Energy Policy Task Force Report, this report recommends that the Legislature pay close attention to the recommendations of those reports.

Section 4.3 focuses on electric rates and the poor. It is generally recognized that the more money people have, the more energy they use. However, studies show that the poor spend a greater percentage of their income on energy than the middle or upper income people. The Ford Foundation report A Time to Choose found that "the poor spend almost 15 percent of their household income on energy while the high consumption of fuel by the rich typically accounts for only 4 percent of their incomes. Any major price increases will thus cause hardship to poor families, since their energy use levels do not include a margin of extra amenities easily done without."<sup>20</sup>

It has been recommended both nationally and in Minnesota that the effects of increasing energy costs not unduly burden the poor and others on fixed incomes. Hazel Rollins, Acting Deputy Administrator of the Economic Regulatory Administration of the Department of Energy, noted that "no geographic, ethnic, or income group should have to bear an unfair share of the total burden, and none should reap undue benefits from our energy problems. It is particularly important that we protect the elderly, the poor, and those on fixed income from disproportionately adverse effects on their incomes."<sup>21</sup> In addition, the MEA has offered as one of their energy policy recommendations that "appropriate legislation to provide assistance for consumers most impacted by higher electricity costs" be undertaken.<sup>22</sup>

One proposal that has been offered to alleviate the impact of rising electric rates on the poor, the elderly, and others on fixed incomes is the establishment of "lifeline" rates as a component of the rate structure. While there is no rigid definition of lifeline, the purpose is to structure the rates in such a way that residential users pay a reduced price for relatively small quantities of electricity (for example, the first 300 to 500 kilowatt hours used per month) necessary for essential needs. The underlying premise behind the lifeline concept is to reduce the price of electricity to residential users who consume small quantities.

<sup>20</sup> Energy Policy Project, A Time to Choose: America's Energy Future, Final Report of the Energy Policy Project of the Ford Foundation, Cambridge, Mass.: Ballinger, 1974, p. 334.

<sup>21</sup> Rollins, H., "Energy and the Consumer," Energy Policy Options for Illinois, Proceedings of the Fifth Annual Illinois Energy Conference, September 28-30, 1977, Chicago Circle Campus, University of Illinois, p. 198.

<sup>22</sup> Energy Policy and Conservation Report, Minnesota Energy Agency, 1978, p. 5.

Lifeline rates offer three apparent advantages. First, they provide rate relief to residential users who use only small amounts of electricity. These users are thought to be the poor, the elderly and others on fixed incomes. Second, lifeline rates promote conservation by providing an economic incentive to hold down consumption. Finally, rates are easy to understand, can be placed in effect without much delay, and are politically and administratively advantageous to the government because they require no new tax revenues to administer "the program". As a result of these multiple advantages, the lifeline rate concept has taken different forms in the several states which have implemented them. In California, for example, lifeline rates have generated strong support as a method of slowing down growth in electricity consumption.

Since there exists a general policy within Minnesota to help the poor (M.S., Chapter 261), the rising costs of electric rates should not unduly burden the poor, the elderly, and others on fixed incomes. Because the data shows that people are reluctant to use stamps, whether food or energy stamps, and because energy stamps do not encourage conservation, a program that provides relief for the poor as well as encourages that conservation should be adopted.

RECOMMENDATION 25: It should be the policy of Minnesota to protect the poor, the elderly, and others on fixed incomes from the rising cost of electrical energy. Therefore, the Public Service Commission should begin hearings to enact a "lifeline" rate which benefits the poor and encourages conservation. The lifeline rate structure should reflect all factors which affect the essential uses of electricity.

Table E.S.-2 summarizes how the recommendation in this report alter the present process of regulating electrical utilities.

#### CHAPTER FIVE: EMINENT DOMAIN AND POWER PLANT AND LINE SITING

It is apparent that there is a crisis attitude today with regard to energy problems. This is indicated by (1) the proliferation of new agencies; (2) the enactment of new laws which regulate energy use and development, and (3) by the proposal for new procedures, such as the Energy Mobilization Board (EMB). The EMB, for example, would not only develop priorities for energy projects and goals, but would limit the time that federal, state, and local governments can make decisions (a process that could result in de facto denial of due process and substantive consideration of the proposed project). The decisions that result from this crisis attitude can seriously affect land use. Studies on the future of land use in the United States report that our intensive use of land is expected to nearly double by the year 2000. The equivalent of every public and private facility including schools, hospitals, shopping centers, power plants, pipelines, homes and highways will be duplicated to accommodate projected population increases in the next twenty to thirty years. Accompanying this type of resource use pressure will be hotly contested debates over governmental powers to regulate land use and the taking of land for public purposes. Recently, extensive debates have occurred in Minnesota over regulation and the taking of land (particularly agricultural land) for power plants, power lines, pipelines, streets and highways, the "domed stadium", preserving "wild and scenic" rivers, protecting the BWCA and many more. These debates, which have occurred in the courts, the legislature, before government agencies, and in many other public forums, will increase in the future.

TABLE E.S.-2

THE ELECTRICAL UTILITY REGULATORY PROCESS -- RECOMMENDED PROCESS

	ELECTRICAL UTILITIES	MINNESOTA ENERGY AGENCY	ENVIRONMENTAL QUALITY BOARD	PERMITTING AGENCIES	PUBLIC SERVICE COMMISSION
RESPONSIBILITIES/DECISIONS	MAKES PRELIMINARY ESTIMATE OF NEED; PLANS RATE REQUEST; PARTICIPATES IN THE PROCESS	MAKES TIMING AND QUANTITY DECISIONS (MW CAPACITY NEEDED)	MAKES SIZE, TYPE, AND LOCATION DECISION; PLANTS AND LINES ARE TOGETHER; SIZE(S) AND TYPE(S) DECISIONS MADE AFTER PLANNING EIS; LOCATION DECISION MADE AFTER PROJECT EIS	ISSUES PERMITS FOR CONSTRUCTION AND USE	GRANTS RATE REQUESTS; DETERMINES SERVICE AREAS
TIME ALLOWED FOR DECISION	PRELIMINARY ESTIMATE DETERMINED IN 1-3 YEARS	6 MONTHS	DRAFT PLANNING EIS: 1 YEAR FINAL PLANNING EIS: + 90 DAYS SIZE(S) AND TYPE(S): 6 MONTHS DRAFT PROJECT EIS: 450 DAYS FINAL PROJECT EIS: +90 DAYS LOCATION DECISION: 6 MONTHS	PERMITS BY A SINGLE AGENCY: 1 YEAR EPCA: 185-205 DAYS	RATES: 1 YEAR
ENVIRONMENTAL REVIEW	NONE REQUIRED	NONE REQUIRED	EIS FOR PLANNING PURPOSES - RESULTS IN SIZE(S), TYPE(S) AND STUDY AREA(S) DECISION; EIS FOR PROJECT - RESULTS IN LOCATION DECISION	NONE REQUIRED	NONE REQUIRED
RIGHTS OF PUBLIC TO PARTICIPATE: 1. ALLOWED 2. FUNDED 3. PUBLIC ADVOCATE 4. OTHER	1. NO 2. NO 3. NO 4. NO	1. YES 2. YES 3. YES 4. CITIZEN ADVISOR	1. YES 2. YES 3. YES 4. SAME	1. YES 2. YES 3. YES 4. CITIZEN ADVISOR	1. YES 2. YES 3. YES 4. CITIZEN ADVISOR
COMMENTS:	TIME REDUCED BY 4-6 YEARS BY ACTIVELY TRANSFERRING PLANNING ACTIVITIES TO MEA AND MEQB	MAKES TIMING AND QUANTITY DECISION ONLY - SIZE AND TYPE DECISION TRANSFERRED TO MEQB; NO ENVIRONMENTAL REVIEW; EXPANDS PUBLIC PARTICIPATION MECHANISMS	EXPANDS DECISIONS TO INCLUDE SIZE(S) AND TYPE(S); ELIMINATES ENVIRONMENTAL REPORTS AND EAW - SUBSTITUTES TWO EIS PROCESSES - ONE FOR PLANNING AND ONE FOR PROJECTS; PLANTS AND LINES ARE TOGETHER; SPECIFIES TIMES FOR DECISIONS; EXPANDS PUBLIC PARTICIPATION MECHANISMS	PERMITS ARE ISSUED AFTER PROJECT EIS IS COMPLETED; EXPANDS PUBLIC PARTICIPATION MECHANISMS; SPECIFIES TIMES FOR DECISION	ESTABLISHES LIFELINE RATES; EXPANDS PUBLIC PARTICIPATION

The desirability of local control over land use decision is under serious question. Each local community, being concerned with its own protection, has tended to zone its land to avoid becoming a dump for undesirable uses. This has resulted in urban sprawl, exclusionary zoning, and unplanned development. Regional problems such as pollution, inadequate housing, and improper management of the environment have been attacked haphazardly and often in deference to wholly local interests. This has resulted in purely local welfare becoming the dominant concern. In addition, local governments, which are dependent upon property taxes for support, find it difficult to resist the desires of developers even though important social and aesthetic interests are sacrificed. One commentator has suggested that the problem is due not so much that the land use decision making is local, but "the flaw is that the criteria for decision making are exclusively local, even when the interests are far more comprehensive."<sup>23</sup>

Recently, the Minnesota Legislature has enacted new laws to overcome the procedures of local concerns by enacting state land use control authorities. Some of these include the Flood Plain Management Act, Regulation of Shoreland Development, the Critical Areas Act, the Minnesota Wild and Scenic Rivers Act, and the Power Plant Siting Act. In each instance the state either regulates the use of the land through its police power or permits the "taking" of the land to meet a "public use" through the power of eminent domain. This chapter focuses on the taking of land under the power of eminent domain by addressing the controversy about the condemnation or eminent domain process used to take land.

What powers and what limitations on the use of power does the state have in affecting the use of land? No matter what level of government seeks to control land use by direct or indirect means, the control must be based on one or more of the following powers; commerce power, power to tax and spend, power over federal property, police power (including control of public nuisances), and eminent domain.

The two most important powers from the perspective state control are the police power and the power of eminent domain. Indeed, much of the litigation over real property that takes place is a result of the choice of power (police or eminent domain) that the state exercised in a given instance. The issue in these cases is whether a "taking" has occurred which requires compensation by the state or others delegated the power of eminent domain.

Eminent domain, like the police power, is inherent in the sovereignty of the state and requires no constitutional recognition. The U.S. Supreme Court has ruled that "the right of eminent domain, that is, the right to take private property for public uses, appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty."<sup>24</sup>

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<sup>23</sup> Babcock, R., The Zoning Game, 1966, p. 153.

<sup>24</sup> Boom Co. v. Paterson, 98 U.S. 403, at 406 (1873).

Constitutional provisions concerning eminent domain limit the power of government to exercise the right, but do not create the power. Even so, the court has ruled that the fifth amendment implies the grant of the power of eminent domain to government.

Does the taking of private property for siting power plants and high voltage transmission lines (HVTL) constitute a public use? The recognition that power plants and lines serve a public use is obviously connected with the inherent value of electricity itself. Since electricity possesses an inherent capacity to serve domestic uses, it has and continues to be considered a public use unless produced primarily to private rather than public use. Since power plants and lines are the sole means of providing electricity to consumers, they have generally been considered a public use. A number of cases have addressed various aspects of the public use issue as it relates to power plants and lines. The cases have determined that (1) each member of the public need not be actually benefitted by the construction of a plant or line for it to serve a public use, provided that each member of the public shares an equal right with all others to use the electricity; (2) the fact that one patron will be served by the facility does not destroy its public nature; (3) the transmission of electricity by a wholesaler for ultimate distribution constitutes a public use; (4) electricity supplied to insure the reliability of a power system, even though it might not supply any customers (within a state) directly, still constitutes a public use; (5) public use exists where evidence that reserve emergency power supplies would be increased by the proposed facility, that the existing electrical distribution system would be stabilized, or that options existed that could provide electric power to a substantial number of residences; (6) property may be condemned prior to the granting of certificate of necessity by state agencies; (7) land may be condemned even though other property may be more suitable; and (8) utilities may enter private property to conduct tests prior to the initiation of condemnation proceedings. In sum, the taking of private property to site power plants and lines appears to constitute a legitimate public use.

The issue of whether power plants and lines constitute a legitimate public use was settled in a 1979 Minnesota Supreme Court Case. It had been argued that the Minnesota Energy Agency Act (M.S., Chapter 116H) removed the question of need from the eminent domain proceedings of M.S., Chapter 117. "By this Act, the legislature has removed from the condemnation court the power to decide whether the subject facility is needed and has transferred that power to a state administrative agency."<sup>25</sup>

Minnesota has extended the power of eminent domain to more than state agencies and political subdivisions. The power has been extended to railroads, mining companies, public utilities and others. As a result, eminent domain is a widely used power affecting land use and the rights and values of large numbers of people. In addition, the eminent domain procedures differ substantially from procedures for other types of civil conflicts.

Chapter One of this report noted that a significant number of new power plants and their associated transmission lines may be built in the next 20 to 30 years. While the ultimate amount of electrical power capacity that can be sited is a function of many technological, environmental, and economic factors; human elements and social acceptance will play a major role. As noted by many



individuals in government, utilities and the community, the growth in electrical power will be closely linked with questions of social equity and the perception of justice that exists in the processes for siting, condemning, and paying for electric power plants and lines. This section examined three aspects of the condemnation issue: (1) due process; (2) social equity in condemnation proceedings; and (3) negotiating the taking. "A thread that runs through all the decisions dealing with the issue of due process and the necessity of some kind of hearing is a tendency towards balancing of private interests in procedural safeguards against government expense and burden of providing those safeguards."<sup>26</sup> The listing of the required constitutional elements for a fair hearing provides a basis for comparison of the state eminent domain procedure. Since, Minnesota Statutes, Chapter 117 requires a hearing in the condemnation process both on the "commissioner" level and upon appeal at district court, an analysis of the need for a hearing in condemnation proceedings seems moot.

The eminent domain process provided for in Minnesota Statutes, Chapter 117 fails to meet the due process requirements as delineated in Goldberg v. Kelly in several respects. (1) the notice of the petition for condemnation fails to provide an explanation of the reasons for the taking; (2) there is no legal requirement that the damages awarded by the tribunal of commissioner be based upon the evidence adduced at the hearing; and (3) there is no requirement that the commissioners explain how they arrived at their decision in the report that they file with the district court. The following recommendations are offered to overcome the due process inadequacies in the present statute.

RECOMMENDATION 26: A copy of the petition submitted to district court under Minnesota Statutes §117.055 should be included with the notice of the time and place of the hearing served upon the owner and occupant of the land.

RECOMMENDATION 27: Minnesota Statutes §117.086 relating to non-contiguous tracts of land should be applicable at the commissioner level, as well as on appeal.

RECOMMENDATION 28: Minnesota Statutes §117.085 should be amended to require that the damages awarded by the commissioners be based upon evidence submitted at the hearings, and the viewing, and that the chairman of the commission be required to explain in writing how the commission arrived at its decision for awarding damages in the report that it submits to the district court.

The purpose of the condemnation procedure is to provide the "just compensation" mandated by the fifth amendment to the U.S. Constitution. Just compensation requires that the party whose property was taken must be placed in as good a financial position by a condemnation award as the party would have occupied had the property not been taken. In other words, a party whose land was taken must be awarded a full and perfect equivalent in money. This



is the thrust of the U.S. Supreme Court's early opinions. In 1943 in United States v. Miller, the U.S. Supreme Court created the "willing buyer-willing seller" or "fair market value" theory for determining just compensation. Market value is what a "willing buyer will sell to a willing seller." Just compensation, therefore, was determined a theoretical market value, i.e., a price that a not overeager buyer pays in a hypothetical market. Market value, as the court said, was "a guess by informed persons."

The Supreme Court decisions, which have affected the evaluation concepts in every state, fail to recognize, monetarily, that the property owner in a condemnation proceeding is a unwilling seller. Consequently, the courts have ignored an owner's unwillingness to sell and the special benefits that accrue to the condemner. In addition, in the absence of state law to the contrary, the courts ignore the loss of profits, business interruption, and appraiser, attorney, and other costs incurred in the condemnation process. "This unenviable position of unwillingness is recognized in English and Canadian law, where at least some balm is given to an innocent victim of that process, euphemistically called 'bulldozing for progress.'" <sup>27</sup>

A sense of justice would demand that, since one is dealing with an unwilling seller, the condemnation process minimize the burden in the process upon the land owner and insure that his interest is represented. Four aspects of the condemnation process, which have defects in light of the unwilling seller concept, include (1) the commissioner process; (2) placing the burden of proof; (3) paying the damage award; and (4) payment of costs incurred in the process. The following recommendations are offered to overcome defects in these areas.

RECOMMENDATION 29: The commissioner system provided in eminent domain proceedings under Minnesota Statutes, Chapter 117 should be retained.

RECOMMENDATION 30: The mechanism for choosing commissioners should be altered so that insofar as practical and desirable, the commissioners shall consist of (1) a real estate broker or other person familiar with current real estate market values; (2) a qualified real estate appraiser; and (3) an attorney knowledgeable in eminent domain or real estate law.

RECOMMENDATION 31: The burden of proof in condemnation proceedings should be abandoned at all stages in the eminent domain process including appeals. On appeal, the owner should still be given the right to open and close at trial.

RECOMMENDATION 32: Minnesota Statutes, Chapter 117 and Minnesota Statutes §116C.63 should be amended to provide a uniform and consistent approach to the payment of damage awards. The petitioner should first attempt to directly pay the owner all unincumbered, uncontested damage awards before depositing the award with the clerk of court. The clerk of district court should deposit all awards

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<sup>27</sup> Searles, S., "Eminent Domain: A Kaleidoscope View," 1 Real Estate Law J. 226, at 238 (1972-3).

in an interest bearing account until paid. Any owner should be able to elect to receive his award in equal installments up to ten years with all unpaid installments accruing interest. All awards held by the district court shall be payable upon demand, and if encumbered or contested upon the removal of such encumbrance or the conclusion of such contesting to the owner upon written request. This provision should be made retroactive to all awards held by the district court.

RECOMMENDATION 33: The petitioner in the eminent domain process should be required to pay all reasonable appraisal and expert witness costs incurred on the part of the owner at any stage of the process including appeals. In addition, the petitioner should pay all reasonable legal costs including attorney fees if the owner, upon appeal, receives an increase in his award by \$1,000.00 or 10 percent, whichever is less.

It is common practice for a utility to negotiate a settlement of the compensation award, prior to the initiation of condemnation proceedings. However, there is no statutory obligation that the utilities conduct negotiations. The Uniform Eminent Domain Code recommends that a condemner make diligent efforts to acquire property by negotiation before instituting eminent domain proceedings. The proposed code recommends (1) that the condemner have the property appraised and inform the owner of the appraisal and permit the owner to accompany the appraiser during the inspection; (2) that the condemner must offer the owner an amount at least equal to the condemner's appraisal of just compensation for the property; and (3) that the condemner may institute condemnation proceedings without negotiating if the owner refuses to negotiate or under other circumstances. It is axiomatic to fair negotiating not to harrass or coerce the owner to compel agreement on the damage award. During the construction of the UPA/CPA line in west-central Minnesota, many farmers have complained that harrassment occurred and fraudulent statements were made by representatives of the cooperatives. According to a former agent who worked for the cooperatives, such practices were common. The following recommendations are offered to provide for better negotiating practices.

RECOMMENDATION 34: During negotiating for property subject to eminent domain proceedings, the following practices should be statutorily mandated (1) the condemner have the property appraised and inform the owner of the appraisal and permit the owner to accompany the appraiser during the inspection; (2) the condemner must offer an amount at least equal to the condemner's appraisal of just compensation for the property; and (3) the condemner may institute condemnation proceedings without negotiating if the owner refuses to negotiate, cannot be found, is legally incompetent, or similar reasons.

**RECOMMENDATION 35:** A fraud statute should be enacted which prohibits harrassment or the use of fraudulent statements to secure title to land subject to condemnation proceedings. If a condemner uses these practices, a penalty should be imposed of an additional 50 percent of the just compensation added to the award.

**RECOMMENDATION 36:** The petitioner in a condemnation proceeding should be required to provide a "handbook" to the owner and tenant of the proper which explains his rights in condemnation proceedings, how the process works, and how to participate in the process. This handbook should be provided during the first meeting or notice to the owner and tenant of an interest to acquire any land, which could be subject to a condemnation proceeding.

The use of land in Minnesota is rapidly becoming politicized, just as energy, food, water, and minerals has in the last 100 years. Fifty years ago, land was thought of as a commodity to be used by the owner as he pleased without regard to neighboring or community interests. Today, land is no longer cheap and its supply has not increased either with Minnesota's population or the demands of that population. As a result, the existing land is used much more interdependent and land is now regarded more as a resource than a commodity.

It is axiomatic that the development and use of energy resources, whether on public or private land, generates conflict with other land uses. Often energy facilities are located on lands valuable for agricultural, forestry, grazing, or recreational uses. Therefore, one of the more important issues in the siting question is the compatibility of energy facilities with other land uses. In addition, the increases distances between the energy facility and the end uses of that energy demand ever increasing amounts of land for transmission corridors. Consequently, some attempt to resolving these land use conflicts or at least balancing the competing interests for the land must be made.

**RECOMMENDATION 37:** Utility companies building high voltage transmission lines must attempt negotiations with the owner on the exact placement of the towers within the route designated by the MEQB.

**RECOMMENDATION 38:** In siting high voltage transmission lines, the utility should follow property lines or section lines whenever practical within the route designated by the MEQB unless an alternative is negotiated with the owner. If negotiations do not result in a settlement, the commissioners should decide the exact placement of the towers.

**RECOMMENDATION 39:** The Minnesota Environmental Quality Board should amend its exclusion and avoidance area regulations to include prime agricultural land as an exemption.

**RECOMMENDATION 40:** Since the MEA and MEQB certificate of need and power plant siting decisions determine the necessity for the condemnation petition, the MEA certificate of need and MEQB power plant siting process should be completed before the eminent domain actions are commenced.

### AUTHOR'S NOTE

The purpose of this note is to respond to some of the criticisms on the draft report: Regulating Electrical Utilities in Minnesota: The Reform of Legal Institutions. Many of the comments have resulted in changes in the Final Report. However, in reviewing the comments offered on the draft report, it became clear that some reviewers did not understand the nature of the study or why I chose to emphasize public participation in the study. As a result, this note is designed to clarify some of the more important points about the study.

This study was conceived, right from the beginning, as being a process study. The study concerns itself with how decisions are made by the principal energy agencies in Minnesota. This type of study falls into the areas of public administration and law. It is NOT an anthropological study, which is why I did not analyze how public participation in agency decisions affects group behavior and attitudes. I also did not attempt to analyze a litany of events in which the process was used. There were a number of reasons for this. First, the process itself has not been used that extensively. Second, much litigation was in progress during the time this study was being conducted. It becomes difficult to analyze case events that are not complete. Third, analyzing case studies as a way of examining process provides little useful information on the logic of the process itself. Each party to the process has a desire to have the outcome or decision arrived at to be in his favor. As a result, those who lose would argue that the process is faulty and those who win would argue that the process is fair and equitable. This is hardly useful data to analyze the logic of the process by which decisions are made.

How does one analyze a process, then, to determine its fairness and equitability? There is no universal research technique to determine the answer to this question. What I attempted to do was identify the values or policies that the legislature placed upon the decision maker and then examine the decision making structure and procedures to determine if the process as a whole provided for a fair and equitable balance of

competing or contradictory values. As I noted in the Preface (pages xiii-xiv), there were a number of specific values or policies that the legislature demanded be considered in the decision. In examining the process, I did not use any additional policies or values in making my assessments of the processes, nor did I attempt to analyze the processes from alternative political structures.

There also appears to be some confusion as to the purpose of the survey that was conducted during the course of the study. First, the study is not based on the responses to the questions in that survey, and the survey was never intended at any point to be the basis for the study. The Subcommittee on Science and Technology of the Legislative Coordinating Commission, which is now the independent Joint Legislative Committee on Science and Technology, requested that I interview those parties (agencies, utilities, citizen groups, and others) who were interested in electrical energy policy. The purpose of the interviews was to determine if a consensus existed on the nature of the problems with the electrical energy decision making process and their solutions and to provide me with information that I could use to carry out the study. Since it was impossible to interview the large numbers of individuals and organizations interested in the topic, a survey was designed and approved by the key legislators responsible for determining the specific direction of the study. Nearly 600 questionnaires were sent out and only 34 were returned. Because of the limited response to the survey, it was not possible to determine if a consensus on the problems or solutions existed. The survey was a corollary function and was not conceived to be either my principal function or the basis of research for the study.

One major area of contention by the utilities and a couple of other reviewers is the emphasis on public participation in agency decision making. Basically, they advocate that one should rely on the legislative or judicial branches of government as a substitute for public participation in agency decision making. I did not rely on the legislative or judicial branches of government as a substitute for public participation for three reasons. First, there is a long-standing tradition of public

participation in government decision making. Second, the constitution and existing law mandate effective public participation in agency decision making. Finally, the judicial branch rarely, if ever, evaluates the substantive basis of government decisions.

The tradition of the public participating in government decision making is not new. From colonial days through the civil war most decisions about health, safety, land use, etc. were made at the local level in town hall style meetings where participation of the public was the status quo with decisions often made by those citizens present. Since the civil war and particularly after the creation of the ICC in the late nineteenth century, increased centralization in decision making took place. This centralization was often manifested in the creation of new agencies whose powers were derived from the legislative branch through delegation. Today, such agencies cover nearly anything. The legislative branch, which delegated the power to the agencies, rarely engages in oversight activities. Agency budgets, programs, regulations, contested case decisions are rarely scrutinized from an efficiency or efficacy viewpoint. Without such oversight, the unelected, generally unaffected, and mostly unaccountable decision makers engage in authoritarian activities that border on being undemocratic in a philosophical sense. Administrative agencies are rarely hemmed in by legislative actions. In fact, mandates are often so broad that it is impossible for them to determine what decisions are in the public interest (primarily due to conflicts in mandates--for example, old AEC promotes and regulates nuclear power).

It is important to recognize an important point about the American system of government. The American system of government is not a pure democracy, nor is it a pure republic. As may be seen by examining Chapter Two (particularly Section 2.6), the American system of government is a mixture of both a republic and a democracy. The democracy is provided not merely in the election of representatives, but also in the rights and opportunities to effectively participate in decisions themselves. This is true for two basic reasons. First, since the post civil war era, the

legislative branch of government has delegated its responsibility for making law in many areas to the executive branch, and not to the governor either, but to unelected, appointed commissioners, directors, and department heads. Second, the United States Supreme Court has interpreted the fifth and fourteenth amendments to the U.S. Constitution to require that decisions made by department heads, commissioners, and directors provide for "due process" of law. The interpretations of due process and legislatively enacted process requirements and procedures both mandate effective public participation in agency decision making.

In Minnesota, the legislature has empowered the director of the MEA, the board of the MEQB, the commissioners of the PSC, and the department heads of various agencies to make law (through rule promulgation), to interpret law (through contested case activities), and generally to make decisions about energy policy. Such decisions include the determination of the need for new energy facilities, which includes the size, type, and timing of the facilities; the location of these facilities, the permits necessary to operate these facilities; the rate structure necessary to pay for these facilities; as well as many other decisions. The legislature does not make these decisions, nor does the governor. Unelected officials make these decisions. The legislature enacts the basic process for making these decisions, i.e., the enabling legislation, but they do not make the decisions themselves.

In addition to enacting the enabling legislation, the Minnesota Legislature also enacted procedural or process laws which govern the decision making process of the agencies. The most important of these include the Administrative Procedures Act, the Minnesota Environmental Rights Act, and the Minnesota Environmental Policy Act. The thrust of these procedural or process laws is to spell out the specifics of the due process requirements mandated by the fifth and fourteenth amendments to the U.S. Constitution. As reviewed in Chapter Two, Section 2.6, these laws and the enabling legislation of the energy statutes mandate effective public participation in energy policy decision making. Consequently, it is no longer reasonable to rely on just the

electoral process for resolving the conflict or balancing the values inherent in energy policy decisions.

Judicial processes, contrary to popular belief, rarely probe legislative intent or rule on substantive evaluations of agencies' decisions. The check that the judiciary imposes on regulatory agencies has two components. First, that the agency has not acted by either whim or impulse, but has followed "due process" (Monk & Excelsior Inc. v. Minn. State Board of Health, 225 N.W.2d 821 (1975)). Consequently, the courts (primarily because of the fifth and fourteenth amendments to the U.S. Constitution) examine agencies' actions procedurally. The second component is the judicial evaluation of the agency substantively. The courts have ruled that where the evidence on the record in a hearing permits more than one inference to be drawn, regardless if the evidence is conflicting or undisputed, the findings of the agency will be upheld by the court (City of Minneapolis v. Richardson 239 N.W.2d 197 (1976)). Unless there is manifest injustice the court will refrain from substituting its judgement concerning inferences to be drawn from evidence for the judgement of the agency (even if the courts would reach different results if it were the agency Ekstedt v. Village of New Hope, 193 N.W.2d 821 (1972)). In short, the judicial branch is not an effective check on substantive determinations of the agencies.

It is recognizable to almost everyone that there are basic divisions in our society regarding energy. These divisions involve disagreement about the type of future people want, about the type of society we wish to create, about the ability of our society to attain the different visions, and about the risks, benefits, and costs from obtaining and using energy. There are numerous subjects over which the conflict wages. Questions are often posed about the morality of nuclear power, the continued legitimacy of perpetual economic growth, the distribution of wealth, the balance between human wants and environmental degradation, the preservation of our species, our lives, our health, and our safety. In short, the divisions are about conflicts in values. If these conflicting value systems have no potential for consensus on any issue,



then such conflicts can threaten the survival of our social-political institutions.

In the energy sector, the major basis for unity among conflicting value systems is the basis upon which decisions are made and expressed. The social stability inherent in a "constitutional" political system is that the decision process is agreed upon prior to the knowledge of the specific outcome of that process. All parties have a stake in preserving a process which they deem fair. In this country, the restraint of the majority when its views conflict with deeply held convictions of minorities is the key to the constitutional system. The alternative is the use of force to guarantee what is necessary to maintain energy expansionism (if, indeed, that is the majority view). As a recent study by the Resources for the Future has noted, "this means that the energy policies must be compatible with the minimum requirements . . . to obtain some source of energy . . . even though this means that disproportionate attention will be paid to minority's preferences and extra expense may be necessary to meet them."

January 10, 1980  
32 So. Ewing, Apt. 5  
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Patrick Lee Reagan  
Science and Technology Research Office  
Room 49  
State Office Building  
St. Paul, Minnesota

Dear Mr. Reagan and interested legislators:

I appreciate the opportunity to comment on the preliminary draft of the report:  
Regulating Electrical Utilities in Minnesota: The Reform of Legal Institutions."

First of all, I would like to commend the legislators who worked with the author and the S&T Subcommittee for sponsoring and encouraging such a study--and also the author for accomplishing the task. As the study describes, the decision-process on electrical utilities is complex. The problem with getting some handle on the process is the complexity and the past history of handling each aspect as if it was unrelated to the others. In addition, there are many conflicting and contradictory forces at work; for example, public participation in the process takes time and can slow the decision process. By going to the root of these issues Mr. Reagan has succeeded in doing something very difficult: providing a means of resolving some of the deeply embedded dilemmas and conflicts. Placing the issues historically and in context with each other is valuable in this time of mistrust in government regulation.

Secondly, in light of the major interest from the public and in the Legislature in energy issues, I believe the recommendations will be of great value in providing a basis for debate and the study as a whole of value as a reference work for many energy-related issues. I urge the S&T Subcommittee to disseminate it as soon as possible.

I have some specific comments on the request for remarks on accuracy and other items in the cover letter requesting review. My experience is mostly with the environmental review process for power plants and with public participation issues--gained from working the Minnesota EQB and a citizens committee studying public participation. The supporting material (Chs. 1 and 2 and related information in other chapters) is accurate and supports the recommendations. The critique of the environmental review process is very well taken--I feel confident it is supported by a number of people both in and out of state government. The existing process is disjointed and there are a number of points where "cart-before-the-horse" decisions are made.

Public participation is a key element in the study and a key element in the decision process. Minnesota has some elements of this in the existing process; however, as the study points out and as past history shows, it is not working well. Public participation is not something that works well when there is "some" of it. This often results in citizens becoming involved late, becoming angry when they find that the major decisions are already past, and then litigation, distrust, and delay follow. Public participation should mean full commitment to the concept by

policy-makers and agency personnel. For example, notice of a project is not given by the EQB until an application is received. However, the EQB knows many months before that planning by the utility is well underway. Once an application comes in, time is short and the EQB is reacting, not leading or even guiding. The Legislature is in a dilemma with public participation--it betrays the people if it reduces public participation (we do have a democracy) but a middle-of-the-road commitment by policy makers causes immense public frustration. The recommendations in the report will improve this situation.

The discussion in the report about technology is crucial. I am fairly well-acquainted with the literature in this area and can attest to the accuracy of this section. For example, the EQB has in the last few days released a report stating that 200 MW plants can be sited in numerous places around Minnesota while 400 MW plants would have more limited sites (according to newspaper reports). Large plants can have large, local effects (and, in the case of air pollution, long-range effects) but are sited by Twin Cities-based state employees. The major decisions occur far from the communities served by the plant. Small plants fit more readily (socially and technologically) with smaller communities; and the environmental, health, and economic costs of energy use are more obvious to citizens--they come out in local siting discussions. Large plants tend to be "out-of-sight, out-of-mind." The social task of encouraging more energy conservation is thus made more difficult by the existence of large plants. The size questions referred to above would seem obvious--but the existing process very much obscures them. (Note: I would judge, from personal experience, that awareness of this problem has been growing within the EQB siting staff recently. New (and "improved") staff members have been added also.)

The essence of the problem is the approach that electrical utility regulation is a technical problem. It is not, emphatically. Energy use, energy facility regulation, and the results of use and regulation are a community problem. Certainly there are large and important technical aspects--the interplay between energy production, economics, size; the unseen and insidious health and environmental damages of air and water pollution, etc. But these are not at all the whole story--witness the difficulty in persuading people that there is an energy shortage. Public participation is the key to changing this--if the people aren't able or willing, regulators--and legislators--aren't doing their job to allow it to happen.

Gathering all these factors together in one report is a difficult task; not the work of a specialist in one area. I strongly encourage the reviewing committee(s) to recognize Mr. Reagan's accomplishment of this task.

There remains one difficult problem with the report: it is very long. I do not believe that there is any way to reduce its length without damaging the report--take away part of the whole and the picture becomes fuzzy. Mr. Reagan has provided a good summary that helps with this problem; even though it is also fairly long, there is a capsulization of the arguments and the summary can be read in a short time. Here in Montana, where I presently work, there is interest from energy officials in reading the report (even though they know the length) because of wanting to learn of Minnesota's regulatory attempts. The report is a gold mine of energy information for Minnesota that is put in context, something which is almost always lacking. One simple structural change that would help explain the report would be to place the preface and table of contents right after the title page. Leave the summary content as is--sorry; you are dealing with great complexity and a large social problem here, you can't get everything in one or two pages. I realize that legislators seldom read long documents--but staff

members do. Also, there is room for differences of opinion in some of the interpretations of the material--that is bound to happen given Mr. Reagan's task. He has provided his interpretation--but also has provided a large amount of background material that allows readers to come to their own judgements. In light of the growing dissatisfaction with regulatory activities of federal and state governments, I believe this study will be very useful both as a source document and as stimulus for legislation. These considerations are a counter to the length problem. After all, according to the preface, the task defined to Mr. Reagan was not at all a small problem.

I would advise some strictly editorial work and advice on the summary--because of its importance. George Hage, a professor in the U of M Journalism Dept., would be a good person to ask for assistance in locating a technical editor (or plain editor for that matter) to spend a day or two on it.

In my judgement the study will be very useful for thoughtful legislators, staff members, and other state officials who will be dealing with this problem in the future, if not now. The problem will not go away; temporary, superficial fixes of the regulatory problems will not make it go away. If anything, I'd say the in-depth report here is before it's time. I commend the sponsoring legislators and the S&T Subcommittee for their long-term thinking in publishing this study; it truly bridges the gap between technology and public policy. I urge sponsoring legislators to develop long-term plans for bill development and hearings on the recommended legislation.

Sincerely,

*Paul D. Stolen*

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UNIVERSITY OF MINNESOTA  
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January 9, 1980

Patrick Reagan, Consultant  
Science and Technology Research Office  
Room 49, State Office Building  
St. Paul, MN 55155

In Re: Draft Report, "Regulating Electrical Utilities in Minnesota"

Dear Mr. Reagan:

Pursuant to Senator Ohlotts' request, I am providing comments on the above draft report. I have had an opportunity to read the executive summary, and to scan the remainder of the report.

In general, I found the report to be a remarkably useful product from a difficult and ambitious undertaking. Despite the complexity and extent of the subject matter, the report is adequately researched. The hard policy issues are confronted directly. In my view the report came close to the central policy issue when it noted that 'if the public interest is truly defined by process, then the public must be able to participate in the process.' I would emphasize this point by observing that the public is aware that energy is a vital agent in this society, and that the status of this vital agent is undergoing fundamental change. As a consequence, the public has grown sensitive and alert to the processes which control that change. The proposal for public advisors, public advocates, etc. is a thoughtful response to this public sensitivity. Such a procedural addition might be the change that is needed to bolster faith in the administrative process. As such it deserves exploration.

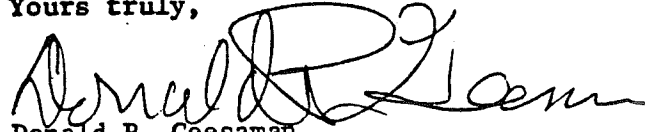
All of your recommendations seem to derive from legitimate concerns. In some cases the recommendations constitute more drastic remedies than I would propose. However, they serve a useful purpose in that through their unrelenting severity they provide a distinguishable basis for dialogue.

Finally, I would like to include a related aside. You may not know that the Science and Technology Research Office derived from a proposal Ed Dirkswager wrote several years ago, as a project in one of my classes. His proposal in turn derived from an earlier proposal which I had produced

Patrick Reagan  
January 9, 1980  
Page 2

for the Center for Urban and Regional Affairs. I was pleased to note from the character of your report, that the spirit of my original proposal has not been lost. Your report is direct, forceful and policy-oriented. It does not purport to furnish absolute answers, but it does provide a basis for informed discussion and argument.

Yours truly,



Donald P. Geesaman  
Professor

DPG/sks

# the Minnesota project

12

A CENTER FOR PUBLIC POLICY STUDY  
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February 26, 1980

Mr. Patrick Lee Reagan  
Consultant  
Science and Technology Research Office  
Room 49, State Office Building  
St. Paul, Minnesota 55155

Dear Mr. Reagan:

I have read your draft report Regulating Electrical Utilities in Minnesota: The Reform of Legal Institutions. I will confine my comments to Chapter Three, on "Public Participation..." (pp. 109-139).

First, your discussion of the patterns of interaction between scientists and experts, on the one hand, and lay persons and citizens, on the other, is excellent. If anything, you understate the case for insuring timely and appropriate participation by citizens. The tendency for many of our most important political and personal problems to be transformed into technical ones by experts of one kind or another is well documented. Once the problems are re-defined as essentially technical ones, the policy process itself usually gives special attention to the technicians.

The role of experts in the process does need to be better understood, and policy debates in fields informed heavily by scientists and professionals need to be both broadened and deepened. The tangle of technical approaches to the "energy crisis" must not obscure the underlying issues - such as distribution of resources, distribution of authority, the integrity of process, and equity. These are political, economic, and social problems. We need scientists and experts to inform us without re-defining the problems as so technical that the possibilities of and for citizenship become diminished.

The most general criticism of your report will, I suspect, be related to your suggestions about setting up legal and financial supports for public participation and intervention. Some will no doubt urge us to "...let representative government do it..." Under many circumstances I would agree with that assertion. My problem with it in this case is that it doesn't take into consideration how much authority we have "delegated" to administrative agencies, only indirectly accountable by means of the executive branch.

Second, your emphasis on process, and your assertion that "...the public interest is defined by process," seem entirely warranted to me.

I am not sufficiently familiar with the Administrative Procedures Act to comment on your recommendations in this area, but their tone and direction are refreshingly strong about the continuing need for public participation. Similarly, I am unfamiliar

Mr. Patrick Lee Reagan

-2-

February 26, 1980

with specific interagency battles, and histories, and so am not able to comment on your selection of some agencies as more appropriate than others for accomplishing particular functions.

What strikes me as most important about your emphasis on process is that if we didn't have or anticipate conflict, then it wouldn't matter. We need democracy because we have conflict. Some among us periodically bemoan or avoid conflict, and even suggest that our system would work better with less of it. If we had no conflict we wouldn't need our system of democratic participation and process. As our problems change, so must our process--not to "manage" conflict, but to respond to it with integrity, to respect it, and to learn from it.

Finally, I was impressed by your description of the nature of technology. You attributed the following characteristics to it: potency, ubiquity, pace, self-acceleration, and lack of direction.

I would add that at least in popular terms, our technology also seems mysterious and complex. However inaccurate this popular view may be, its persistence plagues us. It reinforces the promotional bias you discuss by discrediting or eliminating non-technicians and non-scientists in the policy process. I think this aura of mystery and complexity around much of our technology also makes it more likely we will conceive of technology as an end in itself. But all our tools and techniques, even those most derived from science, are merely alternative means to an end. The key question then becomes what ends they will be applied to - and this surely must be a political rather than technical process.

Your draft report reminds us of this and identifies many ways to translate that understanding into process, policy, and programs.

Thank you for the opportunity to comment. The views expressed here are my own and not necessarily those of colleagues at either the Minnesota Project nor the Humphrey Institute of Public Affairs.

Sincerely,



Thomas R. Dewar  
Policy Group, the Minnesota Project  
Assistant Professor, Hubert H. Humphrey  
Institute of Public Affairs (on leave)

TRD:klz





1703 UNIVERSITY AV. ST. PAUL, MINNESOTA 55104

January 26, 1980

Senator Wayne Ohlolt  
 Chairman, Joint Legislative Committee on Science and Technology  
 State Capitol  
 St. Paul, Minnesota 55155

Dear Senator:

Thank you for the opportunity to review the document, Regulating Electrical Utilities in Minnesota: the Reform of Legal Institutions. It has been an exhausting, yet rewarding effort on my part.

Our organization has a 24-year record of concern for air and water pollution issues in Minnesota. Our experience in the process of siting, permitting, and determining the need for electric power stations is considerable. For example, we took part in the earliest hearings on the Monticello nuclear, and the Allen S. King coal plants. We have monitored the EQB power plant siting process, air quality implementation planning and permits by the MPCA and have participated in numerous EIS proceedings and some lawsuits contesting agency or utility actions over the years. We were participants in the first certificate of need hearing for NSP's SHERCO and raised questions about alternative ways of forecasting need. We urged the importance of conservation and load management before going ahead with the new plant. As you can see, we read this document with some interest.

As an environmental organization, we find this document particularly valid in portraying the difficulty of citizens' groups in getting MEQB and allied agencies to thoroughly address the environmental impacts, conservation and alternative energy approaches in their decision-making. The recommendations are excellent.


We consider this a landmark effort to bring so many of these issues and concerns into one policy document. The Committee and its staff are to be commended for a great service to intelligent debate on our energy problems by suggesting some concrete solutions.

We think a number of the recommendations should be passed this session. We look forward to working with the Legislature in helping bring about a sensible, fair energy policy and a more equitable process by which we make our energy and environmental decisions.

Again, thank you for letting me review such an excellent and thoughtful study.

Rodney G. Loper, President

Document

15  
Minnesota Environmental Control Citizens Association   
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Jan. 30, 1980

Patrick Lee Reagan, Consultant  
Science and Technology Research Office  
Room 49, State Office Building  
Saint Paul, Minnesota 55155

Re: Comments on Preliminary Draft: Regulating Electrical  
Utilities in Minnesota; The Reform Of Legal Institutions

Dear Mr. Reagan:

You are to be commended for this report. I hope it will be made available for wide public distribution. The report shows rare insight into the present problems with procedures for regulating electric utilities. If used by the State Legislature, the Reagan Report should be a great help in establishing procedures that truly serve the public interest.

As one who has participated in a number of state regulatory proceedings during the past decade, I can report that they do not serve the public. Rather they have been sources for grave public disservice, including approval of generating plants which were known to have the potential for serious adverse public health effects.

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In recent months the Minnesota Energy Agency issued a certificate of need for Sherco 3, a huge addition to an already too-large coal generating complex at Becker, Minnesota. Evidence from various official sources indicated we can expect (and probably already are experiencing from Sherco 1 and 2) severe health and environmental effects from the pollution from this site.

The question must be asked: How can any state agency, with responsibilities to consider environmental effects, certify need for a plant like Sherco 3? . . when known evidence indicates that the effects on health and the environment will be serious?

The certificate of need was granted originally for Sherco 3 without regard to environmental and health effects. Then when Northern States Power Company indicated the plant would not be needed as soon as they had forecast (much to the embarrassment of every state agency involved in the licensing procedure, all of whom had been rounded up to support the utility's professed need to move up its construction date), the MEA ruled that the utility must reapply for certification of need. But the agency showed its true intent by ruling that only the question of timing could be reconsidered. Once again critical evidence of serious adverse

health and environmental effects was successfully blocked from consideration in the hearing.

In other words -- human life and quality of life carry no weight in MEA need hearings. A similar situation exists with the state Environmental Quality Board. Some serious questions must be asked about who is protecting the public.

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Where was the Department of Health during these hearings? Do they or do they not have a responsibility for public health in this state? Does that responsibility stop when it comes to state procedures to approve electric power plants?

In July of 1972, the executive director of the Minnesota Health Department came forward in a nuclear power hearing before the Minnesota Pollution Control Agency to volunteer testimony in support of the Monticello Nuclear Power Plant. In his support of nuclear power, he revealed some extremely frightening mortality figures in condemning the utilization of coal for generating electricity. He testified, "there are very hard and very real data about the human health effects of minor increases of sulphur dioxide in the human environment."

Referring to the 545 megawatt nuclear plant, the executive director testified, "If the Monticello facility is shut down to avoid very small additions of radioactivity to the environment, Northern States will be required to make up this loss of generating capacity by increased use of the coal-fired facilities in the Minneapolis-St. Paul metropolitan area. . . . This might be expected to result in as many as 57 excess human deaths due to sulphur dioxide and 17 excess deaths due, to particulate matter over a nine month period."

If the Health Department has been extremely vocal in its public support of nuclear power (we have always disagreed with them on this too) -- they have maintained silence on the effects of coal at coal plant hearings.

Since the Department's testimony on the serious health effects of coal, two large 800 megawatt coal plants have been put into operation adjacent to the Monticello nuclear plant. A third 700 megawatt (Sherco 3) has been certified by the Minnesota Energy Agency and the Environmental Quality Board. All this has happened with little or no input by the Health Department. No public health testimony was received in the hearings for Sherco 1 and 2. In the Sherco 3 and 4 EIS hearing, this writer publicly asked the Health Department to produce its "very real and very hard data about the human health effects of minor increases of sulphur dioxide in the human environment." No such evidence was produced. No "very real and very hard data" on health has been submitted by the Health Department in any of the proceedings for Sherco 1, 2 or 3. . . or to my knowledge, in any public procedure in this state on the generation of electricity with coal.

The Minnesota Pollution Control Agency also asked the Health Department to help prepare the health supplement to the Sherco 3-4 Environmental Impact Statement. The Health Department refused because they were too busy.

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The courts have now remanded the Sherco 3 site certificate back to the Environmental Quality Board with instruction to consider environmental and health impacts. Maybe that job now will be done right. Maybe not. But the great waste in sham hearings (of time and money) by state agencies (and participating citizens who are short of both) cannot be undone. They may be avoided with the type of legislation recommended in the Reagan Report. Even then, unless the Legislature makes it clear that the job of state regulatory bodies is to serve the public interest first, agencies will find ways to circumvent that need.

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Another application for certificate of need for NSP's Prairie Island nuclear plant is now pending before the Minnesota Energy Agency. The company has applied for permission to pack more than 7 times more high level radioactive spent fuel rods in their storage pool than the pool was originally designed to hold. While serious health and safety concerns are being raised in this hearing, the MEA has ruled in advance that closing down the plant cannot be a decision in this hearing. This rule can be interpreted only to mean that nothing can change the hearing decision which has been predetermined. It clearly demonstrates again that human life, health and safety carry little or no weight in state hearings on utility facilities.

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As stated in the Reagan Report -- size, type and location must be considered together and they must not be isolated from other public policy matters. I would like to see a series of reports from the State Legislature that would cover other public policy matters. With this foundation, the state may then begin to develop the energy policy that is so badly needed. I do not see such a policy coming out of existing state regulatory bodies. The MEA has already all but abdicated its responsibility for developing long-range policy; executive director Al Johnson recently admitting in the press that the MEA is so busy with daily demands it cannot find time for long-range planning.

Not the least of public policy matters that needs to be addressed, for example, is the utilities' present trend toward building large plants and power complexes adjoined by controversial high power transmission lines. Environmental impact, high voltage transmission lines, decreased reliability are some of the recognized problems related to the trend to big plants

and power complexes. A major problem, however, that has not been properly recognized for its importance, is the tremendous waste of fuel associated with the large centralized power plant. In fact, of all the known ways to generate electricity, the large, centralized coal plant may be the most wasteful.

Sixty to sixty-seven percent of the potential useable energy is lost up the smokestack or discharged into a river in the form of waste heat. Another ten to twelve percent is lost in transmitting the energy. The large, centralized generating plant is only between twenty to thirty percent efficient in converting fuel to useable energy: heat or electricity.

Undoubtedly these wasteful practices go back to the days when utilities convinced even themselves that electricity was penny cheap. Now with the depletion of energy fuels -- the dear costs of fuels -- the contribution of these wasteful practices to runaway inflation and to international confrontations over oil. . . we can no longer afford the waste of large, centralized electric power generation.

Other technologies -- such as district heating or even smaller systems of cogeneration that are important sources of electricity and heat in other parts of the world -- are capable of converting fuels to useable energies with up to ninety percent efficiency.

It is not enough to expect energy users only to fulfill the needs for energy conservation. The utility must share this responsibility. Existing laws do not require efficiency in electric power generation. They may, in fact, contribute to waste as utilities are guaranteed a profit by law, no matter how they choose to generate electricity or waste fuel.

Legislation is needed to eliminate the waste in electric power generation. A conservative provision would be, where possible, to require minimum standards of efficiency at 70% for conversion of fuel to useable energy. In most cases, higher efficiencies should be attainable and required.

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In summary, to this writer it has become flagrantly clear that regulatory decisions on electric utilities in Minnesota are being made prior to public hearings. As the Reagan Report observes, understandings between utilities and state agencies are being reached prior to the hearing process. The process itself then has become a means for achieving the predetermined goal.

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Finally, I believe that public participation in these proceedings is of vital importance if our generating systems and policies are to be developed with the least impact on citizens and quality of their lives.

Unless present procedures are drastically changed, public participation will not continue. Personal sacrifices are usually too great; the

MECCA COMMENTS - 5

procedures are too frustrating; the decisions are too wrong. The Reagan Report's recommendations to facilitate public involvement, including financial and legal assistance, may well be considered essential if any meaningful contributions from the public are to be forthcoming in the future.

Thank you for the opportunity to comment on your excellent report.

Sincerely yours,

MECCA

A handwritten signature in cursive script that reads "Russell Hatling". The signature is fluid and written in dark ink.

Russell Hatling  
President



UNIVERSITY OF MINNESOTA  
TWIN CITIES

Department of Anthropology  
215 Ford Hall  
224 Church Street S.E.  
Minneapolis, Minnesota 55455  
January 23, 1980

MEMORANDUM

To: Patrick Reagan, JLCST Consultant

From: Luther P. Gerlach, Ph.D., Professor of Anthropology

Subject: Review of Preliminary Draft Report on Regulating Electric Utilities  
in Minnesota: The Reform of Legal Institutions

The report is encyclopedic in its review of many of the comments and studies on energy facility siting and public participation in energy areas. It tells us much about legal judgments in these areas, about third party assessments of the participation process, and about the relationships between changes in the energy areas of life with changes in land use and economy. In the areas which it covers, it has the appearance of being comprehensive, and, indeed, may appear to be <sup>so</sup> comprehensive that some readers might find the document overwhelming, giving them much more than they feel they need to know or have time to read. On the other hand, the document seems to ignore or exclude a very important dimension of the public participation issue and interactions between citizens and institutions in energy decision-making. It excludes or pays scant attention to the way citizens mobilize for participation, the participation events as themselves part of the change process, the frustration which citizens feel and express during participation processes, and also the frustration experienced and expressed by people in the energy industry and administrative and regulatory bodies of government. The recommendations made seem thoughtful and reflect the considered judgments of many individuals who know that something is wrong with present attempts to conduct energy decision making in ways more acceptable to diverse publics. But, because the author has not really dealt with the dynamics of interaction in participation, the reader is left with no indication that the recommendations, if carried out, will bring reconciliation,



acceptance, better decision-making or less frustrating decisions. Perhaps these are not the goals of the reforms advocated by the writer. One of the underlying problems is that the goals are not expressed and thus we have no measure of how changes will affect goals. Perhaps there is an underlying commitment to the goal of making energy decisions in more democratic ways, but surely people will differ considerably in their opinions about how democracy is best served.

Let me now elaborate upon these general observations. The report's recommendations do reflect concerns voiced by many different people and groups who have been dealing with energy decisions and controversies during the past decade. They do deserve close attention, and will, in any case be presented in various forms and forums time and again as people deal with energy issues and conflicts, both in specific cases such as siting specific facilities, or regulating specific utilities or making judgments on pricing or allocation, or even more generally in developing energy policies. The recommendations are supported by some detailed information and theory, particularly legal theory and legal precedent, and they are placed in a broader perspective of land use and social change analysis. There is also some reference to specific case studies of siting controversies, particularly the now famous UPA/CPA,  $\pm$  400 kV DC line in west central Minnesota, and the writer acknowledges that this controversy did much to cause the legislature to call for this type of study. The case study information is, however, deficient. It does not appear to reflect the author's own personal interview of people involved, but instead depends upon secondary sources, chiefly the Environmental Policy Institute's Jack Doyle, and also various reports of legal decisions or assessments by the agencies involved in dealing with this siting case. The author indicates that he conducted a survey of people involved using a kind of questionnaire, but that response to the questionnaire was limited to a very small number. I think that through this very much important information

Gerlach/3

was lost. It seems that the author simply does not know enough about the very case he has cited over and over again as evidence that there must be change in the regulation of the energy industry, and in public participation.

It is very interesting that Minnesota would, indeed, continue to consider changes in siting procedures and citizen involvement since its present practices are still so new and one could argue have not been tested across a broad enough range of cases. This seems to be further evidence of the ways resource issues and related policy development continues in a state of flux. One is left with the impression that there is so much flux and so much controversy that by the time these recommendations were acted upon and perhaps included in policy change and in new legislation that they would then be applied against a situation which has already changed so much as to make them obsolete. It may very well be that in this area of controversy legislation lags considerably behind action.

The report refers at various times to the importance of process, suggesting that bureaucracies may focus too much on achieving certain specific goals rather than on improving effective process. The author is not too clear about what these goals are, or what effective process is, but it is hard to believe that in the final analysis, legislators will amend laws to improve process. It is more likely that they will do so to achieve specific objectives. I tend to agree with the writer that process is important, but I think it's unrealistic to believe that legislators will accept this argument when it comes to explaining their reasons for voting in a certain way.

The reader can learn much of the problems in the process and goals by using this document. Specific siting issues are placed in a larger context of land use changes. There is much in this report which helps the reader learn more of legal developments and decisions pertaining to energy facility siting. The legal system, particularly the juridical sub-system, is pictured

Gerlach/4

as an institution trying to reconcile different, and often conflicting social needs and to protect different interests through the relatively flexible instrument of case law, and establishing the use of precedent against a background of changing values. The writer -- or the sources he most frequently quotes -- seems or seem to reflect the opinion that private rights, particularly the right of ordinary people, have suffered at the hands of energy developers, but that ever rising concern for such individual equity is creating both a need for and a climate for change. The document reflects very much the arguments and ideas of the critics of the big energy industry, and governmental decisions which support it. It pays scant attention to those who defend big energy and conventional energy wisdom, and similarly, it pays little or no attention to the critics of public participation or public resistance to the construction of large energy facilities. In this and other senses, the report does not appear to be balanced. A specific example might help clarify this comment: the writer indicates, for example, that representatives of CPA/UPA in trying to get easements for powerline construction harassed farmers and other landowners, lied to them in various ways and applied other pressure tactics. On the basis of this and presumably other case material, implied, but not illustrated, the author recommends legislation which would curb such behavior on the part of industry. All of this seems to make sense, and certainly, there have been reported such unethical behaviors on the part of the right of way agents. Farmers protesting the line have talked about this time and again. It does appear that this is what happened. But what does the energy industry, generally, what does CPA/UPA, and what does the Right of Way Association have to say about this? Not surprising they present a different interpretation. They will either say that this never happened, or that it happened without their consent or knowledge. The writer

Gerlach/5

may not believe them, but at least their point of view should have been included in a balanced report. Further, there is no way that legislation can be designed and implemented to make people behave in ethical ways. Legislation will not do it. The most that legislation can do is offer positive and negative sanctions to help control <sup>unethical</sup> behavior. Since the industry says its instructions call for the very behavior the legislation would be designed to promote, why would these new legislations make any difference? A final comment on this is that the writer indicates that CPA and UPA officials or right of way agents employed by UPA and CPA admitted that they engaged in unethical practices. But from the reference cited to support this, I am unable to assess the validity of this statement.

People concerned that their rights are being trampled by big energy in league with big government, might find that this document does indicate that government is concerned about their problems and does care. The document does give additional voice to many of their complaints. It might indeed contribute to further discussion of these complaints within the legislature. In this sense then, it will help contribute to the process of democratic action, and for some, at any rate, show that government is responsive. It does not, however, persuade me that even if the recommendations were accepted and converted into legal decisions, that controversies over energy facility siting would end, or that citizens involved in such controversies either in the past, now, or into the future, would, indeed, feel that their interests were being adequately served. The answers to the problems are not to be found in changing legislation, or in creating new pieces of bureaucracy to help citizens make complaints. And, again, I would return to one of my earlier questions, what are the problems which the author thinks these will solve -- that is what are the goals -- to reduce conflict, to get citizens to accept energy facility siting decisions, to make better decisions, to make more acceptable decisions, to curb big industry, to legitimate established decisions, or simply to increase citizen input as an end in itself? -- or what?

Gerlach/6

The document makes considerable reference to the need for more integrated systems-wide management of resources. In parts of the document the writer sounds like a planner, much concerned with the tragedy of the commons, that is with the ways individual decisions perfectly rational in themselves, add up to social actions which seem undesirable or irrational. The writer also seems to feel that the individual actions of various utilities in siting energy facilities did indeed add up to a patchwork of decisions which did not make good ecological or economic or social sense, when viewed on larger scale. In short, the writer seems to support or even call for more integrated, systems-wide, planning, coordination and control. The implication of this is, however, that there will be more and not less management of people. But the writer elsewhere in his document indicates that when individuals and local governments are indeed managed from the top down they feel this threatens them and they seek ways to protest, and to have a greater say in the decision-making. Most of the recommendations of the writer would appear to facilitate this increased individual and local level involvement. Perhaps the writer, like so many others, feels that this kind of ever improved participation will somehow fit into and contribute to the better systems level management plans. But he gives us no evidence to support this. Instead, we can imply from all of the legal decisions he cites and cases he refers to that there is, indeed, significant contradiction between these pulls for larger scale management on the one hand, and for more individual local and group self-interest on the other. I do not believe that these two contradictory forces can be brought into balance and in fact integration through legislative change. If Minnesota could design systems of public participation which would enable governments to manage large systems efficiently, effectively, and justly, and at the same time have support for this from the general public, it would be a triumph indeed. It is, perhaps, the hope of every planner that this can be done : how to manage things as integratively and broadly as Hobbes thought

Gerlach/7

was necessary, while giving people the individual freedoms called for by Adam Smith, or to put it in another way, reconcile the visions of Hamilton and Jefferson through one process. It seems that the writer does not even consider the contradictions which exist, and it may be that he believes the problems lie in the way the energy industry has misbehaved, or the way the environmental Quality Board simply did not do what it could have and should have done. If this is the case, then certainly the whole thing could be fixed up by legislative change if this change can then be implemented. But I suspect that the problems are far deeper and much more at the very nature of things and that legislative change will have little effect upon outcomes. At least the writer could have considered this viewpoint, since certainly enough people have expressed it.

The writer indicates that some people wish participation to be a legitimating device, to make legitimate and palatable that which powerful interests wish to accomplish. It seems that he wants participation to accomplish much more, and that this, indeed, is the intent of jurists and indeed of our whole constitutional system. Participation should, according to this, provide people with a greater voice, to challenge and even change plans. But I return here to the question of the purpose of participation. One of the issues in conflict, one of the subjects which becomes part of the debate during public hearings and as people prepare for them in the participatory process, is indeed the purpose or goal of participation. People enter the hearing and participation process with conflicting goals in mind. It may be that bureaucracies are preoccupied with goal seeking, but this is a kind of definition of decision-making. What is the function of participation to be? Is it to be a check on established decisions and objectives which contribute ultimately to a balance acceptable to all? Is it to be a way of getting acceptance ultimately of much or most of the objectives of those who propose the big projects or the pricing, or distribution plans? Is it to lead to some kind of an ultimately wiser decision? Is it to delay decisions? I repeat time and again that this is

Gerlach/8

crucial to any attempts to improve the quality of decision making or the regulatory process-- improve it for what? This indeed is left hanging.

The writer does a service in showing how established orders criticized citizen participation as something which delays production of necessary facilities, but that delays are much more a function of other matters more central to the development of resources or the construction of facilities, and much more a result of what established orders do and not what citizens do. Much of the evidence that the author cites for this, however, comes from the early 70's. Is this still the case? The writer also indicates that there are times when both sides want delays and that it serves purposes of both sides. This can enlighten administrators. I don't think that the writer makes these points as forcefully as he could, or uses as current an information source as he should.

In any event, more consideration should be paid to citizen action as a dynamic force with its own processes which is affected by but also affects the siting process. The writer has a good sense of what some have called the mutual-causal process or processes of positive feedback: Using energy increases the need to use energy -- the automobile increases sprawl, highway construction, and the use of convenience fuels which in turn increases use of the automobile, etc. Unfortunately, the writer does not apply this understanding to the citizen participation. He treats citizen participation as a kind of passive element. Being affected, and not affecting decision making. He sees citizen participation as being affected negatively, or being controlled by the participatory process, and related legislation, but he doesn't deal at all with the ways in which citizen participation uses and takes advantage of public hearings, and the ways in which participation can become an end in itself, or serve ends far in excess of simply getting equity in terms of the siting of specific energy facilities. Yet our research clearly shows that public hearings and citizen involvement processes themselves contribute to citizen mobilization, the development of social movements



Gerlach/9

and the promulgation of many different purposes. Both facilitating and curbing participation can lead to greater mobilization and anger, and ultimately to the delegitimization not rather than legitimization of government decisions. If participation is an end in itself for the legislators, then this should not be of concern. But surely what most of the legislators will want is that participation produces results other than merely increasing citizen mobilization and protest.

The report makes much use of secondary information, and as indicated above does not seem to reflect first hand analysis of cases. The compilation of secondary sources provides a useful set of reference materials. But it does seem simply to give us a first step in the development of recommendations. It raises points which then could be and should be tested against the reality of cases. Bits and pieces of cases are referred to, but whole cases are not studied from beginning to end, and there is really no attempt to compare cases. The author recommends courses of action which have been tried in various forms in other parts of the country, and, indeed, in Minnesota, both formally and informally in respect to other kinds of decision making, not only about other power plants and power lines, but about water resources and other large developments. For example, the Upper Mississippi Basin Commission engaged in a long process of citizen involvement in its "Level B" study to work out better management plans for this Basin which integrated the viewpoints of various specialists and a broad range of citizens. What were their findings? In many ways they have provided natural experiments against which the recommendations could be tested. I see no evidence that this was done.

The report shows considerable unevenness. Some sections are hard to read, cloudy, even confusing, <sup>having</sup> strings of words without much meaning. Other sections, particularly the executive summary, are effective. There is very much repetition, not only of whole sets of ideas, but of whole phrases. It looks somewhat like

Gerlach/10

a report done by a committee, with people sticking in sections written for one part to support other parts. In short, this makes the report far more cumbersome and long than need be. It seems unlikely that legislators will have the time or take the time to wade through it. Possibly they will want to skim it, but it does not lend itself to skimming or skanning. For example, the pages are numbered consecutively, but the references are not. The author begins with one with each new chapter in numbering his references. Thus, in scanning, it is difficult to find the reference -- difficult in this case merely meaning the loss of a few minutes -- but for someone faced with time problem, this is enough.

The essay seeks to do so very very much, and its main thread is often lost. Is the document really to provide information to reform legal institutions general more specifically in respect to energy, or more broadly in respect to land use? Does it focus on energy facility siting, or all aspects of energy policy? I must confess that I had trouble determining this, and I am certain that someone with a more specific focus as a legislative requirement would be disturbed. In sum, this is a useful document which contributes to ongoing attempts to deal with complex system problems while trying to find ways to protect democratic pluralism. The author does not make this point clear, and in fact seems not even to show understanding of it, although the point seems latent in the subject and also in the draft report. The report does more to help the cause of increasing participation and citizen mobilization and to question the actions of the energy industry and big government, than it does to evaluate participation as a tool and to find ways to improve the quality of participation as a tool in decision-making. I have no complaint with this approach, but I would like to see it more clearly expressed as a value of the writer. Its recommendations would, if carried out, increase the power of participation to add information, and to help the many forces already presently challenging conventional wisdom. It will contribute to

Gerlach/11

those pressures encouraging more conservation, the scaling down of the size of projects, and, indeed, to the contesting of the development of large projects.

This shift seems to represent a rising trend towards what some have called "the soft path." This, then will run counter to other attempts being made to create an Energy Mobilization Board at the federal level to promote the development of critical projects. One does not have to take a position for any of these approaches to be able to anticipate more conflict. I don't think that the recommendations will lead to changes which will reduce conflict or make more palatable or acceptable the kinds of energy decisions which are likely to be felt most desirable by established thinkers in the energy industry.

If the recommendations are carried out, they will lead to the creation of more attempts to resolve problems using administrative and bureaucratic means centered in more government while one of the implications of much of the citizen protest and mobilization is that citizens are developing alternatives to this established bureaucratic system relating to representative democracy. New political forces are emerging which might, indeed, ultimately make most of these recommendations seem like the efforts of a general trying to fight World War II using lessons learned during the middle of World War I. I suspect that we are now, indeed, learning how to site large energy facilities at about the same time that whole new methods of dealing with energy problems are coming into operation.

DEPARTMENT Natural Resources-Office of Planning*Office Memorandum*TO : Patrick Lee Reagan, Consultant  
Science and Technology Research Office

DATE: January 10, 198

FROM : Vonny Hagen, Assistant Commissioner  
Office of Planning

PHONE: \_\_\_\_\_

SUBJECT: Comments on Regulating Electrical Utilities in Minnesota:  
The Reform of Legal Institutions

We appreciate the opportunity to review this report. In general, we found it to be well-conceived and well-prepared. Although we do not endorse all of the recommendations proposed in it, we do, of course, support the underlying emphasis on improving the public participation and environmental review process and on expanding the state's role in insuring the development of conservation and renewable resource energy alternatives.

Chapters One and Two of the report provide a good overview of the historical development of the electric utility industry and the federal and state regulation thereof. The historical data presented on electricity use is comprehensive, and the outline of Minnesota legislation and agency development well-detailed. One brief observation here is that better analysis could have been done on the significance of recent data showing declines in the growth rate, the consequent revision of utility forecasts downward, and the effect of this on any overall energy policy to be developed.

It is, however, the last three chapters and the forty recommendations for regulatory and institutional reform contained therein that warrant more detailed review from DNR here. Specifically, this review will focus on the recommendations in Chapter IV which propose a restructuring of the timetables and agency responsibilities in the entire EIS and energy facility siting and licensing process. Brief comments are also included on some of the other proposals regarding public participation in Chapter III, conservation and electric rates in Chapter IV, and eminent domain issues in Chapter V.

In summary, some of the more significant recommendations that we support in the following comments include the generic EIS, the two-stage planning and project EIS, and the expanded use of the Public Advisor tool. Some of the other lesser recommendations that we support seem to be simply formalizations of existing procedure. As for recommendations which we do not support, two of the more important ones are the proposal to establish three new types of public participation offices (the offices of Public Counsel, Citizen-Advocate, and Center for Intervention, and Technical Assistance) and the proposal to shift planning responsibility from the utilities to the MEQB. Our opinions on these recommendations as well as on some of the reasons presented in the report are discussed in more detail in the following comments.

CHAPTER IIIRECOMMENDATIONS 1-17

While the recommendations in this chapter would all serve to broaden public participation by increasing public notification procedures and public accessibility to information, expertise, and financial aid we question whether all are feasible, necessary, and economically justifiable. Recommendations #1-#4, #6-#12, and #15 seem most practicable while Recommendations #5, 13, 14, 16, and 17- were they all to be implemented - seem to us excessive.

Recommendation 13

This constitutes the most elaborate proposal. Yet, it is unclear from the discussion whether the proposed offices of Public Counsel (one in each regulatory agency of state government), Citizen Advocate, and the Center for Intervention and Technical Assistance are designed to deal with just energy facility siting issues or with all agency permitting and approval processes generally. In either case, though, we question the desirability of establishing all of these offices because of the expense involved, the additional bureaucracy which would be created, and the possible redundancy of functions. One of the primary frustrations of the public in dealing with the present process has been the multiplicity of agencies and offices with which it must deal, and this proposal would create several more. If these offices are meant to deal with just energy facility siting issues, then it seems more appropriate that the EQB itself house one such public assistance office.

Recommendation 14

This proposal which specifies that certificates of need and site compatibility and corridor designation should occur 2-5 years earlier in order to involve the public at an early stage may not be practicable.

While it might reduce the "secrecy" of utility planning, it also seems likely to inordinately delay it. The implicit question here as to how much of a shift in planning responsibility can or should occur between the utilities and the public is addressed further in Chapter IV.

#### Recommendations 16 and 17

Assuming that early public participation mechanisms are improved (e.g., that Recommendation #4, the Public Advisor tool, and some portions of Recommendation #13 are in effect), the need for such financial aid at the litigation and adjudicatory stage would hopefully be minimized. Anyway, Recommendation #17 seems more acceptable than #16 in that #17's criteria for providing funds are more clearly defined and limited.

### CHAPTER IV

#### RECOMMENDATIONS 19-25

The first five recommendations in this chapter warrant the most review from DNR, involving as they do a complete restructuring of the timetables and agency responsibilities in the whole EIS and energy facility siting process. These recommendations are supported in various degrees and are answered point by point. The last recommendation in the chapter which regards conservation and lifeline rates is supported more unequivocally.

#### Recommendation 19

We agree that the size, type and location decisions are inter-related enough to warrant being made within one agency, and as suggested the MEQB is the most likely candidate.

Recommendation 20

Although we see problems with the reasoning presented in this section, the end result as stated in the recommendation is basically sound, with the possible exception of part #6.

We question the value of hiring additional personnel for EQB staff review of environmental documents. This should be the function of the member agencies, and if additional staff is provided it should go to the agencies. In addition, the EQB (Power Plant Siting) staff prepares the EIS on transmission lines, so there is a question as to why any EQB staff review would be necessary.

We believe it is important to note, however, that the segmentation which is noted on pages 289-90 would certainly not be eliminated by the proposed process. The proposed process would still entail a Certificate of Need decision and a size/type/general location decision at stages when it would be impossible to identify, much less notify and involve all of the potentially affected people. This is because at the Certificate of Need state, study areas would not even yet be identified while at the size/type/general location stage, the study areas identified would still be so large as to make the identification of all landowners therein virtually impossible. Chances are that most landowners would choose not to participate anyway until a specific site affecting them was identified. Therefore, the basic frustration of people most affected by power projects who complain that they are not involved in the early decisions, would not be eliminated by these alterations in the environmental review process.

Before proceeding to the next Recommendation, please note again that the discussion preceding Recommendation #20, beginning on page 263, seems to exhibit some misunderstanding as to how the present



process works. This in turn results in not giving sufficient credit in the recommendations to the tremendous amount of both public participation and environmental review that presently occurs in the EIS process and especially in the formal EQB routing and siting process. Some clarification is in order:

- a. (p. 264) An Environmental Assessment Worksheet is virtually never prepared on a major power plant or transmission line. EQB regulations provide for waiver of the EAW on large projects (6MCAR 3.024 C). Thus, the recommendation that they be eliminated is basically a formalization of existing procedure.
- b. The "position papers" referred to (second paragraph p. 264) are usually position statements presented orally by the agency at the siting or routing public hearing, and are therefore subject to public review, comment and questioning.
- c. There is confusion regarding the concepts of "corridors" and "routes" as discussed in 6MCAR 3.025 d and e. It should be noted that the EQB Power Plant Siting Regulations were revised to eliminate the corridor designation stage for transmission lines and there is now only a one-step route designation process. The EIS regulations have not been revised to reflect this change. In practice, Environmental Impact Statements recently have always been completed prior to EQB route designation (see 6MCAR 3.025 e.(3)), and most recently, have been completed prior to completion of the public hearings so that the Hearing Examiner could benefit from it. In addition, EQB rules require that transmission line Environmental Impact Statements provide information on alternate routes (6MCAR 3.025 e.(2)).

- d. The analysis of the present environmental review process (pp. 268-283) seems to recognize only the environmental documents as the means by which the present process meets the six criteria listed. In fact, however, the siting and routing processes provide a much more comprehensive format in many respects than the EIS process for the consideration of environmental impacts and alternatives, the encouragement of agency review and input, and public participation. For example, a Citizens' Route Evaluation or Plant Siting Advisory Committee is formed, a series of public informational meetings is held in each affected county, and then a series of public hearings is held in those same counties. The report speaks highly of the Federal (NEPA) environmental review process. It should be noted, however, that for most projects undergoing NEPA review there is not any extensive siting (or routing) process such as is provided for in our Power Plant Siting Act. Consider, for example, the controversial UPA/CPA transmission line. It had a federal EIS under the NEPA process as well as a state EIS; yet, the federal EIS was little more than a superficial assessment and was accompanied by virtually no public input other than comments on the DEIS provided by state and federal agencies.
- e. Adequate staff (p. 270-1). The report notes that the MEQB has a very small staff to review environmental documents. This section indicates a lack of understanding of the fact that the EQB staff serves primarily an administrative function, while it is the EQB member agencies who really provide the review function. To build up a review staff in the EQB itself

would duplicate what the member agencies are or should be doing already.

- f. Public Review (p. 276-9). It is not true that there is no formal review process for a Draft EIS. See 6MCAR 3.029.

Also, this section again does not reflect the fact that the corridor stage has been eliminated from the transmission line routing process.

- g. Alternatives (p. 279-83). It is not entirely true that "the choice of size, type and location is left to the individual utility" (p. 279). The site designated for the MP&L 800 MW plant at Floodwood was a site identified by the EQB and not proposed by the utility. In the case of the once proposed NSP southern Minnesota power plant, the MEA considered the possibility of using multiple smaller plants as well as district heating. Contrary to the statement on page 282, the MEQB regulations require consideration of "all alternative routes designated for study by the Council" (Board). Since the corridor process has been eliminated, the EIS now considers virtually all alternative routes which are ever proposed or considered by anyone at any time during the process, including those proposed by the utility, by the Citizens Route Evaluation Committee, by the agencies, by the EQB Power Plant Siting Staff, and by the public.

#### Recommendation 21

This two-stage ("Planning" and "Project") process appears to be a sound alternative to the present array of approvals and environmental documents: that is, at least for power plants which habitually require lengthy, detailed size/type/location decisions. However, the process

may not be necessary or appropriate for most transmission lines, especially smaller ones, since often size and type variations are not critical factors and few alternatives exist. An example would be a short connecting link in a grid where the end points are fairly well fixed and the voltage must match the existing grid voltage. In such cases, there would be no reason to go through a long two-stage process. A five year-plus process could be quite burdensome for small lines needed to meet critical localized transmission problems. This recommendation seems to reduce the present flexibility available for shortening unnecessary review procedures.

We note that, presumably, the effort required for preparation of "Planning" Environmental Impact Statements, would be gradually reduced by the development of the "generic EIS" (Recommendation #22) and the completion of the state inventory of plant study areas which are capable of supporting different types and sizes of plants. At this point, then, it might be possible to cut the time period of one year and nine months for the planning EIS and decision.

To reiterate an earlier comment, this process would not eliminate one of the public's most basic concerns with the energy facility siting process; that is, those persons most directly affected by the proposed facility could not be identified and involved at the earliest stages of the process. At the Certificate of Need Stage, study areas have not even been identified; and at the "Planning" stage, the large size of study areas still precludes the possibility of involving all the land-owners who could be ultimately most affected.

#### Recommendation 22

The generic EIS concept is a good one, provided the generic documents are well done, kept up-to-date, and fulfill the purpose of reducing the time and effort needed for the planning and project Environmental Impact Statements.

Recommendation 23

The total time frame proposed (approximately 5 1/4 years minimum) seems rather long especially, as noted earlier, for smaller transmission lines. The primary justification for the lengthened agency-processing time frame seems to be a proposed transfer of some early type/size decision-making from the utilities to the EQB. It is very unclear from the discussion, however, exactly where this division of responsibility would occur. There is a fundamental question as to whether a public agency should make basic technical decisions about the design of a private utility's generation and transmission systems. If the EQB were to do so, certainly it would need significantly more funding, personnel, and time to develop the expertise for such basic utility system design decisions.

If the EQB is to consider alternatives regarding basic utility system design as part of the size/type decision, the one year period for the planning EIS may not be enough. That is, it may be enough for actual EIS preparation, given the availability of a good generic EIS, but it may not be enough time for the system planning effort needed to determine the alternative sizes and types of facilities which are going to be considered.

Recommendation 24

This recommendation is laudatory if somewhat obvious, but there could be a conflict of interest in the EQB's responsibilities, in that there seems to be a fairly strong mandate for the EQB to site a facility once a Certificate of Need is issued, even though "there is no good place to put it."

Recommendation 25

This proposal regarding "lifelines" rates is an excellent one which we endorse strongly because implementation of such rates could simultaneously provide some protection for the poor from rising utility costs and encourage conservation among all residential users. The underlying emphasis in this report on the importance of promoting conservation and the development of renewable resources is well-conceived and politically-wise. In addition, the referral in this section to the reports by the House Select Committee on Energy and by the MEQC (now the MEQB) which describe a wide variety of possible incentive programs in this area should be heeded.

CHAPTER VRECOMMENDATIONS 26-40

Generally, the recommendations in this chapter which aim at increasing the consistency and fairness of the eminent domain process by easing the landowner's role seem reasonable. It is noted here simply that Recommendations #36, 37, 38, and #40 actually serve to formalize procedures which are already often followed: that is, handbooks have been provided landowners on some routes, placement of towers have been subject to negotiation with landowners, HVT lines have often followed property lines, and utilities have generally waited for the certificates of need and siting processes to be completed before commencing eminent domain proceedings.

STATE OF MINNESOTA  
OFFICE OF CONSUMER SERVICES

Metro Square Building  
7th and Robert  
St. Paul, Minnesota 55101  
(612) 296-2331

January 31, 1980

Senator Wayne Olhott, Chairman  
Representative Tom Rees, Vice-Chairman  
Joint Legislative Committee on  
Science and Technology  
Room 49  
State Office Building  
St. Paul, Minnesota 55155

Dear Senator Olhott and Representative Rees:

This letter will acknowledge our receipt of the report entitled, "Regulating Electrical Utilities in Minnesota: The Reform of Legal Institutions," prepared on behalf of your committee. The length of this report and the importance of the subject matters it deals with will require more exhaustive study by our relatively small utility staff than we have been able to give it so far. However, I would like to give you our initial responses to a few of the sections in the Report, and indicate our intention to share with you our further thoughts on these matters as they develop.

We would first refer you to the Report's description of "the energy players" in Public Service Commission proceedings (p. 87). You describe our Utility Unit at OCS by quoting Subdivision 2 of our enabling statute, Minn. Stat. § 45.17. We would note that while this section sets out the broad representational duties assigned us by the Legislature, Subdivision 3 removes rate case jurisdiction over cooperative or municipally owned utilities.

Perhaps more significantly, nothing in the entire statute grants the OCS/RUCU explicit authority to represent the residential customers in Minnesota Energy Agency Certificate of Need proceedings for new power plants. Nor is express authority granted for OCS/RUCU to appear in Federal Energy Regulatory Commission proceedings establishing the wholesale prices of fuel, or Federal Communications Commission hearings on AT&T charges for long distance calls and other services. The former omission is of particular potential significance, in that the proportion of overall





Sen. Olhott and Rep. Rees  
Page 2  
January 31, 1980

gas and electric charges which are determined at the federal level and passed through to Minnesota ratepayers under fuel adjustment clauses has dramatically increased in recent years to now account, in some cases, for over half of the total utility bill.

The second area in the Report attracting our attention involves the discussion of representing unrepresented interests at pages 165-178. In reviewing the recommendations on page 178, we would suggest that there may be great difficulty in forming effective separate internal representational mechanisms within the regulatory agency itself. Instead, the concept of an independent citizen advocacy agency has generally been better received among the state regulatory officials with whom we deal, whether it is within a larger department or is a separate cabinet level agency as recommendation 2 on page 178 suggests.

We also believe that a center for intervention and technical assistance could be created within an independent agency such as ours. We proposed the creation of an intervention and technical information clearinghouse of this sort as part of the activities to be carried out under a Department of Energy grant which the OCS/RUCU applied for in 1979. Unfortunately, our Office was not successful in its grant application, largely because the preponderance of nuclear energy as a source of electric power in this state kept the average cost per kilowatt hour of electric power too low for Minnesota to rank well on the "need" criterion.

We nevertheless stand ready to assist consumer groups with information insofar as doing so is consistent with our resources and with our duty to represent all of the state's residential consumers. Often this merely involves explaining to a prospective intervenor how the hearings process operates, the role our agency intends to take in a particular hearing, and the advantages and disadvantages of separate intervention.

Finally, we note your discussion of energy cost problems facing our less affluent citizens at pages 304-315 of the Report. To begin with, we might note that there is some dispute over your unsupported assertion at the beginning of

Sen. Olhoft and Rep. Rees  
Page 3  
January 31, 1980

paragraph 4.3 that rich people generally consumer more energy. Often the poor have less well-insulated homes, and for this reason, and the fact that they often have larger families, tend to have suprisingly high levels of energy usage. We have been able to obtain some data on energy consumption by income level and would be glad to share this with your Committee.

We would also note in this regard that the OCS/RUCU has presented rate designs in recent electric and gas cases incorporating some of the lifeline aspects discussed in your Report, but with particular features to preserve some of the conservation incentives which the Report in several places suggests may be inconsistent with lifeline rates. While the rate structures proposed certainly are not claimed to be ideal, they do try to mitigate billing impact without discouraging conservation. They also attempt to address considerations particular to customers of the individual utilities, such as proportion of customers using electric heat, levels of summer air conditioning usage, etc.

We shall look forward to working with you in the future on the topics dealt with in the Report or any other matters of mutual concerns.

Sincerely,



KRISTA L. SANDA  
Director

KLS:jrw

STATE OF MINNESOTA  
OFFICE OF CONSUMER SERVICES

Metro Square Building  
7th and Robert  
St. Paul, Minnesota 55101  
(612) 296-2331

February 12, 1980

Senator Wayne Olhott, Chairman  
Representative Tom Rees, Vice-Chairman  
Joint Legislative Committee on  
Science and Technology  
Room 49  
State Office Building  
St. Paul, Minnesota 55155

Dear Senator Olhott and Representative Rees:

In our letter to you on January 31, 1980, commenting on the report entitled, "Regulating Electrical Utilities in Minnesota: The Reform of Legal Institutions", we referred to data on energy consumption by income levels. Since the data is incorporated in several reports published by Northern States Power Company, it is difficult to characterize in a brief manner. Therefore, I have requested Mr. Bob Kohlstedt, an employee of Northern States Power, to forward to you copies of the following reports:

1. "Residential Electrical Use Study - Twin Cities Metro Area" - February, 1979;
2. "Residential Electrical Use Study - Minnesota (Non-Metro)" - May, 1979;
3. "Residential Gas Use vs. Income Study - Minnesota" June, 1979.

Of particular interest to you may be the section in each report titled, "Characteristics of Low Income Families". Those sections can be found on Page 50 of the "Residential Electrical Use Study - Twin Cities Metro Area;" on page 49 of the "Residential Electrical Use Study - Minnesota (Non-Metro)"; and on page 35 of "Residential Gas Use vs. Income Study - Minnesota." Please note that in the Gas Use report, on Table 15, a family of over 6 with an income of between \$10,000 and \$14,999 used an average of 439 CCF per month.

Upon investigating this number, I was told it represented a sample of one customer. I suggest that it may be an anomaly and that it does not accurately reflect useage by low income customers since it varies so greatly from any other numbers on that table.

The information in these reports can be interpreted in a variety of ways and we do not necessarily accept NSP's conclusions about the data.

If you have any questions on this material, please do not hesitate to call.

Sincerely,



Diane Legatt Hunt  
Research Analyst  
Residential Utility Consumer Unit

Dear Delbert:

You asked me to comment on the tentative prepared changes recommended for regulating Electrical Utilities in Minnesota.

In Chapter Five: Eminent Domain and Power Plant and Line Siting, I would like to make the following comments: On page 349 where the recommendation is that the award of damages awarded should be based on evidence presented at the hearings, and the chairman be required to submit in writing how the commission arrived at their findings, with this I cannot agree. To require the commissioners to base their findings only on evidence presented at the hearings would defeat the purpose and intent of having a commission. The commissioners are required and should view the property in question. If they are not able to use their own best judgement and knowledge, why ask them to view the property. Also the condemner has access to the best of legal assistance, while often the land owner is uninformed or unable to secure equally proficient assistance. He should not be penalized for this reason. The commissioners should take into consideration the evidence presented at the hearings, but should not be restricted on what they can use in making their decision. I do not believe the chairman should be required to file in writing how they arrived at their decision except maybe to show in a very general way the criteria used.

On page 353 the recommendation is that the commission be composed of a real estate broker, a real estate appraiser and an attorney. I cannot agree with this reasoning. I do agree it would be well, as far as practical, that one member be a real estate broker or real estate appraiser, familiar with land in the vicinity of the taking. An attorney should not be one of the commissioners. The petitioner is represented by an attorney. The land owner --may or may not --also be represented by a lawyer. The court which has appointed the commission has instructed and is willing to clarify any points of law that may be raised. What you are suggesting is the same as saying: one-third of a jury should be composed of lawyers.

In most cases, transmission lines and power plants are taking agricultural land, and for that reason, at least one of the commissioners should have a wide general

knowledge of agriculture as practiced in the area of the taking. It would be well if the third man or preferably all had a sound business knowledge. I would prefer to see a real estate broker rather than an appraiser on the commission, as the condemner and owner will probably each have appraisers testifying for them. My recommendations are for agricultural or forest land and would not apply to urban property.

I agree with the recommendations on page 357 that the petitioner be required to pay appraisal and expert witness costs as well as reasonable attorney fees incurred by the owner either at a hearing or appeal to district court. I also agree with the findings that a fraud statute be enacted to prohibit the use by the petitioner or his agents of fraudulent statements. The 50 percent penalty is reasonable.

I hope these thoughts will be of help to you in working with this difficult and controversial problem.

Sincerely,



Henry Foelschow

LAW OFFICES OF  
**PAUL A. SKJERVOLD**  
SUITE 1800 DAIN TOWER  
MINNEAPOLIS, MINNESOTA 55402  
OFFICE 333-8563  
RESIDENCE 474-9089

January 31, 1980

Mr. Patrick Lee Reagan, Consultant  
Joint Legislative Committee on  
Science and Technology  
Room 49  
State Office Building  
St. Paul, MN 55155

Re: Preliminary Draft of Regulating Electrical Utilities in  
Minnesota: The Reform of Legal Institutions

Dear Mr. Reagan:

A special subcommittee of the Hennepin County Bar Association Eminent Domain Committee appointed to review your report has met and this letter will set out our comments on the various recommendations included in your report. Although considerable time and effort has gone into our review of the report, we have chosen to make our comments brief. If you so desire, we will be happy to provide an indepth analysis of any of our comments.

The comments are as follows:

Recommendation No. 26 - This is largely covered by the present statute. We propose that a copy of the actual petition be attached to the notice served on owners. This would avoid the necessity of defining what would be included in a "summary" and would prevent any misunderstandings a "summary" could create.

Recommendation No. 27 - We agree with your recommendation. It could easily be implemented by revising Subdivision 2 of 117.086 to read as follows:

"A party claiming a unity in noncontiguous tracts shall give timely notice thereof."

Recommendation No. 28 - If implemented, substantial problems will result. Proper presentation of evidence will in most cases

Mr. Patrick Lee Reagan  
January 31, 1980  
Page 2

require the assistance of an attorney; owners will be discouraged from presenting their own cases. The additional requirements placed upon commissioners will further reduce the availability of persons qualified and willing to serve.

Recommendation No. 29 - We agree.

Recommendation No. 30 - We agree but we foresee practical problems in locating such individuals in outlying areas.

Recommendation No. 31 - There should be no "burden of proof".

Recommendation No. 32 - The present statutes cover the question of deposits and withdrawals fairly well. However, attempts to make direct payment should be encouraged.

Recommendation No. 33 - We recommend increasing the appraisal fees recoverable at the commissioner stage. However, assessing attorney fees against the petitioner would foster a large amount of unnecessary litigation, as has been demonstrated in several states. In many small takings, the attorney fees would far exceed the payment received by the owner and in most cases the taxpayers will foot the bill.

Recommendation No. 34 - This is not practical as written. In major condemnations these practices are generally followed, but in small acquisitions these requirements would create an undue burden and cost to the condemnor.

Recommendation No. 35 - Not necessary. The existing criminal code covers criminal fraud and civil fraud is actionable under the common law.

Recommendation No. 36 - This is commonly done; we agree with the recommendation.

Recommendation No. 37 - This recommendation does not appear appropriate for Chapter 117. Aside from that, technical problems abound and the condemnation award or settlement takes into consideration the location of structures.

Recommendation No. 38 - Same comments as Recommendation No. 37.

Recommendation No. 39 - This is not an appropriate subject for comment by the Eminent Domain Committee.



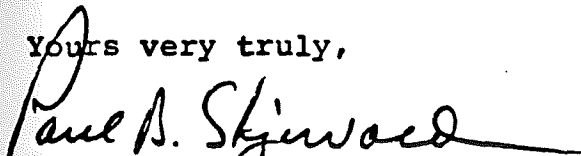
Mr. Patrick Lee Reagan  
January 31, 1980  
Page 3

Recommendation No. 40 - This is not an appropriate subject for comment by the Eminent Domain Committee.

We are much impressed by your interest and your creative approach to the problems inherent in the eminent domain process. We in the Hennepin County Eminent Domain Committee have labored long and hard with these problems. In the past ten years numerous changes to eminent domain substance and procedure have been suggested by our committee. Many of these suggestions have been enacted into law. The job of making the whole process more equitable and responsive to the needs of a changing society is by no means finished. We, therefore, welcome your interest and feel that we in the field and, indeed, the cause of justice have obtained a valuable ally. Chapter 117, though not perfect, is constitutional and workable. It can be made better by judicious improvement.

We again thank you for the opportunity to be heard.

Yours very truly,

  
Paul A. Skjervold

PAS:skm

cc: Honorable Wayne Olhoft, Chairman  
Joint Legislative Committee on  
Science and Technology  
29 State Capitol  
St. Paul, MN 55155

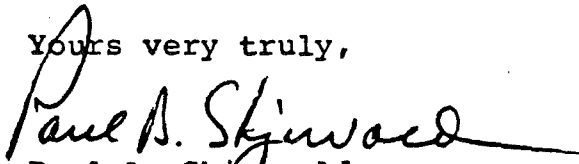
Mr. Patrick Lee Reagan  
January 31, 1980  
Page 3

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We again thank you for the opportunity to be heard.

Yours very truly,

  
Paul A. Skjervold

PAS:skm

cc: Honorable Wayne Olhoft, Chairman  
Joint Legislative Committee on  
Science and Technology  
29 State Capitol  
St. Paul, MN 55155

LELAND J. FRANKMAN  
ATTORNEY AT LAW  
1709 CARGILL BUILDING  
MINNEAPOLIS, MINNESOTA 55402  
AREA CODE 612-375-1600

February 1, 1980

Mr. Patrick Lee Reagan, Consultant  
Joint Legislative Committee on  
Science and Technology  
Room 49  
State Office Building  
St. Paul, Minnesota 55155

Re: Preliminary Draft of Regulating Electrical Utilities  
In Minnesota: The Reform of Legal Institutions

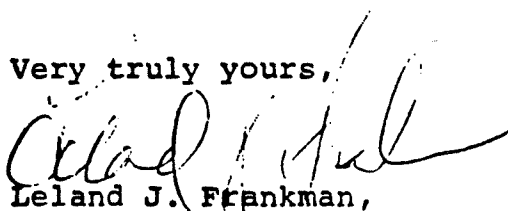
Dear Mr. Reagan:

I want to thank you on behalf of the Eminent Domain Committee of the Hennepin County Bar Association for attending our monthly luncheon meeting on January 16, 1980. At that meeting I appointed a 6-man special sub-committee to review your report insofar as it pertains to eminent domain law and to inform you prior to February 1, 1980, of our suggestions.

I have received a copy of a letter dated January 31, 1980, addressed to you with the report of the sub-committee. Since you and I have met concerning your report in my office and have spoken several times on the telephone concerning same, you may consider the letter of January 31 to be additional comments to those I have already given you in my capacity as Chairman of this attorney's committee.

We appreciate your interest and work in the eminent domain process and want to thank you for giving us an opportunity to share our ideas with you.

Very truly yours,

  
Leland J. Frankman,  
Chairman, Hennepin County  
Eminent Domain Committee

LJF:KH

cc: Honorable Wayne Olhoft, Chairman  
Joint Legislative Committee on  
Science and Technology  
29 State Capitol  
St. Paul, MN 55155

Route 1  
Echo, MN 56237  
January 3, 1979

Patrick Lee Reagan, Consultant  
Science and Technology Research Office  
Room 49, State Office Building  
Saint Paul, MN 55155

Dear Mr. Reagan,

RE: Comments on the draft report, Regulating Electrical  
Utilities in Minnesota: The Reform of Legal  
Institutions

Reference is made to the letter of Senator Wayne Olhoft,  
Chairman Joint Legislative Committee on Science and Technology,  
dated December 7, 1979, requesting opinions and remarks on the  
draft report.

Your objective presentation of the issues in this matter is  
greatly appreciated. Specifically, I would like to comment  
on the following:

RECOMMENDATION 39: The Minnesota Environmental Quality Board  
should amend its exclusion and avoidance  
area regulation to include prime agricultural  
land as an exemption.

Comment: I strongly support this recommendation. The  
following enclosures document the reasons for  
my support:

Enclosures:

1. Letter, Paul Ims, dated February 19, 1978, to  
Mr. Peter Vanderpoel, Chairman, MEQB, RE: Report  
of the Hearing Examiner in Docket No. EQB-78-005-  
MG, EQB Rules Hearing Report
2. Statement of Paul Ims at MEQB Meeting, March 9,  
1978, 9:30 A.M., St. Paul, MN
3. Minutes, MEQB Meeting, March 9, 1978, Veterans  
Service Building, 9:00 A.M.
4. Testimony of Paul Ims at Citizens Meeting on  
Inventory of Study Areas for Electric Power Plants,  
Southwest State University, Marshall, MN, August 29 1978

5. Testimony of Paul Ims at Hearing of the House Select Committee On Energy, Thursday, September 14, 1978, 7:00 P.M., Rm 83, State Office Building, St. Paul, re: Public input on energy policy in Minnesota
6. Testimony of Paul Ims at the Annual Hearing on the Power Plant Siting and Transmission Line Routing Program of the Minnesota Environmental Quality Board, held from 9:00 a.m. to noon, Saturday, November 18, 1978, on the fifth floor of the Veterans Service Building, 20 West 12th Street, St. Paul, MN

Your attention is also invited to these enclosures as they document personal experience illustrating inadequacies and injustices of the existing administrative procedures, whereby state agencies can circumvent the spirit and intent of legislative mandates as stated in the The Power Plant Siting Act of 1973, As Amended 1977.

Your objective presentation of the issues in this matter, along with recommendations for correcting deficiencies should certainly make a valuable contribution in the search for solutions that will "come to grips" with the crux of the problem, thereby looking after the best interests of present generations and the generations yet to come.

Thank you for the opportunity to review your draft report.

Sincerely,



Paul Ims

6 Enclosures: as stated

RR 1  
Echo, MN 56237  
February 19, 1978

Mr. Peter Vanderpoel, Chairman  
The Minnesota Environmental Quality Board  
550 Cedar Street, Room 100  
St. Paul, MN 55101

Dear Mr. Vanderpoel,

RE: Report of the Hearing Examiner in Docket  
No. EQB-78-005-MG, EQB Rules Hearing Report

References:

(A) Letter, Hearing Examiner Myron Greenburg to Paul  
Ims, dated November 14, 1977 (Enclosure No. 1)

(B) Report of the Hearing Examiner in Docket No. EQB-  
78-005-MG, which I received February 1, 1978

(C) My letter to MEQB, dated February 2, 1978, subject  
as above, mailed via certified mail receipt no. 178287, with  
a return receipt request, requesting time for me to present  
additional pertinent information to the MEQB prior to its  
taking final action on subject report

(D) My visit to the Lyon County Library, Marshall, on  
February 3, 1978, for the purpose of researching the tran-  
scripts of the EQB Hearings in order to prepare a response to  
subject report. However, the transcripts were not available  
at Marshall, as stated in a memo from the librarian. (En-  
closure No. 2)

(E) My visit to the Crow Wing Regional Library, Willmar,  
on February 3, 1978, where the transcripts were available

(F) My testimony before the MEQB Hearing at Granite  
Falls on November 3, 1977 (Enclosure No. 3)

(G) My telephone conversation with Ms. Mary Sullivan on  
February 7, 1978, granting me additional time to submit  
comments on subject report prior to the March 1978 meeting of  
the MEQB

(H) Transcripts of Hearings, Rules for the Siting of  
Large Electric Power Generating Plants and High Voltage  
Transmission Lines, VOLUME I and VOLUME II

First of all, I would like to state that this response to the Report of the Hearing Examiner has been submitted as expeditiously as possible. Briefly, as you may have noted from references (B) thru (E) above, my time schedule for review of the report, review of the hearing transcripts, and preparation of this response to the report has been as follows: (1) FEB 1, received copy of the report following my order which was submitted as soon as I was notified that the report was available, (2) FEB 2, mailed letter to MEQB advising of my intent to respond to subject report, (3) FEB 3, traveled 35 miles to the Marshall Library in search of the hearing transcripts, then 65 miles to the Willmar Library, where copies were found, then 45 miles to home, and (4) FEB 4 to date for review of pertinent material and preparation of this response. Having to accomplish the work of preparing this response after accomplishing my daily mandatory work involved in a livestock operation, places me at a disadvantage time-wise.

In accordance with stated policy of the Minnesota Legislature, as specified in The Power Plant Siting Act of 1973, As Amended 1977, which states in part, "to provide a public planning process where all interested persons can participate in developing the criteria and standards to be used by the Minnesota Environmental Quality Board in preparing an inventory of large electric power generating plant study areas and to guide the site and route suitability evaluation and selection process", and having reviewed subject REPORT OF THE HEARING EXAMINER, EQB-78-005-MG, In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing, and portions of the transcripts of the hearings, I hereby respectfully submit to the MEQB for its consideration, prior to taking final action on subject report, the following supplemental, relevant information, comments, and recommendations.

MEQB 74 H - CRITERIA FOR THE EVALUATION OF SITES

1. I would like to invite your attention to a vital aspect of a relevant, seriously important issue and its related facts and ramifications, stated in the testimony of Paul Ims at the Granite Falls EQB Hearing (Pub. Ex. 22, pp. 2-4, See Enclosure No. 3), which was not mentioned in the Hearing Examiner's discussions of this subject in his Findings 39 thru 65. This issue is relevant to my recommendation which reads in my testimony as follows:

MEQB 74H.1.e. Exclusion Criteria

Add 74H.1.e. New subdivision after d.

"No large electric power generating plants shall be sited on agricultural land which would be rated as Class 1, 2, or 3, in the USDA Soil Conservation Service land classification system."

The vital aspect of the issue pertains to a warning from the U.S. Secretary of Agriculture, and the application of this warning to the power plant site selection situation here in Minnesota. The warning of Bob Bergeland pertains to the alarming loss of cropland in the United States. (See Enclosure No. 3) The Hearing Examiner's Report fails to mention this high level warning, and also to mention how, and to what extent, the existing power plant siting rules, criteria and standards, and plans and projections for additional power plants to be built in Minnesota, can permit and contribute to the irreplaceable loss of such significant quantities of a vital natural resource.

Briefly, in reviewing the study titled, "Future Electrical Energy Resources Demands", developed and produced by the Minnesota State Planning Agency, Minnesota Pollution Control Agency, Minnesota Energy Agency, and the Minnesota Department of Natural Resources, with its section devoted to FUTURE DEMAND ON RESOURCES, and in reviewing information published by a power company as to actual cropland that would be lost to the plant site alone, in the case of a site area currently under consideration, a very alarming situation comes to light.

In making the forecast of future electrical demands, the study uses minimum and maximum growth factor estimates of 3X, 4X and 6X, which would require 12, 16, or 25 1,600 MW plants, respectively. Applying the NSP published estimated loss of cropland of 3,100 acres for the plant site itself at the proposed Wood Lake site, to the projected number of additional power plants, total permanent losses could run from 37,200, 49,600 to 77,500 acres depending on the actual growth rate. It certainly is alarming to note that existing policies and plans can permit the squandering of such quantities of a vital irreplaceable natural resource.

While the Hearing Examiner may have judged this aspect of a vital issue, (which was presented in accordance with statutory authority granted to all interested persons to participate in developing the criteria and standards to be used by the Board in preparing an inventory of large electric power generating plant study areas and to guide the site and route suitability evaluation and selection process) to be of such small importance that it was not worth mentioning in his Report, there are, however, in addition to U.S. Secretary of Agriculture Bob Bergeland, other leaders and men of professional stature who are speaking out and taking action on this very important issue of preventing further irretrievable losses of this vital natural resource. A partial list documenting their concerns follows:

DR. NORMAN E. BORLAUG, who states in his letter of January 27, 1978, that we are recklessly removing too much good farm land from agriculture... And this sad situation is going on in many other states and countries. (Enclosure No. 4)



Dr. Borlaug, Director, International Wheat Improvement Program, International Center for Maize and Wheat Improvement (CIMMYT), Londres 40, Mexico 6 D.F., Mexico, states further in a treatise titled, "The Green Revolution: Can We Make It Meet Expectations?", Reprinted from PROCEEDINGS of The American Phytopathological Society, Vol. 3, 1976, p. 11, that as we begin to reflect on the natural resource base of our earth and its potential for food production, we see that the earth has a lot of poor real estate. Approximately 71% of the surface area is ocean and only 29% is land. Moreover, much of the land is of little value for agriculture and animal husbandry. (Enclosure No. 5)

VICE PRESIDENT WALTER MONDALE was clearly impressed by the urgent logic of Dr. Norman Borlaug's message, as stated in an article in the Minneapolis Tribune, January 22, 1978, titled, "Farm expert Borlaug warns Mondale of food shortages", written by Finlay Lewis, Staff Correspondent.

U.S. REPRESENTATIVE RICHARD NOLAN, who states in his letter of January 23, 1978, that the loss of prime agricultural land to nonagricultural uses is of growing concern in the Nation, and in Congress. He also mentions our need to preserve prime farm land as an irreplaceable natural resource. He further states that on February 14, 1978, his Subcommittee will meet to officially adopt and send to the Full Committee, H.R. 5882, the National Agricultural Land Policy Act of 1978. This legislation is designed to initiate a major government effort to develop strategies to preserve prime agricultural land. (Enclosure No. 6)

THE MINNEAPOLIS METROPOLITAN COUNCIL has stepped up its attention in efforts to save farmland for farming, as stated in an editorial of the Minneapolis Tribune of February 1, 1978, titled, "Rural issues get equal time." It states further that the council has set up a rural task force charged with doing for undeveloped outlying areas what the urban task force did for the developed core: to determine what's happening -- and likely to happen -- to rural areas; to assess the effect of regional policies and taxation, and to suggest what federal, state, regional and local governments can do to preserve farmland. In 1976, it issued guidelines for local governments to use in identifying and protecting such land.

JOHN TIMMONS, PROFESSOR OF NATURAL RESOURCES AT IOWA STATE UNIVERSITY, states in an article from the Washington Post, written by Paul Shinoff, and republished in the February 2, 1978 edition of The Mankato Free Press, titled, "Green Revolution bumping ceiling of applied technology", that America's "green revolution" may be over. The intense 30-year industrialization of the nation's farm lands,

during which crop yields more than doubled through the introduction of complex harvesting machinery, petro chemicals and genetically engineered crops, appears to be at an end.

HARRY M. MAJOR, USDA, SOIL CONSERVATION SERVICE, stated in the Minneapolis Tribune "Fixit" column of February 11, 1978 that 3 million acres of farmland are irreversibly shifted each year from agriculture to other uses. Inventories by the Soil Conservation Service indicate there are about 111 million acres in the nation that are available and have the quality for conversion to cropland. This is land that would not need intensive management, such as irrigation. Simple arithmetic indicates that, at the present rate, this reserve of cropland will be lost in approximately 37 years.

2. Your attention is also invited to Hearing Examiner Finding 54, in which he states that the language "and utilize only marginal lands" to be ambiguous and redundant. This language was used in my testimony at Granite Falls. (Pub. Ex. 22, p. 4, See Enclosure No. 3)

Submitted for your consideration is revised language as follows:

MEQB 74H.3.g. Add the underlined words:

"Preferred sites minimize the removal of valuable and productive mineral, timber and agricultural land from other necessary uses."

This language would appear to be reasonable to clarify the desired result in the implementation of these criteria, and further, to add emphasis in the rules for the protection of agricultural land -- a "thread of strong feeling woven throughout the fabric" of the hearing testimony, surfacing at many points in the transcripts such as in (Tr. VII, pp. 90-91, and Tr. X, pp. 47-48) reflecting the opinions of Legislators based on their personal recollection and conclusions of what the 1977 Minnesota Legislature intended to accomplish in amending the Power Plant Siting Act of 1973, as it pertains to emphasis on the protection of agricultural land, and in (Tr. IX, pp. 36-37) reflecting the opinion of an attorney on the PPSAC, and as recognized in the Report of the Hearing Examiner in Finding 36.

#### RECOMMENDATION

In light of the Hearing Examiner's final recommendation on p. 79,

recommending that the proposed rules, as modified herein, be adopted, and further recommending that consideration be given by the Board to those suggestions which were indicated by the Examiner to constitute substantial changes and that additional hearings be scheduled with appropriate notice to consider those suggestions, and,

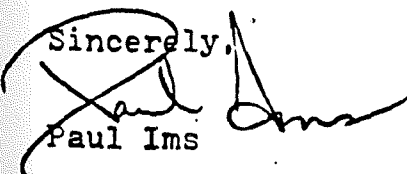
In light of the supplemental, relevant and substantive information, comments, and recommendations which I have submitted hereinabove, and,

In light of the Report of the Hearing Examiner's omission of and failure to direct the attention of the Board to a vital aspect of a relevant, seriously important issue and its related facts and ramifications as presented in my written and oral testimony at the Granite Falls EQB hearing (Pub. Ex. 22, pp. 2-4), and

In light of the procedures utilized in these EQB Proposed Rules Hearings, which precluded affected citizen's participation until after the Proposed Rules had been printed and distributed (green sheets), which in effect, means that citizen participation can be extensive, intensive, objective, and constructive, but that actual meaningful results from such valid citizen participation recommendations may never be realized, but rather that they can be stymied or negated simply by omission from the Report of the Hearing Examiner, or on the basis of being found to constitute "substantial change" and thereby being subject to the provisions, and procedures of Minnesota Rule HE 108, which in turn involves exposing the final "weighing of the merit" of the recommendation to possible arbitrary action on the part of the initiating agency, which may view the recommendation as not being completely in accord with its rationale in the matter at hand, regardless of the objective merit of the recommendation, and hence, choose to decline the adoption of the recommendation and thereby prevent the scheduling of any additional hearings to give it further consideration, and thus silencing at a possibly critical time, an issue of potential, great, long-term importance affecting generations yet to come,

It is therefore, hereby requested that hearings be scheduled to consider the matters hereinabove identified.

Sincerely,

  
Paul Ims

Enclosures:

1. Ltr, HE Myron Greenburg to Paul Ims, dtd 11-14-77
2. Memo, Marshall Librarian, dtd 2-3-78
3. Paul Ims Testimony, EQB Hearing, Granite Falls, 11-3-77
4. Ltr, Dr. Borlaug to Paul Ims, dtd 1-27-78
5. Treatise, Dr. Borlaug, "The Green Revolution: Can We Make ..."
6. Ltr, U.S. Rep. Nolan to Paul Ims, dtd 1-23-78

**STATE OF MINNESOTA****OFFICE OF HEARING EXAMINERS****ROOM 300 - 1745 UNIVERSITY AVENUE****ST. PAUL, MINNESOTA 55104****(612) 296-6910****November 14, 1977**

**Mr. Paul Ims, Sr.**  
**Echo, Minnesota - 56237**

**RE: Power Plant Siting and Power Line Routing Rules**  
**Our File No. EQB-78-005-MG**

**Dear Mr. Ims:**

Responding to your letter of November 10, 1977, please be advised that your exhibit has been marked as Public Ex. No. 22.

Your request for a copy of the Report in this matter is somewhat premature. You will receive a letter indicating when that Report is available and the cost thereof. If you still wish a copy, you may then order one.

Yours very truly,

A handwritten signature in cursive script, reading "Myron S. Greenberg".

**MYRON S. GREENBERG**  
**Hearing Examiner**

MSG/eag

**Marshall - Lyon County Library**

301 West Lyon Street  
Marshall, Minnesota 56258  
Phone (507) 532-2646 •

February 3, 1978

After searching carefully our collection of Environmental Quality Control materials we find that we have not received the November 3, 1977 transcript of Hearings which took place in Granite Falls, Minnesota.

Please be advised that Mr. Paul Ims attempted to receive this information from us.

*Margaret E. Bosshardt*

Margaret E. Bosshardt  
Director of Library Services

*Encl #2*

November 3, 1977

TO: Hearing Examiner (EQB Hearing, Granite Falls, MN)

FROM: Paul Ins, RR 1, Echo, MN 56237

SUBJECT: Testimony of Paul Ins at Hearing on Proposed Rules of the Minnesota Environmental Quality Board for Siting Large Electric Power Generating Plants and Routing High Voltage Transmission Lines, held at Granite Falls, MN on November 3, 1977

Mr. Hearing Examiner. My name is Paul Ins, and I am a farmer in the Wood Lake area. I am here tonight because I am concerned about the environmental and agricultural impact of siting a large electric power generating plant in the Wood Lake area, and also the projected siting of 12 to 25 additional plants in Minnesota.

I would like to make the following recommendations concerning the Proposed Rules of the Minnesota Environmental Quality Board for Siting Large Electric Power Generating Plants and Routing High Voltage Transmission Lines. My testimony will pertain to three provisions of the proposed rules:

FIRST,

MEQB 74H.1.c. Add the underlined words:

"No area shall be selected which does not have reasonable access to a proven water supply sufficient for plant operation. No use of ground water shall be permitted where mining of ground water resources will result. "Mining" as used herein shall mean the removal of ground water that results in material adverse effects on ground water in and adjacent to the area, as determined in each case. Therefore, Southwestern Minnesota is excluded from the siting of large electric power generating plants."

This exclusion of a specific geographical area is recommended because of the following reasons:

Mr. Curtis Sparks of the Minnesota Pollution Control Agency's Office of Environmental Analysis, stated in the September 22, 1977, issue of the "ENERGY" Section of the Mankato Free Press, on page 18A, as follows:

"Any power plant likely to be constructed, said Sparks, will likely be on a river, because neither the federal government nor Minnesota has thus far looked at dedicating lakes for power plants. Plants on the Minnesota River, he said, may be limited by poor water quality -- the water already has heavy concentrations of salts from the geologic strata.

Encl #3

Southwestern Minnesota, Sparks said is excluded by a shortage of water, and northwestern Minnesota has limited water of poor quality. Aaron Katz (also of this office) and Sparks agreed water and air space could be available in west-central Minnesota -- if the state were willing to sacrifice lakes -- but said that area is off limits for political reasons."

## SECOND.

### MEAB 74H.1. Exclusion Criteria.

#### Add 74H.1.e. New subdivision after d.

"No large electric power generating plants shall be sited on agricultural land which would be rated as Class 1, 2, or 3, in the USDA Soil Conservation Service land classification system."

There is a compelling reason for this recommended exclusion, and this reason has two aspects. First, there is a warning from the US Secretary of Agriculture, Bob Bergeland, concerning the alarming annual loss of agricultural land in the United States, as stated in an interview titled, "Why Farmers Are Up In Arms," published in the October 31, 1977 issue of US News & World Report, on page 59, which reads in part as follows:

"Q You often emphasize the need for more planning in rural development and agriculture. Do you feel that farmers want the Government involved in their affairs?

A There's no such thing as being totally free. There are constraints of all kinds -- social and financial -- so I don't accept the theory that you can operate in society today without living by limits..There are problems where planning and Government involvement are necessary.

Q For example --

A In my lifetime we've paved over cropland equivalent to the size of Ohio, and we will "pave over Indiana" before the century is out.

We are a farming nation; we pride ourselves on being an industrial might, but farming is the biggest business in the United States. We were started by farmers. They came to this country, and they settled in the valleys and along the rivers



and lakes and oceans -- the flatland. Villages grew to towns and cities, and they were connected by highways and airports -- all on flatland. Suburbs grown on flatland. And so we are paving over 2 million acres of crop land and recovering 1 million -- for a net loss of 1 million acres annually. The 1 million recovered is mostly submarginal land that requires irrigation to be productive.

We need to carefully examine our land-use strategy in this country. That means that we're going to set a confrontation between private rights and public interest. We can't go on losing a million acres of the world's best cropland forever."

And secondly, heeding this warning of the US Secretary of Agriculture Bob Bergland, as it applies to the projected siting of large electric power generating plants here in the state of Minnesota, we find the following alarming statistics: (1) The estimated loss of farmland presently in crops at the Wood Lake site would be a total of 3,100 acres, as stated in a letter from Mr. Robert D. Cook, NSP District Manager, Montevideo, sent to local newspaper editors, dated October 24, 1977, clarifying previous acreage estimates. And (2), a study titled "Future Electrical Energy Resources Demands", developed and produced by the following state agencies: Minnesota State Planning Agency, Minnesota Pollution Control Agency, Minnesota Energy Agency, and the Minnesota Department of Natural Resources, has a section devoted to FUTURE DEMAND ON RESOURCES, which includes an Electrical Energy Demand Forecast. This forecast makes projections for the number of power power plants required in the future, based on minimum and maximum growth factor estimates as follows:

Growth factor of 3X	would require 12	1,600 MW plants
" " " 4X	" " 16	1,600 MW plants
" " " 6X	" " 25	1,600 MW plants

Using the estimated permanent loss of actual crop land at the Wood Lake site of 3,100 acres, and applying this to the forecast projections of 12, 16, and 25 future power plants required, total permanent losses would be 37,200, 49,600 or 77,500 acres respectively. In addition to the permanent losses due to plant sites and reservoirs, each site will require a 2,000 to 3,000 acre buffer zone, future uses for which are still being studied. It is acknowledged that actual losses of crop land would vary from site to site, depending considerably on the size of reservoir expansion requirements, existing



land use practices and terrain features. However, regardless of certain variations from site to site as to actual losses of farm land, the total losses of farm land from these projected sitings remains very alarming.

and THIRD,

MEQB 74H.3.G. Add the underlined words:

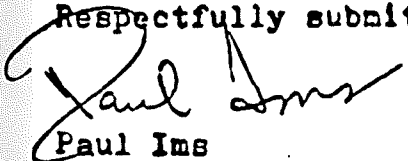
"Preferred sites minimize the removal of valuable and productive land from other necessary uses, and utilize only marginal land."

This addition provides guidance, that if followed, will be of considerable assistance in achieving one of the objectives stated in MEQB 71B, Purpose and Policy, which reads as follows: "It is the purpose of the Act and the policy of the State to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources."

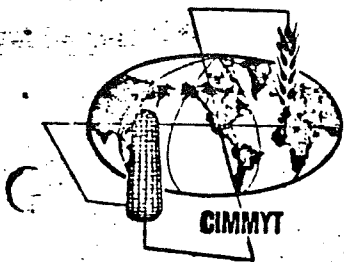
Utilization of marginal land in the siting of power plants is vital to conserving valuable land for other necessary uses and achieving the objective of "efficient use of resources."

In conclusion, I would like to say that having heard and read about the CPA-UPA matter in Stearns, Pope, Travis and other counties, and having personally talked to some of the individuals involved, and having read the editorial titled, "The Court and the Power-line Controversy", published in the October 2, 1977 issue of the Minneapolis Tribune, siting the separate opinion of Justice Lawrence Yetka, on this matter, it raised serious questions in my mind as to the integrity of this whole process, and as to whether a citizen's participation would actually be worth the effort involved, however, after having observed the response of local governmental units to citizen participation in this matter, and having personally attended the EQB hearing at St. Cloud on October 27th, and having listened to the tapes of the Office of Hearing Examiners' hearings at Alexandria on October 17th, and Markato on October 20th, which my wife attended, I have hope that an equitable solution can be found within the system.

Respectfully submitted,

  
Paul Ims

- 2 Enclosures: 1. Cp, Mpls Tribune Editorial, Oct. 2, 1977  
2. Cp, US News & World Report, Interview with  
Sec. of Agriculture, Bob Bergeland



CENTRO INTERNACIONAL DE MEJORAMIENTO DE MAIZ Y TRIGO  
NEB-53

INTERNATIONAL MAIZE AND WHEAT IMPROVEMENT CENTER

Londres 40, México 6, D. F.  
Apdo. Postal 6-641  
Cable: CENCIMMYT  
Tel. 514-46-30

January 27, 1978.

Mr. Paul Ims  
Route 1  
Echo, Minnesota 56237  
U. S. A.

Dear Mr. Ims:

I am sorry for my long delay in replying to your letter of October 27, 1977. I was traveling and away from my office for virtually all of the months of October, November and December.

I am wondering what happened on the hearings concerning the proposed siting of the N.S.P. power plant. I fully agree with you that we are recklessly removing too much good farm land from agriculture and diverting it to industrial sites, housing developments, highways, airports etc. And this sad situation is going on in many other states and countries.

I am enclosing herewith a copy of an article in which I mention some of the general problems of land use and the food problem in general.

Sincerely,

*Norman E. Borlaug*  
Norman E. Borlaug.

Encl. The Green Revolution:  
Can We Make It Meet Expectation?

growing world population. To most people, the world (earth) is an enormous planet—and, unfortunately, to many still the center of the universe—with much unexploited land and water for expanding food production indefinitely as needed. The truth is that our earth is a medium-sized planet in our modest solar system, which in turn is only a "speck" in the universe as most of us observe, but only vaguely comprehend, as we glance upward on a clear, moonless night and see the star-studded sky with many "solar systems."

As we begin to reflect on the natural resource base of our earth and its potential for food production, we see that the earth has a lot of poor real estate. Approximately 71% of the surface area is ocean and only 29% is land. Moreover, much of the land is of little value for agriculture and animal husbandry, as is indicated in Table 1. Only about 11% is classified as arable land, suitable for agriculture or permanent non-forest tree crops, 22% is classified as permanent pastures or meadows, and 30% as forest and woodland. This leaves about 37% of the total land area in wasteland (sub-arctic and antarctic wasteland, rocky mountain slopes, tundra, or deserts) cities, industrial sites, highways, airports, etc.

This classification is, at best, only a tentative attempt to classify the world's land resources. In land-reform programs in several parts of the world, I have seen peasant farmers being allocated land that is incapable of producing food for a sizable population of grasshoppers, much less for a family of hungry people. Consequently, considerable essentially worthless land has been classified as arable for political reasons. Similarly, much land classified as forest and woodland is of little value, being in some cases vast extensions of sagebrush with an occasional lonely juniper or "pining pinion pine." Moreover, large areas of valuable agricultural land are being removed from agricultural use and converted to industrial and residential sites, highways, airports, etc. each year. It has been estimated that in the USA 1 million hectares are being lost to these uses annually. The truth is that the USA even now has no land-use policy and that the situation is equally chaotic elsewhere in the world.

It is true that there are still opportunities for expanding the arable land area by irrigation of desert areas, and by clearing forests in some areas, but these undertakings are both time consuming and expensive as will be emphasized by Borgstrom and by Janzen in this Symposium. Moreover, we must weigh the advisability of clearing or not clearing forest lands for agricultural use or the world will soon find itself faced with a worsening shortage of forest products. Wouldn't it be disastrous for the vast and growing national and international bureaucracies, news media, and the publishers of books of gloom and doom, and of sexology if the world ran short of paper?

#### Where does our food come from?

Food is produced from three different sources: the ocean and inland waters; the land; and, to a very limited extent, indirectly from micro-organisms cultured under artificial conditions. The latter currently is of very limited importance and will not be discussed in this presentation.

Many people erroneously believe that the sea is a vast and largely untapped reservoir of food production. The

truth is that at the maximum level of fish and crustacean production in 1971, the harvest of the sea reached a level of approximately 70 million metric tons, or only about 2% of the tonnage of food harvested from the land. In recent years, the marine harvest has begun to decline despite improvements and expansion of the world's fishing fleets. A number of authorities, including Dr. Georg Borgstrom who is on this Symposium, have stated that already the ocean is being overharvested for many species and that it will be necessary to limit catches to a lower level to sustain yield. Consequently, it becomes apparent that we must not consider the ocean to be a vast, largely untapped food-production base.

Thus, it becomes obvious that, as in the past, the growing demands for food must largely be met by production on the land. This can be achieved by expanding the area cultivated, by increasing yields on the area now under cultivation, or by a combination of the two.

Since the first recorded history there have been many crises in food production leading to famines caused by droughts, plant diseases, or hordes of locusts. Each crisis was precipitated because the human population was approaching the carrying capacity of the land under cultivation and animal husbandry under the prevailing conditions of that time.

After each crisis more land was rapidly opened to cultivation—for then land was plentiful—to feed the growing populations. But population growth in those early times was slow because man had little control over the environment, his food supply, or his own diseases. Next year we will celebrate 200 years since the birth of this country; our lands were opened largely during that time. How much more land can we, and the rest of the world, open in the next 10 years, or in the next 200 years? It is true that in certain areas of the world the development of large irrigation schemes such as the Indus-Ganges-Brahmaputra drainage basin in South Asia, the Mekong in Southeast Asia, the Niger basin in Africa, and the Amazon and Parana River basins in South America could bring large areas of land under higher production. But this will require enormous capital investments that are beyond the capabilities of individual nations. Moreover, international agreements and international financing will be required to begin to develop the potential of these, and the gestation period between planning and implementation will be very long—several decades at best. There are also vast tracts of land with good precipitation that gradually can be opened to cultivation in southern Sudan. Similarly, Brazil has vast tracts of lateritic, leached soils in areas with precipitation of 1,000-1,600 mm. Twenty-five years ago these areas, known as the "campo cerrado" and variously estimated to constitute an area of 60-100 million hectares, were regarded as having little potential value for agriculture. But with the introduction of the proper technology, this area in a period of 10 years has become the second largest producer of soybeans in the world. Under the economic stimulus of the worldwide shortage of edible oil and meal, Brazilian soybean production increased from 350,000 metric tons in 1965 to 10 million metric tons in 1975—truly a revolution in soybean production.

The grass savannahs of Central Africa, in many ways similar to the campo cerrado of Brazil and the savannah

Large Base for food waste  
like food waste

Small #5

RICHARD NOLAN, DEEN,  
CHAIRMAN  
JOHN BRECKINRIDGE, KY.  
DANIEL K. AKAKA, HAWAII  
CHARLES ROSE, N.C.  
FREDERICK W. RICHMOND, N.Y.  
JAMES WEAVER, OREG.  
TOM HARKIN, IOWA  
BERKLEY BEDELL, IOWA  
MATTHEW F. MCHUGH, N.Y.  
LEON E. PANETTA, CALIF.  
THOMAS S. POLEY, WASH.,  
EX OFFICIO MEMBER

68

CHARLES E. GRASSLEY, IOWA,  
RANKING MINORITY MEMBER  
KEITH S. SEBELIUS, KANS.  
E. THOMAS COLEMAN, MO.  
RON MARLENEE, MONT.  
WILLIAM C. WAMPLER, VA.,  
EX OFFICIO MEMBER  
ROBERT M. BON,  
MYDE H. MURRAY,  
COMMITTEE COUNSELS

**U.S. House of Representatives**  
**Committee on Agriculture**  
**Subcommittee on Family Farms,**  
**Rural Development, and Special Studies**  
Room 1301, Longworth House Office Building  
Washington, D.C. 20515

January 23, 1978

Mr. Paul Ims, Sr.  
Echo,  
Minnesota 56937

Dear Mr. Ims:

Thank you for your recent letter and for testifying before the Subcommittee last October. The hearing record is now at the printing office and you will be sent a copy as soon as they are printed -- approximately three weeks.

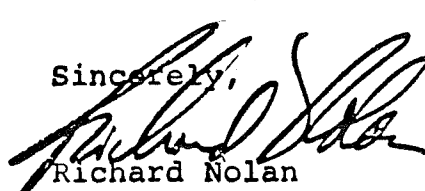
The loss of prime agricultural land to nonagricultural uses is of growing concern in the Nation, and in Congress. It is a complex and frustrating problem, often pitting our Nation's need for energy, transportation, and economic development against our need to preserve prime farmland as an irreplaceable natural resource.

On February 14, 1978, our Subcommittee will meet to officially adopt and send to the Full Committee, H.R. 5882, the National Agricultural Land Policy Act of 1978. This legislation is designed to initiate a major government effort to develop strategies to preserve prime agricultural land.

I am confident that our Subcommittee will act favorably on this legislation and I am hopeful for its adoption by the Congress this year.

With best wishes, I am

Sincerely,

  
Richard Nolan  
Chairman

RN:jsf

Encl #6

STATEMENT OF: Paul Ims, RR 1, Echo, MN 56237

AT: MEQB Meeting, March 9, 1978, 9:30 A.M., St. Paul, MN

Chairman Vanderpoel. My name is Paul Ims, and I represent Concerned Citizens for the Preservation of the Environment, Inc.

For the record, I would like to refer to the following actions:

1. My oral and written testimony submitted at the EQB Hearing at Granite Falls on November 3, 1977, which was designated Public Exhibit 22
2. Report of the Hearing Examiner, in Docket No. EQB-78-005-MG, dated February 1, 1978
3. My letter of February 2, 1978 to the MEQB providing notice of my intent to respond to the Report of the Hearing Examiner, and requesting time to do so
4. EQB Staff Proposed Findings of Fact, Conclusion and Order, dated February 15, 1978
5. Letter from EQB Administrator, Mary Sullivan, dated February 17, 1978, confirming information provided during our telephone conversation on February 7, and advising of the opportunity to submit comments or suggestions to the Board through its Chairman, Mr. Peter Vanderpoel
6. My letter of February 19, 1978, to Mr. Peter Vanderpoel, RE: Report of the Hearing Examiner in Docket No. EQB-78-005-MG, EQB Rules Hearing Report, providing my response to the Report of the Hearing Examiner
7. EQB Staff Proposed Findings of Fact, Conclusion and Order, dated March 2, 1978.

Having personally participated in the hearings, and having reviewed the Report of the Hearing Examiner, Transcripts of the Hearings, the EQB Staff Findings of Facts, Conclusions and Orders, dated February 15 and March 2, 1978, it is disappointing to find that the final rules will fail to provide adequate protection for the preservation of prime agricultural land (land which would be rated as Class 1, 2, or 3 in the USDA, Soil Conservation Service land classification system).

The Conclusions of the EQB Staff reflect a basic failure to meaningfully "come to grips" with a vital issue that is now coming to the forefront at the national level in such matters as H.R. 5882, the National Land Policy Act of 1978, now being considered in the United States Congress -- which would provide

legislation designed to initiate a major government effort to develop strategies to preserve prime agricultural land. The seriousness of this matter is further emphasized at the international level in the efforts of the International Wheat Improvement Program, with main offices in Mexico City, and its Nobel Prize-winning Director, Dr. Norman E. Borlaug, a world-renowned agricultural expert who has been expressing grave concern for the world's food producing capacity, and who recently impressed Vice President Walter Mondale with his urgent logic in a warning about developing food shortages.

In making my final comment on this matter, I would like to quote from a Proclamation of our former Governor, Wendell R. Anderson:

State of Minnesota

PROCLAMATION

WHEREAS: the high quality and quantity of agricultural production in Minnesota is founded in the state's bountiful soil and water resources; and

WHEREAS: Minnesota's reputation for conservation of natural resources is the result of its people who support soil and water conservation programs based on the wise use of our resources; and

WHEREAS: our nation is faced with a need for bringing several million acres of "set aside" cropland back into agricultural production in 1974 to meet the increased demand for agricultural commodities; and

WHEREAS: there are sufficient acres of cropland in Minnesota to meet increased production demands; and

WHEREAS: land that is better suited for pasture, hayland, forests or wildlife should remain in these uses; and

WHEREAS: local, state and federal agencies and service organizations dedicated to the conservation of our Minnesota natural resources stand ready and able to assist and guide landowners and operators in the selection of proper land for cultivation and with applying appropriate soil and water conserving measures;

NOW, THEREFORE, I, Wendell R. Anderson, Governor of the State of Minnesota, do hereby proclaim and charge the people of Minnesota with the challenge of meeting the vital need for expanded agricultural production in 1974 while protecting our basic natural resources with appropriate soil and water conserving measures, and thus sustain our agricultural productive capacity for this and future generations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Minnesota to be affixed at the State Capitol this eleventh day of March in the year of our Lord one thousand nine hundred and seventy-four and of the State the one hundred and sixteenth.

/s/ Wendell R. Anderson

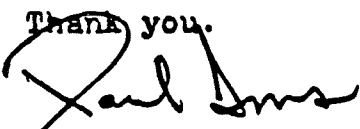
G O V E R N O R

/s/ Arlen I. Erdahl

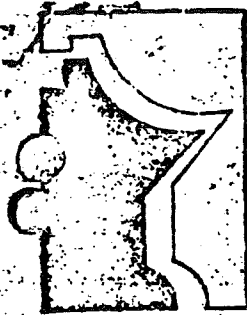
S E C R E T A R Y O F S T A T E

In light of this proclamation by former Governor Wendell R. Anderson in 1974, and in light of statements by Dr. Norman Borlaug, U.S. Secretary of Agriculture Bob Bergland, U.S. Representative Richard Nolan, and Professor John Timmons, as presented in my testimony at a previous hearing, and in subsequent written supplemental information pertaining to these proposed rules, it would appear that EQB proposed rule MEQB 74H.1, a-d, is not adequately protecting our most valuable natural resource, prime farmland, Classes 1, 2, and 3 in the USDA Soil Conservation Service land classification system; therefore, it would be my hope that this Board would rectify this situation by adding my previously proposed rule, MEQB 74H.1.e. to these proposed rules, and thereby in effect, make the rules for the siting of large electric power generating plants in the state of Minnesota, the example for the nation, in this very important matter of preserving prime farm land for future generations.

Thank you.

  
Paul Ims





# Minnesota Environmental Quality Board

100 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101  
Phone \_\_\_\_\_

## MINNESOTA ENVIRONMENTAL QUALITY BOARD MEETING

March 9, 1978

Veterans Service Building

9:00 a.m.

### Minutes

EQB Members Present: Chairman Peter Vanderpoel, Ronnie Brooks, Sandra Gardebring, Jim Harrington, Warren Lawson, Barbara Lukermann, John Millhone, Allan Mulligan, William Nye

EQB Members Absent: Wesley Ohman, Gwen Schwartz, Bill Walker

Chairman Vanderpoel called the meeting to order.

The proposed agenda, with amendments, was unanimously approved.

### Power Plant Siting Rules

Will Kaul, Power Plant Siting staff, explained to the Board that the Hearing Examiner's report was received in late January. Staff has proposed its own findings because in some instances the Hearing Examiner's findings were very general and staff disagrees with the Hearing Examiner in other instances.

He then outlined each of the rules explaining any substantive or clarification changes.

Mr. Millhone suggested some non-substantive, clarification amendments in the rules that were unanimously approved by the Board.

Paul Ims, representing Concerned Citizens for the Preservation of the Environment, expressed concern that the final rules fail to provide adequate protection for the preservation of prime agricultural land as classified 1, 2 or 3 in the USDA Soil Conservation Service Land Classification System. He recommended the Board adopt an additional rule that would state that no large electric power generating plants shall be sited on agricultural land which would be rated 1 or 2 in the USDA Soil Conservation Service Land Classification System.

Mr. Vanderpoel commented that Mr. Ims's request is clearly outside the Board's authority. The legislature did not include, in the Board's basic law, the authority to rule out major parts of the state.

Dave Velde, Assistant Commissioner, Department of Agriculture, expressed concern over continuing utilization of agricultural land as contrasted to preservation and concern over other types.



He noted that the Department of Agriculture is preparing material which begins to address some mapping and identity of different classes of land.

Charles Dayton, representing Concerned Citizens for the Preservation of the Environment, stated to the Board that he believes there is justification for making a special category for productive and prime agricultural land as an avoidance area when considering the siting of power plants. He requested the Board support the proposed amendment put forth by Mr. Ims with the qualification that it would only be an avoidance criteria and limited to lands which meet the criteria 1 and 2 prime agricultural lands as defined by the Soil Conservation Service.

Myron D. Peterson, President, Circuit Breakers Inc., expressed his support of Mr. Ims's proposed amendment.

There was no motion to add this rule.

Keith Wietzecki, NSP, explained to Board members that it recommends the Board include language in Rule 74(H)(1)(b) that would state that the undeveloped portion of the site's buffer areas be permitted to overlap exclusion areas.

Ms. Gardebring expressed opposition to NSP's recommendation on her own and Commissioner Nye's behalf.

Mr. Vanderpoel also expressed opposition to NSP's request.

Ms. Brooks moved:

WHEREAS, the Minnesota Environmental Quality Board proposed major amendments in the Power Plant Siting Act to the 70th Legislature; and

WHEREAS, the 70th Legislature responded with a major redraft of the Power Plant Siting Act; and

WHEREAS, the Legislative changes in the Power Plant Siting Act made it necessary to promulgate a new series of rules for power plant siting and transmission line routing; and

NOW, THEREFORE BE IT RESOLVED:

THAT the Minnesota Environmental Quality Board adopt staff's amended proposed findings of fact, conclusions and order for adoption in the matter of the rules proposed for adoption by the Minnesota Environmental Quality Board relating to power plant siting and transmission line routing; and

THAT staff take the necessary actions to allow the rules to take effect.

Seconded by Mr. Millhone, the motion carried unanimously with Vanderpoel, Brooks, Gardebring, Harrinton, Lukermann, Millhone and Mulligan voting aye, Lawson and Nye not present.

A verbatim transcript of the above discussion is available for review at the EQB office

Craig Forsman Request for Revocation and Suspension of Construction Permit

Discussion between Tom Jensen, attorney representing Craig Forsman, and the Board determined that no action on Mr. Forsman's Petition for Revocation and Suspension be taken at this meeting because there are no rules in effect.

August 29, 1978

TO: Allen Jaisle, Manager  
EQB Power Plant Siting

SUBJECT: Testimony of Paul Ims at Citizens Meeting on Inventory of Study Areas for Electric Power Plants, Southwest State University, Marshall, MN, August 29, 1978

Mr. Jaisle. Thank you for providing citizens an opportunity to participate in developing the criteria and standards to be used by the Environmental Quality Board in preparing an inventory of large electric power generating plant study areas. My name is Paul Ims, and I am a farmer in the Echo area. I am here tonight because I am interested in the agricultural and environmental impact of state policies pertaining to the siting of large electric power generating plants and the routing of high voltage transmission lines.

The following comments and recommendations are made in response to your letter of August 21, 1978, subject: Citizen Meeting on Inventory of Study Areas for Electric Power Plants, and the enclosed INVENTORY DISCUSSION PAPER, dated August 21, 1978.

FIRST,

INVENTORY DISCUSSION PAPER, pp. 2-3, Citizen input on the following plant size and type questions is requested:

1. What do you believe would be the least burdensome: (a) to concentrate the adverse impacts of very large power plants in a few locations; (b) spread out the adverse impacts to very many locations with small power plants; or (c) to do something in between?

CITIZEN INPUT: Maximum utilization of our state and national potential hydroelectric power sources and (c) do something in between

2. Should the inventory cover a wide range of plant sizes rather than assume that one plant size will suit all situations?

CITIZEN INPUT: The inventory information should be complete to the extent that it can provide meaningful guidance to those persons involved in the selection of future power plant locations.

3. How important is it to identify study areas for nuclear power plants in the inventory now?

CITIZEN INPUT: It is very important to identify all factors that have a bearing on the problem and its solution, considering both the short term and long term ramifications.

4. What other questions about the size and type of power plants should be considered in the inventory study?

CITIZEN INPUT:

- a. What are the results of the investigation of potential hydroelectric power sources in the state of Minnesota?
- b. What is the state of Minnesota doing to facilitate the development and integration of the hydroelectric power potential on a national basis?

(References:

- (1) BRITANNICA BOOK OF THE YEAR 1978, p. 146, "Wasted Energy", which deals with potential U. S. hydroelectric power sources, and includes the Mississippi River.
- (2) BRITANNICA BOOK OF THE YEAR 1978, p. 358, table titled, "Installed Capacity and production of Electric Power in Selected Countries, 1975-76.

Our failure to utilize our dams is wasting as much electrical energy as the county of Italy produces.

- (3) David E. Lilienthal, a former Chairman of the Tennessee Valley Authority and the Atomic Energy Commission, presently head of the Development and Resources Corporation, in his article titled, "Lets put Our Rivers Back to Work!", originally published in the Smithsonian (SEP '77) by the Smithsonian Institution, and republished in the January 1978 issue of Readers Digest.

- (4) July 1977 Report by the U.S. Army Corps of Engineers, concerning an inventory of potential hydroelectric power sources in the United States.

- c. The INVENTORY DISCUSSION PAPER states in part on p. 10, under Cost Implications, "A shift to small power plant sizes would most likely increase cost. However, how significant would these projected increased costs be when compared to the increase in security risks resulting from such large segments of our population and economy being dependent on relatively few, strategically important sources of electrical energy."
- d. Isn't the trend of building larger and larger electrical power generating plants an unsound policy?

(Reference:

- (1) BRITANNICA BOOK OF THE YEAR 1978, p. 143, re: Physicist Amory B. Lovins:

"Beyond the risk of atomic warfare, Lovins sees the nuclear enterprise as symbolic of the whole trend toward increasingly centralized energy facilities, which tie up astronomical amounts of capital while creating vulnerability to the massive disruption that results from region-wide power failure. This trend must lead, according to Lovins, toward a more brittle and authoritarian society."

SECOND,

INVENTORY DISCUSSION PAPER, p. 4, Citizen input on the following water requirements and impacts questions is requested:

- 1. Is there a practical upper limit to reservoir size considering this land will be lost to other uses?

CITIZEN INPUT:

- a. Yes, there is a practical upper limit to reservoir and the criteria applying to this matter should include the following considerations:

- (1) Avoidance of loss of prime agricultural land. Classes 1 and 2 of the USDA Soil Conservation Service Land Classification System
- (2) Geological factors and engineering factors relevant to potential flooding safety hazards developing from the construction of substantial dam, levee and diking structures.

- 4. What other water requirements and impacts questions should be considered in the inventory?

CITIZEN INPUT:

- a. Are terrain features and geological strata adequate to ensure that acid residue accumulations from the scrubbers can be stored without danger of contaminating underground water supplies and the adjacent countryside?
- b. How will the acid residues from the scrubbers be disposed of without causing contamination or pollution of underground and surface water supplies?

THIRD,

INVENTORY DISCUSSION PAPER, p. 6, Citizen input on the following air pollution and health hazards questions is requested:

1. Even if regulations permit location of power plants in or near concentrated population areas like the Twin Cities, Duluth or Rochester, do you think we should risk exposing the larger numbers of Minnesota citizens in these areas to whatever health hazard there may be rather than risk exposing relatively few citizens in more sparsely populated areas?

CITIZEN INPUT:

- a. The lives and well-being of rural residents should be given the same consideration as residents of urban areas.
- b. This is a moral question.
- c. No plants should be sited before adequate standards are determined and implemented for acid rains and trace element pollutants.

FOURTH,

INVENTORY DISCUSSION PAPER, p. 7, Agricultural and Other Land Impacts, paragraphs 1-3; p. 8, paragraphs 1-4, and Citizen input on the following agricultural and other land impacts questions is requested:

- A. Paragraph 1 on p. 6 states in part, "The inventory will consider if and how protection of valuable and productive agricultural land can be used as a criteria for identifying study areas. The commitment to address this question was made during consideration of power plant siting rules."

CITIZEN INPUT:

It seems appropriate that the following information which has been omitted from this INVENTORY DISCUSSION PAPER, be made available and considered by all concerned parties at this time.

1. As stated in testimony at the EQB Hearings and at the EQB Meeting on March 9, 1978 at St. Paul, there already exists an operational and effective land classification system which could be used in the identification of productive agricultural land that should be preserved for future generations. This system is the U.S. Department of Agriculture Soil Conservation Land Classification System which clearly defines 8 classes of land with Class 1 and Class 2 being the best and referred to as prime agricultural land and Class 8 being the poorest land. This system has been operational and effective for many years on a nation-wide basis.
2. At the EQB Meeting on March 9, 1978, the EQB Staff argued that Soil Conservation Service classification of the entire state of Minnesota has not been complete and therefore this system could not be used. The issue of the matter is that there has been no demonstrated reason why the Soil Conservation Service could not provide adequate information on some specific area in a relatively short time in the event that a specific study area has not already been classified.
3. At the EQB Meeting on March 9, 1978, the EQB Staff further argued that they had no authority to give special protection to agricultural land, and hence could not use such a system. However, the Legal Council for Concerned Citizens for the Preservation of the Environment, Inc. and Circuit Breakers, Inc. stated the opinion that state agencies already have adequate statutory authority in The Power Plant Siting Act of 1973, As Amended 1977, to place prime agricultural land, Classes 1 and 2 of the USDA, SCS Land Classification System at least in the Avoidance Category of the EQB Rules for the Siting of Large Electric Power Generating Plants, to wit: paragraph MEQB 74H2 of the Proposed Rules (green sheets) utilized in the hearings.

B. Paragraph 2 on p. 6 reads as follows: "Power plants are expected to require less than 20,000 acres of land for site locations over the next 20-25 years. This compares to 24 million acres of cultivated land, 6 million acres of open and pasture land, and 18 million acres of forest land. Mining lands are relatively small acreages and presumed easily avoidable."

CITIZEN INPUT:

1. The estimated figure of "less than 20,000 acres" of land for site locations over the next 20-25 years should be noted, reviewed and verified correct as of a certain date, since this figure varies drastically from figures presented in undisputed testimony at the EQB rules hearings.

and which figures remained undisputed at the EQB Meeting at St. Paul on March 9, 1978.

2. The "less than 20,000 acres" figure should be verified for the following specific reasons: Based on calculations derived from the study titled, "Future Electrical Energy Resources Demands", developed and produced by the Minnesota State Planning Agency, Minnesota Pollution Control Agency, Minnesota Energy Agency, and the Minnesota Department of Natural Resources, with its section devoted to FUTURE DEMAND ON RESOURCES, and combined with data published by a power company as to actual cropland that would be lost to the plant site alone, in the case of a site area currently under consideration, amounts of cropland irreversibly lost would be much greater than the INVENTORY DISCUSSION PAPER figure of "less than 20,000 acres."
3. The previously undisputed calculations as presented to Mr. Peter Vanderpoel, Chairman, The Minnesota Environmental Quality Board, in a letter from Paul Ims, dated February 19, 1978 are as follows:  
  
"In making the forecast of future electrical demands, the study uses minimum and maximum growth factor estimates of 3X, 4X and 6X, which would require 12, 16, or 25 1,600 MW plants, respectively. Applying the NEP published estimated loss of cropland of 3,100 acres for the plant site itself at the proposed Wood Lake site, to the projected number of additional power plants, total permanent losses could run from 37,200, 49,600 to 77,500 acres depending on the actual growth rate. It certainly is alarming to note that existing policies and plans can permit the squandering of such quantities of a vital irreplaceable natural resource."
4. In addition to this maximum projected loss of 77,500 acres, Mr. Vanderpoel stated at the EQB Meeting on March 9, 1978 that this figure could possibly go to 100,000 acres.
5. It would appear that unless there has been a recent drastic reduction of the estimates of future electrical energy resources demands in Minnesota, the INVENTORY DISCUSSION PAPER figure of "less than 20,000 acres" is highly erroneous and grossly misleading.

- C. Paragraph 1 on p. 7 reads as follows: "Of the total Minnesota land use change expected for the future, only a relatively small proportion is likely to be accounted for by power plants and lines. About six percent of the



land use change from 1975 to 1990 is expected to result from land used for power plants and lines. The greatest changes in land use in Minnesota for the future are associated with wildlife land acquisition and urban land expansion. About 80 percent of the land use change will be accounted for by these activities."

CITIZEN INPUT:

1. This statement in the INVENTORY DISCUSSION PAPER HAS the effect of attempting to minimize the loss of productive farm land by dealing in percentages rather than actual acreages as related to actual economic and moral values. However, when comparing the estimated irreversible loss figures of even 20,000 acres, 37,200 acres, 49,600 acres and possibly 100,000 acres with the warnings of Dr. Norman E. Borlaug, Nobel Prize Winner and world food authority as to the reckless removal of good farm land from agriculture and the dire results that will follow, these losses are alarming. Secretary of Agriculture Bob Bergeland has warned of our serious loss of good agricultural land. Vice President Walter Mondale was clearly impressed with the urgent logic of Dr. Borlaug. Rep. Richard Nolan's Subcommittee developed H.R. 5882, the National Agricultural Land Policy Act of 1978, which is legislation designed to initiate a major government effort to develop strategies to preserve prime agricultural land. The Minneapolis Metropolitan Council has stepped up its attention in efforts to save farmland for farming. John Timmons, Professor of Natural Resources at Iowa State University states that the "Green Revolution is bumping the ceiling of applied technology." Harry M. Major, USDA, SCS, stated that 3 million acres of farmland are irreversibly shifted each year from agriculture to other uses. Inventories by the Soil Conservation Service indicate there are about 111 million acres in the nation that are available and have the quality for conversion to cropland. This is land that would not need intensive management, such as irrigation. Simple arithmetic indicates that, at the present rate, this reserve of cropland will be lost in approximately 37 years.

(These references are documented in the Paul Ims letter of February 19, 1978 to Mr. Peter Vanderpoel, RE: Report of the Hearing Examiner in Docket No. EQB-78-005-MG, EQB Rules Hearing Report)

2. Such irreversible losses of a vital natural



resource should certainly appear ominous to any person who has moral considerations for the generations yet to come.

- D. Paragraph 2 on p. 7 states, "Definition of valuable and productive agricultural land is a very difficult matter, especially if different grades or rankings of agricultural land are sought. The Soil Conservation Service has long been involved with this; however, soil surveys and other assessments are not completed for a very substantial portion of Minnesota farmland. The State Planning Agency is completing a statewide ranking of agricultural land based on soil and climate characteristics."

CITIZEN INPUT:

1. If one reviews the existing USDA, Soil Conservation Service Land Classification system, with its clear definition of each of the 8 classes, it is baffling to understand what is "a very difficult matter" in identifying prime agricultural land, Classes 1 and 2.
2. As to the statement that soil surveys are not completed for a substantial portion of Minnesota farmland, there has been no indication that the Soil Conservation Service could not provide adequate information in a reasonable time on a specific area in site areas under consideration where soil surveys have not been completed.
3. Further verification of land quality can readily be obtained from the Agricultural Stabilization and Conservation Service, which has a per acre, per crop yield rating and payment schedule for each farm unit.

- E. Paragraph 3 on p. 7 states, "If all agricultural land, regardless of its value or productivity, were to be avoided, this would place power plants at great distances from agricultural regions. Many more miles of transmission lines to deliver electric power to farmers would be needed as a result."

CITIZEN INPUT:

1. If current recommendations for the exclusion of only Classes 1 and 2 of the USDA Soil Conservation Service Land Classification System as presented at the EQB Meeting in St. Paul on March 9, 1978, were implemented, referenced statement would be irrelevant.
- F. Paragraph 4 on p. 7 states, "Land rankings differ depending on the level or perspective of the analysis. The best agricultural land in a county is not necessarily the best land in a region of the state or statewide."

Different perspectives can serve different purposes. Protecting the best agricultural land in the state may protect absolute statewide crop production to some degree, but it would not necessarily protect the best agricultural land at the regional or county levels. The same concepts may apply to forest lands."

CITIZEN INPUT:

1. Your attention is invited to MEQB 71 AUTHORITY, PURPOSE AND POLICY, paragraph B. Purpose and Policy. It is the purpose of the Act and the policy of the State to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.
2. Prime agricultural land is certainly a vital natural resource. It can readily be identified in any area where identification is warranted, regardless of evasive excuses to the contrary.
3. The crux of the matter is the preservation of prime farm land as stated by authorities and leaders previously mentioned.
4. To irreversibly squander a vital natural resource, especially one that is needed to provide for generations yet to come, in a highly questionable trade-off for a facility with a useful life of only some 35 years, certainly doesn't add up to the efficient or prudent use of resources.
5. Implementation of the current recommendation to exclude prime agricultural land, Classes 1 and 2 of the USDA Soil Conservation Service Land Classification System, from the siting of large electric power generating plants, would be a significant contribution to the preservation and efficient use of our state's natural resources, and would be within the spirit and intent of referenced state policy.

G. Citizen input on the following agricultural and other land impacts questions is requested:

1. Should protection of agricultural land be approached from a statewide, regional or county point of view?

CITIZEN INPUT:

- a. Protection of prime agricultural land is already a national issue presently before the Congress of the United States in the form of H.R. 5882,

the National Agricultural Land Policy Act of 1978, which is legislation designed to initiate a major government effort to develop strategies to preserve prime agricultural land.

- b. With the protection of prime agricultural land already being approached from a nationwide point of view, it would appear only logical that each state approach this issue from a statewide point of view.
  - c. With Congress searching for strategies to preserve prime agricultural land, on a nationwide basis, it would appear that the state of Minnesota, with its considerable experience in legislation - The Power Plant Siting Act of 1973, As Ammended 1977 - and its considerable experience in the siting and construction of plants and transmission lines within the state, would be in an advantageous position to "come to grips" with the basic problem and come forward with policies, rules, implementation procedures, and additional legislation as required, which would not only solve a crucial problem in this state, but would also demonstrate Minnesota's leadership in important issues and serve as a model for the entire nation.
  - d. On the other hand, failure to "come to grips" with the crux of the matter - regardless of obstacle pretexts used to the contrary - will produce an end result of inefficient use and squandering of a vital resource. This would be a travesty of the trust which the people have placed in their State Agencies and the Legislators who have the responsibility for looking after the future interests and well-being of the generations yet to come.
2. What factors should be considered in developing a definition of "valuable and productive" agricultural land?

CITIZEN INPUT:

- a. The U.S. Department of Agriculture Soil Conservation Service Land Classification System, Class 1 and Class 2 definitions.
3. Should forest land be given consideration equal to agricultural land?

CITIZEN INPUT:

- a. No, not in all cases. While values of different categories of forest land will vary as will values of different categories of agricultural land, this matter should be kept in the perspective of the preservation of prime agricultural land being of national concern.
- b. When trade-offs between forest land and agricultural land appear justifiable, the decisions should be made on a case by case basis considering the specific values of the lands involved.

and FIFTH,

CONCLUSION:

- A. Again, thanks for the opportunity to provide citizen input in this matter.
- B. It would be greatly appreciated if you would advise as to the following:
  1. Can I get a copy of the transcript and/or minutes of this meeting?
  2. Will you be making a written report and recommendations from these Citizen Input meetings to the MEQB?
  3. Can I obtain a copy of this report and recommendations?
  4. How and when can I get a copy of the draft report on the Inventory?
  5. Verification of the revision of the study titled, "Future Electrical Energy Resources Demands", developed and produced by the Minnesota State Planning Agency, Minnesota Pollution Control Agency, Minnesota Energy Agency, and the Minnesota Department of Natural Resources with its section devoted to FUTURE DEMAND ON RESOURCES, to include the following:
    - a. When was it revised?
    - b. By whom was it revised?
    - c. How can I obtain a copy of the revision?

Sincerely,

  
Paul Ims, President

Concerned Citizens for the Preservation of the Environment, Inc.

cc: State Senator A.O.H. Setzefandt  
State Representative Gaylen DenOuden

November 18, 1978

TO: Minnesota Environmental Quality Board

SUBJECT: Testimony of Paul Ims at the Annual Hearing on the Power Plant Siting and Transmission Line Routing Program of the Minnesota Environmental Quality Board, held from 9:00 a.m. to noon, Saturday, November 18, 1978, on the fifth floor of the Veterans Service Building, 20 West 12th Street, St. Paul, MN

Mr. Chairman. Thank you for providing citizens an opportunity to participate in developing the criteria and standards to be used by the Environmental Quality Board in preparing an inventory of large electric power generating plant study areas. My name is Paul Ims, and I am a farmer in the Echo area. I am here today because I am interested in the agricultural and environmental impact of state policies pertaining to the siting of large electric power generating plants and the routing of high voltage transmission lines.

In response to Mr. Jaisle's letter of November 2, 1978, subject: Notice of Annual Public Hearing on the Power Plant Siting Program, in which he invites comments on the inventory meeting summary, the tentative study methodology, or any other power plant siting or transmission routing matter, I would like to bring the following information to the attention of the EQB members, and also to have a copy of my testimony entered verbatim in the records of this hearing.

In order to facilitate and expedite the presentation of my comments, I am providing a copy of my testimony to each member of the board at this time.

FIRST,

COMMENTS ON THE SUMMARY OF INVENTORY DISCUSSION MEETINGS

1. A perusal of the SUMMARY OF INVENTORY DISCUSSION MEETINGS, dated November 2, 1978, which was enclosed with Mr. Jaisle's letter of November 2, 1978, subject: Notice of Annual Public Hearing on the Power Plant Siting Program, reveals that certain relevant and important information and data presented in written testimony at the Citizens Meeting on Inventory of Study Areas for Electric Power Plants, at Southwest State University, at Marshall on August 29, 1978 has either been completely omitted or in certain cases only alluded to.
2. The following examples of such omissions and allusions - which are in effect a failure to come to grips with the crux of various matters - can be found by comparing Mr.

Jaisle's SUMMARY OF INVENTORY DISCUSSION MEETINGS, dated November 2, 1978, with the written testimony of Paul Ims submitted at the August 29th meeting at Marshall. A copy of this testimony is attached herewith as Tab labeled:

Paul Ims  
AUG 29'78

- a. The "SUMMARY" fails to report two important questions concerning the investigation of potential hydroelectric power sources in the state of Minnesota, and what is the state of Minnesota doing to facilitate the development and integration of the hydroelectric power potential on a national basis? (See Tab, p.2, par. 4)
- b. The "SUMMARY" further fails to report information and recommendations from such authoritative sources as BRITANNICA BOOK OF THE YEAR 1978; David Lilienthal, a former Chairman of the Tennessee Valley Authority and the Atomic Energy Commission, and his published article titled, "Lets Put Our Rivers Back to Work!", and the July 1977 Report by the U.S. Army Corps of Engineers, concerning an inventory of potential hydroelectric power sources in the United States. (See Tab, p.2, par. 4)
- c. In regards to the "SUMMARY" section on Water Requirements and Impacts, question #1, Is there a practical upper limit to reservoir size considering this land will lost to other uses?, the "SUMMARY" fails to mention the consideration that should be given to avoiding the loss of prime agricultural land.  
  
It also fails to mention the consideration that should be given to safety hazards resulting from man-made impoundments of large quantities of water. (See Tab, p.3)
- d. In regards to the "SUMMARY" section on Water Requirements and Impacts, question #4, What other water requirements and impacts questions should be considered in the inventory?, the "SUMMARY" fails to mention the following two critical considerations:

- (1) Are terrain features and geological strata adequate to ensure that acid residue accumulations from the scrubbers can be stored without danger of contaminating underground water supplies and the adjacent countryside?
- (2) How will the acid residues from the scrubbers be disposed of without causing contamination pollution of underground and surface water supplies? (See Tab, p.4)

- e. The "SUMMARY" failed to mention the recommendation that "No plants should be sited before adequate standards are determined and implemented for acid rains and trace element pollutants." (See Tab, p.4)
- f. In regards to the "SUMMARY" section on AGRICULTURAL AND OTHER LAND IMPACTS, the "SUMMARY" has failed to mention that the U.S. Department of Agriculture Soil Conservation Service Land Classification System clearly defines 8 classes of land - with Classes 1 and 2 being the best and referred to as prime agricultural land - and Class 8 being the poorest - and that this system has been operational and effective for many years on a nation-wide basis. (See Tab, p.5)
- g. The "SUMMARY" fails to mention that at the EQB meeting on March 9, 1978, the EQB staff argued that they had no authority to give special protection to agricultural land, and hence could not use such a system. However, the Legal Council for Concerned Citizens for the Preservation of the Environment, Inc., and Circuit Breakers, Inc. stated the opinion that state agencies already have adequate statutory authority in The Power Plant Siting Act of 1973, As Amended 1977, to place prime agricultural land, Classes 1 and 2 of USDA, SCS Land Classification System at least in the Avoidance Category of the EQB Rules for the Siting of Large Electric Power Generating Plants as stated in paragraph MEQB 74H2 of the Proposed Rules (green sheets) utilized in the hearings. (See Tab, p.5)
- h. In the INVENTORY DISCUSSION PAPER used at the recent series of Citizen Meetings, par. 2 on p. 6 reads as follows: "Power plants are expected to require less than 20,000 acres of land for site locations over the next 20-25 years."

This figure would appear to be erroneous and dangerously misleading in light of undisputed figures presented at the EQB Rules hearings and which figures remained undisputed at the EQB meeting at St. Paul on March 9, 1978. Previous estimates indicated that the amount of permanently lost prime agricultural land could go as high as 77,500 and possibly 100,000 acres. (See Tab, pp. 5-6)

- i. In the INVENTORY DISCUSSION PAPER used at the recent series of Citizen Meetings, par. 1 on p. 7 reads as follows: "Of the total Minnesota land use change expected for the future, only a relatively small proportion is likely to be accounted for by power plants and lines. About six percent of the land use change from 1975 to 1990 is expected to result from



land used for power plants and lines. The greatest changes in land use in Minnesota for the future are associated with wildlife land acquisition and urban land expansion. About 80 percent of the land use change will be accounted for by these activities."

This statement in the INVENTORY DISCUSSION PAPER has the effect of attempting to minimize the loss of productive farm land by dealing in percentages rather than actual acreages as related to actual food production and economic and moral values. (See Tab, pp. 6-7)

- j. Paragraph 2 on p. 7 of the INVENTORY DISCUSSION PAPER states in part, "Definition of valuable and productive agricultural land is a very difficult matter, especially if different grades or rankings of agricultural land are sought."

The testimony of Paul Ims places this matter in a more realistic perspective. (See Tab, p.8, par. D)

- k. Paragraph 3 on p. 7 of the INVENTORY DISCUSSION PAPER states, "If all agricultural land, regardless of its value or productivity, were to be avoided, this would place power plants at great distances from agricultural regions. Many more miles of transmission lines to deliver electric power to farmers would be needed as a result."

The testimony of Paul Ims places this matter in a more realistic perspective. (See Tab, p.8, par. E)

- l. Paragraph 4 on p. 7 of the INVENTORY DISCUSSION PAPER states, "Land rankings differ depending on the level or perspective of the analysis. The best agricultural land in a county is not necessarily the best land in a region of the state or statewide. Different perspectives can serve different purposes. Protecting the best agricultural land in the state may protect absolute statewide crop production to some degree, but it would not necessarily protect the best agricultural land at the regional or county levels. The same concepts may apply to forest lands."

It appears that this paragraph establishes additional peripheral ambiguities in an effort to confuse basic concepts, rather than addressing the basic statutory mandate of the Minnesota Legislature as stated in MRSB 71 AUTHORITY, PURPOSE AND POLICY of the old rules



and presently referenced in the new rules as 6 MCAR § 3.071B, to wit: "It is the purpose of the Act and the policy of the State to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources."

The testimony of Paul Ims places this matter in a realistic perspective. (See Tab, pp. 9-10)

- m. In testimony of Paul Ims on August 29, 1978 (See Tab, p. 11, CONCLUSION), Mr. Jaisle was asked to verify the current status of the study titled, "Future Electrical Energy Resources Demands", developed and produced by the Minnesota State Planning Agency, Minnesota Pollution Control Agency, Minnesota Energy Agency, and the Minnesota Department of Natural Resources, with its section devoted to FUTURE DEMAND ON RESOURCES. The purpose of this verification is to determine the validity of the possibly erroneous and dangerously misleading figure of only 20,000 acres that would be lost to power plants in the next 20-25 years. Mr. Jaisle responded at that meeting that he would check into the 20,000 acres as to how it was calculated.

This matter is not mentioned in the "SUMMARY", nor has he replied to me as of this date.

The testimony of Paul Ims explains the possible loss of prime farm land figures from 37,200 to 77,500 acres and possibly 100,000 acres.  
(See Tab, pp. 5-6)

## SECOND.

### COMMENTS ON THE TENTATIVE STUDY METHODOLOGY

1. The seven topics listed in the tentative Inventory Study Methodology appear to be appropriate and useful, assuming that each topic will be comprehensively and objectively developed.
2. Question: How will the new EQB Rules titled, "Minnesota Code of Agency Rules, ENVIRONMENTAL QUALITY BOARD, Routing High Voltage Transmission Lines and Siting Large Electric Power Generating Plants" be applied to or incorporated in the new INVENTORY?

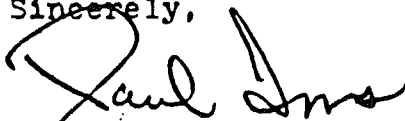
Request: It would be greatly appreciated if you would respond to this question in writing.

and  
THIRD,

COMMENTS ON OTHER POWER PLANT SITING MATTERS

1. A review of The Power Plant Siting Act of 1973, As Amended 1977, reveals the following provisions which are of deep concern to citizens who are interested in the preservation of our environment and the efficient use of our natural resources, especially as these matters apply to the food production resources for and the well-being of generations yet to come, as related to the preservation of prime agricultural land, a vital natural resource.
  - a. 116C.53 (SITING AUTHORITY.), Subdivision 1. (POLICY)
  - b. 116C.54, Subd. 2. (INVENTORY CRITERIA; PUBLIC HEARINGS)
  - c. 116C.59 (PUBLIC PARTICIPATION.)
  - d. 116C.66 (RULES.)
  - e. 116C.57, Subd. 4. (CONSIDERATIONS IN DESIGNATING SITES AND ROUTES.), Items: (2), (5), (7), (9) and (10)
2. In reviewing MEQB operations, activities, findings and recommendations concerning 116C.51 to 116C.69 during the past two years, as they compare with the spirit and intent of the Legislature, specifically as they apply to the possible irreversible and irretrievable loss of from 37,200 to 77,500 and possibly 100,000 acres of cropland, it appears that the declared policy of the state of Minnesota has to an imprudent and dangerous extent been ignored.
3. It is hoped that in the near future, all concerned state agencies will take forthright action to correct existing deficiencies in rules, procedures, inventories, and standards and criteria related to providing adequate protection for the preservation of prime agricultural land, an irreplaceable, vital natural resource.

Sincerely,



Paul Ims, President  
Concerned Citizens for the Preservation of the Environment, Inc.

Enclosure: (See Tab) Testimony of Paul Ims, AUG 29'78 at  
Citizens Meeting at Marshall

# MINNESOTA LEGISLATURE SCIENCE AND TECHNOLOGY RESEARCH OFFICE

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on Science and Technology

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FRED R. PEARSON  
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Secretary/Administrative Assistant

REVIEW COMMENTS ON STUDY ENTITLED  
REGULATING ELECTRIC UTILITIES IN MINNESOTA:  
THE REFORM OF LEGAL INSTITUTIONS  
from John G. Malinka  
January 28, 1980

## EXECUTIVE SUMMARY

Page iii, first paragraph under Chapter One: Setting the Stage, second sentence, "the public did not perceive . . ."; I think the idea that the ability of the public to perceive that resource conflicts has changed is a good one, but that is only part of the story. There has also been more active media and interested individuals and groups which have contributed to this change.

Page v, second paragraph after quote beginning with the third sentence; "First, a substantial portion . . ."; I don't understand the sentence; "and that" does not link the two parts in an understandable manner.

Last paragraph on the bottom of the page, last sentence; "This reduction in the rate of growth is equivalent to a doubling time of about 14 years." I do not think the author means the reduction is "equivalent"; perhaps it should say the new rate of growth is equivalent to a doubling time of about 14 years. Are these annual growth rates? Has not more recent data lowered the growth rate projections even further?

Page vi, third paragraph; I think this paragraph should have a reference. Also, the statement is strange as Minnesota indeed cannot build plants.

Next paragraph; I believe you should have a reference for this as well. Sentences stating "Nature is full of the self-propelled processes. However, none of them are perpetual." are unfounded. The author has not shown that all processes some day end. You also are mixing nature's process with man-made processes. There are many processes in nature which have not been shown to not be perpetual.

Same page, last paragraph, contains a lot of jargon and is difficult to follow. This paragraph should be rewritten.

Pages xiv to xxi, covering public participation are covered in detail under comments for Chapter 3. No comments for these pages are made at this time.

Page xxi, third complete paragraph, is unclear. Statement saying that "decisionmaking authorities noted above is not resolved" would perhaps be clearer if you said "decision-making authorities noted above has not to date been resolved". What is a "balanced decision of the competing interests"? What is a "random solution"?

CHAPTER ONE: SETTING THE STAGE

Page 1, fourth line; "Until a decade or so ago . . ."; this seems to hang the major recognition of conflict on awakening public perception. There are many other things that promoted change in this perception (e.g., environmental activists, and the media) than only the public's abilities to perceive.

Pages 2 and 3, set the stage well. However, I question the need for the entire quote; summarizing and referencing would be adequate.

Pages 6 and 7; I do not understand Table 1-2 (p. 6) and the conclusion that various sectors are "increasingly relying on electricity" (p. 7, line 4). Table 1-2 shows that electricity use as a proportion of total U.S. energy was only 21% for industry and commerce in 1950 and 18% in 1978. Residential figures were 16% in 1950 and 10% in 1978. These sectors of the economy do not appear to be relying increasingly on electricity as the most popular form of energy.

Page 7, toward the end of paragraph two; what is the reference on "while cost of energy consumption per \$1.00 GNP has decreased," the cost of electricity per \$1.00 of GNP has increased since 1970. This does not agree with the numbers presented in Table 1-3. Is cost the same as consumption?

Page 10, Table 1-5 also shows a decrease in cost of electricity from 1950 to 1978.

Page 13, Table 1-9; I believe nuclear in the U.S.A. (lower 48) should be 9.9%.

Page 20, second sentence in last paragraph; "This means that the rate of growth is itself increasing". Is this taking recent data into account which shows decrease growth rates? Some recent data from Europe reveals that some countries have begun to show a dissociation between energy growth and economic growth. "Nature is full of these self-propelled processes." What does this mean? "However, none of them are perpetual." I think this is unfounded. Scientists have not yet, for example, discovered that there is an end to the expanding universe, though there have been hypotheses to the effect. This paragraph is interesting philosophy, yet the conclusions do not follow. At the same time, we are experiencing a change in growth rates.

Page 22, first paragraph; the identification of "increased output and reduced average cost" as a "human proclivity" and one which leads to monopolies is not clear.

Page 25, first complete paragraph; "The next step . . ." What was the first step?

The next paragraph beginning with the third sentence; "The court has . . ." is very vague and should be rewritten.

Page 26, some editing is necessary in the third sentence of the first paragraph.

Page 27, second line; what is the "protection of the public interest"? What is the "public interest"? Also in the numbered parts of the summary of the interstate commerce provisions of the Public Utility Act of 1935, the paragraph labeled "2" is not clearly stated. Also all nine points do not have parallel structure.

Page 31, Table 1-15 is a good summary of the federal electric energy law but ought not appear in the body of the document. Would provide better flow to narrative if it were placed in an appendix. However, I do not see it as necessary to subsequent arguments in Chapters 3, 4 or 5.

CHAPTER TWO: THE ENERGY PLAYERS

Page 43, middle of the second paragraph beginning with "The primary purpose of"; this sentence needs to be rewritten. It is not clear.

Page 44, middle of the last paragraph, beginning with "In November 1965 . . ."; I do not understand the demonstrated disparity between "demand" and the "reliability problem". What is that problem? What is the disparity? The wording on top of page 46 is clear. Perhaps a simple rewrite on page 44 is all that is needed.

Page 46, first full paragraph, third sentence; "The regional council which includes Minnesota" would be better.

Page 58, a lot of information is presented beginning on page 58 and the subsequent ten pages, but I do not believe all of the quotes are necessary. This could be significantly shortened.

Page 67, the summary of the Power Plant Siting Act, Table 2-4, on pages 67-69 would be better located in an appendix.

Page 70, since Chapters 3, 4 and 5 contain the substantial recommendations, I suggest placing the material from page 70 into the appropriate Chapters. These pages are significantly overwritten. As they stand now, these subsequent chapters (3, 4 and 5) contain significant repetition.

CHAPTER THREE: PUBLIC PARTICIPATION IN ENERGY-RELATED DECISION MAKING

Page 109, middle of the second paragraph; though it is clear that "technology and governmental institutions are being questioned by many people" the analysis that leads to requiring more "public input into decisionmaking" and (page 110, line 2) and the conclusion that "legitimacy of the responsible authorities may depend on the politics of participation" is not complete. Another conclusion could be that public employees are public servants and the difference in opinion is just one public debating and objecting to the actions of another. Though there is a clear need for resolution, it seems that other equally reasonable solutions are available (e.g., to let the political process work instead of imposing arbitrary regulations favoring one public over another).

Page 110; it appears to me that what follows from page 110 and 111 on is just one philosophy or approach of many on the public participation issue. What is there is too wordy for only one position and does not seem to be a real objective analysis of the problem. I do not see any references in this chapter to research on case studies of public participation and the results of such participation (e.g., water resource development or highway routing selection). There have been significant involvement of the public in these areas in the sixties and seventies, and the lessons learned are significant.

I believe the summary of Chapter 3 in the Executive Summary is sufficient if more thoroughly referenced. I do not think the Legislature needs all this material in Chapter 3 since it represents only one approach to resolution of the conflicts in power plant siting. This approach strengthens the adversary process and the opportunity to promote adversary contacts and contention. It is reliance on regulatory and judicial solutions rather than reliance on electoral and political solutions.

Page 110, last sentence in first full paragraph; "Public participation is a necessary and integral part of decisionmaking". I agree that more participation of different

publics or parts of the public is needed, but the argument that what is needed is a fourth branch of government represented by new "public participation mechanisms" (fourth line from bottom of page), does not follow.

Page 111; I do not understand the logical flow of ideas in the first full paragraph under section 3.1 on page 111. In the middle of the paragraph beginning with "Technology, however, particularly 'high technology,' . . ." is not clear to the end of that paragraph. Perhaps the author could explore making the regulatory process more sensitive to the political process of electing representatives of the people.

Pages 114 and 115. The first paragraph under B. "Technology and Values" is misleading. I would like a reference for these statements. I doubt that any scientists worthy of the title carry the notion that "there are no political components to technology policies, that costs, benefits, and risks are equally distributed throughout society," and that they have "complete and conclusive knowledge of the consequences". What does "judgments and commitment" include? Why is the reference for "disasterous effects" not even being considered? The discussion on values is very cursory and inappropriate in light of the purposes of the report and of their actual role they really play. I suggest combining some ideas in Sections B, C and D into a single section entitled "Energy Technology: Conflict and Values".

Page 116, first paragraph, second sentence; it is possible to maximize (or minimize) two dependent variables simultaneously. "It is not mathematically possible to maximize (or minimize) two independent variables at the same time; for example, the cesspool and the integrity of the environment in this case are not the best choices. These "variables" are somewhat dependent and use of the environment for disposal could be viewed as a constraint on maintaining some level of integrity. In essence, these two variables properly construed, can be "maximized" simultaneously.

Pages 120-122. I do not understand the contribution of the section D, Energy Technology. Perhaps this material could be combined with the preceding section.

Page 122; the author has said that resources are limited and that we must make choices and trade-offs, but the third sentence stating that "the term energy crisis is a euphemism for a shortage of cheap, convenient, and readily accessible energy". Are not the limitations on resources a "crisis" to some extent? (i.e., we cannot get the same quantity of Btu's for the same dollars and some other part of the "energy pie" shrinks depending on priorities.) Is not the rapidity with which this occurs make it a crisis?

Page 126, beginning with the third sentence. Regulatory control involves "intervention on behalf of society". What aspect of public participation is intervention? Is it intercession or only interposition? What is the difference between "proper" regulation and public participation? I think these questions must be answered directly in this report.

Page 129; I agree with the description in the first full paragraph. However the next paragraph seems to me to say that improvements to the process can occur by well-defined, aggressive legislation.

Page 130, second sentence of the first paragraph, the author states ". . . the regulatory agency is unduly oriented toward the interests of the industry". It appears to me that the change in this orientation could come through the legislature (instead of a fourth branch of government) since they give authority to the administrative agencies. This idea needs to be thoroughly addressed.

Page 131, where the author identifies the difficulty to implement "articulated policies", I think that over the years some of these policies have been shown to be inadequately articulated.

Page 132, last sentence before item 3, "regulatory process is wrought with secrecy, conflicts of interests, and elitist attitudes". I think you have identified some of the conflicts of interests, but you have not anywhere addressed the problem of the self-interest and security of career in governmental bureaucracy. Dealing with the problems of bureaucracy is an important alternative or addition to public participation and is an oversight in this report.

Page 133, last sentence of the first full paragraph; "adversarial environments", seems to promote legal or political contention. I believe the solution on page 141, middle of the page, saying that site selection should be "a public rather than a private responsibility" and "accomplished through a planning rather than adversary process" is a better one.

Page 133, last sentence of last paragraph; I think the author needs to sort out the role of an elected government, with respect to the suggestions here that citizens "must develop countervailing power at all levels of government".

Page 134, first paragraph, second sentence; "broadened public participation protects the integrity of the decisionmaking process". Does this apply to administrative decisionmaking, statutory decisionmaking, judicial decisionmaking as well? I think these aspects and the arguments which follow need to be defined and articulated.

Sixth sentence, "public interest groups simply present unrepresented interests"; I have not seen any data to support this statement. Legislators and those in executive offices are elected by people representing all interests going to the polls. The governor is elected by all. However, just because a large number of interests are represented or considered in the process, this does not mean that they will have equal weight in the decision. If special interests are not represented "adequately" in a decision (as judged by these "special interests"), that is the result of winnowing of candidates in the election process and subsequent policy selection in decisionmaking. Legislators are involved in administrative oversight as well, and the represent the interests of their constituency. Logic of more investment in another layer (fourth branch) of government to adversarially present the views of special interests is not clear in the report. Still I agree as stated in the last sentence of the second paragraph on page 134, that "the crucial key in deciding who will bear the costs and who will reap the benefits must be based on inputs from all interests". What is not clear from this research and presentation is that this solution is the only solution, the best one, the most rationale, or even that it will succeed. No evidence is given that the public participation approach, which the author suggests, has had success elsewhere. (See last paragraph on p. 134 and following.)

Page 135, last paragraph; "define democracy as 'mutual coercion mutually agreed upon by the majority of the people affected.'" This appears to me to be a slanted definition of democracy. Two concepts basic to a good definition of democracy are missing. One--government, two--elected representatives. A more reasonable definition is in order (e.g., "mutual government, mutually agreed upon by the majority of the people affected through elected representatives"). Simply put democracy according to Webster is "rule by the ruled".

Page 137, middle of the second paragraph under F; "second, public participation can promote agency autonomy . . ." A better word might be "authority" or "influence" rather than "autonomy".



Page 139, last sentence under first paragraph in 3.2; "Objectives are, first, that public policies correspond with the needs and preferences of the affected citizens, . . ." I think these objectives are important. Do you have a reference for them? Is not public policy, however, made by the Legislature and are not they representatives of the affected citizens? The author should involve the role of the legislature in the discussion of public participation.

Page 141, middle of the page, site selection; "a public rather than a private responsibility, to be accomplished through a planning rather than an adversary process". These words are significant. I think more research by the author should have been done (not necessarily more writing) on the difference between a planning and adversary process and what has been gained and has not been gained historically from these two approaches.

Page 142, quote that begins on the bottom of the page and ends on the top of page 143, particularly where the author identifies the public often seeking to become involved after the hearing in the most appropriate forum for their concerns; I think the author needs to explore the reasons for this. All the notification in the world may not change this behavior if the public does not invest time until they are sure the outcome affects them, that is after hearings for approval have been held. Has any research been done on this? I think research available on transportation and highway route siting and on water resources might provide some insights and measures of success. When, rightly or wrongly complaints are made that notice was inadequate, it is important to determine if the complaints are reasonable or not before we try to solve the problem. I would like to know whether a larger process of public participation is effective and successful prior to investing time and money in it.

Page 143, at the bottom, paragraph identifying "several bases upon which an agency's obligation to provide effective public notice rests" that there be "public support for the agency's activities . . ." This point was made twice already on page 133 and page 137. These ideas ought to be consolidated to avoid repetition.

Page 144, at the bottom, in your recommendation where you indicate advertisements and releases should be made statewide and local newspapers, wire services, and radio and television stations for each and every hearing. I realize you discuss the standing issues later, but does everyone statewide have standing in every hearing? That should be discussed at this point.

Overall though, the author has quoted a lot of opinions. The question I have after reading this section on public participation is 'Will better notice provide more public participation?' (If a major problem is one of bureaucratic secrecy and self-service, this could be dealt with more directly by changing bureaucracy instead of creating another layer of government to act in the role of an adversary.) This is expensive and may not be as successful.

Page 148, quote at bottom, where you identified the difficulty of bureaucracies, 'Could not one alternative be to decrease the power and the size of bureaucracy rather than create a fourth branch of government?'

Page 150, second sentence, first paragraph, if "there must be a means to improve the public's access to technical information and its ability to use such information in a political forum," how much of a return on investment in more information services, notice, public advisor, and so on can we get? Is there a peak in the cost/benefit relationship here? Have you compared the solution stemming from these recommendations with other solutions?



Page 151, first paragraph after recommendations. Could an individual's legislator expedite the administrative process and promote improved human relationship if an agency denies a request in whole or in part or if it fails to provide the requested information in a timely manner, rather than promote judicial review?

Page 152: Don't citizens have open access to agency experts through the Legislature? Overall if there is a problem with the bureaucracy, do we maintain "self-serving," "non-imaginative," "secretive," "lying (see p. 148) staffs and hire intervenors to second guess them and do their job for them or do you just promote a system that more directly will provide better public employees?

Page 158: Recommendation does not follow from the research and information provided. The definition of interest and standing have had a significant role in determining role and objective of judicial review.

Page 163: Recommendation in the middle of page 163 does not follow. Why should a citizen be guaranteed the right to intervene regardless of the nature of this citizen's interest? This recommendation doesn't follow from information under (a) and (b) on page 162 which provides criteria of clear interest (economic or otherwise) to be established and of representation of interests not already adequately represented by existing participants other than the government. This appears to open the process to considerable adversarial confrontation and delay.

Quote beginning on the bottom of the page is very interesting. I do not understand why private competency may no longer be feasible. I understand that broad statutory directives are likely to be "conspicuously unhelpful," but one reason for increased research and detail in recent legislation is a response to just this problem. Legal confrontation in the courts is not the only way of resolving decisions and from many aspects has had limited success.

Page 164: The recommendation that appears in the middle of the page in that all interests be considered is reasonable, but without the preceding recommendation that any citizen, regardless of the nature of the citizen's interest, has the right to intervene in any agency action. There is little, if any, research or data provided by the author to support this recommendation. The current limits are reasonable. As I understand it, agencies are not free to disregard interests of those entitled to participate. Precedents of reasonableness would apply. Restrictions relating to relevance, common interests, priorities and delay, however, are guidelines (and constraints) for both sides of the issue.

Last paragraph, second line, "if an agency develops policies or disposes of controversies by informal methods in which standing and intervention procedures are not applicable". I believe the route for a citizen to contact his or her legislature has been successful in the past when an agency has not been responsive.

Page 165: Regarding the recommendation in the middle of the page my response is the same as with the recommendation on page 163. The research and data provided does not back the substance of this recommendation.

Page 166: I believe you should define pluralism. Pluralism in democracy means all citizens get to be representative, but at the same time not all speak at once. There are criteria for choosing representatives which exist in the legislature and in the courts and should exist in administrative hearing and intervention. The idea that "a pluralistic vision requires that all interests be represented" in the decision is the author's viewpoint and is not documented by other than opinion. There is a difference between input into the process and forcing a result which follows directly from that input.

Page 166, the last sentence in the first full paragraph; "to assure that unrepresented interests become represented". What are "unrepresented" interests? Any examples or data would help. Must all unrepresented interests be represented? Some may not want to be involved or represented.

Page 171, next to last sentence in the first full paragraph; "the individual consumer generally has no rational economic incentive to invest the necessary time and resources to protect his interest in an agency proceeding". Is not this why we elect legislators? The economic and other values held by citizens that motivate the election of a particular candidate seem to coalesce in that individual's victory at the polls. On an agency level is the author saying that individual consumer incentives are not rational or that these incentives are just not high enough on the individual's priority list or that these incentives just do not emerge in the decision.

Page 173, seven lines from the bottom; "based on all interests which make up the public interest". My experience indicates that eventually a decision based on "all the interests" must result in some interests being elevated and others being depressed. The selection of objectives for a program mean that a specific program cannot do everything.

Page 178: This recommendation seems to say to me that the agencies have not been acting responsible (i.e., in terms of economics, MEPA, the Administrative Procedures Act, and other requirements). I do not yet understand why there has been no discussion in this chapter of dealing with the problem of the bureaucracy directly rather than (or at least in addition to) setting up opposing and costly offices and administrative procedure.

I think the information from page 179 to 201, particularly from page 184 to 190 is repetitive and could be written more compactly. I do not understand on the fifth line of page 157 the need or idea of the surrogate plaintiff who represents the interests of others. Is not that one of our problems now? Also identifies an example of how the report presents ideas but fails to pull many of them together. This section is not very coherent.

Page 192, in the process described in the quote at the top of the page, "at the staff's discretion, public groups should also be permitted to participate in utility-staff negotiations. If an adequate degree of public involvement is not achieved through the discretionary approach, further legislative remedies will be required." Also at the bottom of that page; "all sides regard adversary proceedings--court actions--as a last resort--to be used only when all other methods of conflict resolution have failed." I think discussion and implementation of this idea is overlooked in this report. Especially as far as the over-emphasis of adversary procedure in the recommendations provided are concerned.

The balance of the chapter is very repetitious. For example the quote on page 204 really repeats the major ideas of the page 202 quote. I think the author can summarize Table 3-3 in a list and brief narrative and eliminate five pages of text. Points on page 216 and 217 have been made in several places before. The quote on page 219 could be summarized and idea referenced. I do not think we need all the quotations from page 217-227. Overall there is too much duplication of the arguments presented in this chapter.

Page 230, the next to the last sentence, in the paragraph ending at the top of the page: "but little, if any, evidence shows that this increase can be attributed to environmental opposition". Yet the data for 1972 and 1973 in Table 3-4 on page 231 shows that intervention is an element in delay for 8 out of the 13 nuclear plants identified. So, why is the delay due to environmental opposition not significant? Please explain.

Page 236, the first full paragraph, second sentence, "quite fashionable to blame public intervenors". Fashionable by whom?

Page 237 and top of page 238; quote could be summarized in a few sentences.

One of the problems I have with this whole chapter on public participation comes out in the first sentence of the second paragraph on page 240. The author was asked to focus on energy-related decisionmaking and not on the whole public participation concept. I believe this chapter could be cut down considerably and still communicate the important ideas.

Page 235, the quote on the bottom is lengthy. Is that new information? If it is, it should not be in a summary. If it is not new information, I believe the quote should only be summarized.

#### CHAPTER FOUR: SELECTED ISSUES IN ELECTRICAL ENERGY POLICY

Pages 249-251: A number of problems in the process of power plant siting as it relates to the environment are identified. One of the things that is not included there is the changing nature of the facilities to be sited. Are we as a state perhaps going at this time from siting large facilities to small facilities? Or are we changing the technology? Might not these changes have something to say about the nature of the problems that should be addressed? For example, a European study which I have just recently reviewed identified the success or apparent success that Europeans have had in dissociating economic growth from energy growth. The report indicated that savings in energy of 20 to 35% for transport, 15 to 35% for industry, and 50% for domestic and tertiary sectors were possible. In sum, what is the significance of the conflict which you allude to in the list on these two pages?

Page 253, quote toward the end of the first full paragraph, beginning with; "In sum . . ." is a problem. It is okay to say that the utility decides in secret what the energy requirements are and then that it will propose a nuclear plant, also in secret. But I believe this quote is taken out of context. Does Sundquist's comment (ref. #10) refer to Minnesota explicitly? In any case, by using his words for the summary of what the author is saying without identifying in the narrative who it is, the author comes across as biased. For example, the idea of "surreptitiously" surveying an area and picking it out implies stealth and slyness and creates a problem, for any reader I believe, about the objectivity of the author.

Page 256; this quote is an example of significant overwriting. I do not see the benefit of the entire quote. The essence of this quote in terms of location factors, suitable site inventory, and so on could be summarized quickly and referenced.

Page 257, second sentence in the first full paragraph, recalls my comment about Sundquist's words that the author has used on page 253. On page 253, it would have been better to say that "some have argued that" rather than absorb the Sundquist quote as the author's own point of view. In terms of current plans, is there really a trend toward large plants? References 18, 19 and 20 are ten years old.

The ideas in the paragraph on the bottom of the page are not clear. I do not understand what the author is trying to say.

Page 263, I felt that the text did not distinguish well between the concept of size and need. I think the recommendation could be clarified by saying, "The MEA should continue to issue a certificate of need, but based on factors that affect demand without regard to size and type of facilities necessary to meet that demand."

Page 299, last sentence in second paragraph: Does NSP really produce 84% of the electricity used in Minnesota? Don't they buy significant portions of their power?

Page 299, past paragraph: Is energy consumption based only on these two facts? Could the author change this to read "most energy consumption is dependent on . . ." making it not so absolute.

Page 313, last sentence; ". . . it must still hold hearings . . ." Why must they? According to PURPA? What is it?

Page 315: I disagree with the statements on energy stamps and the poor in the first paragraph; "Since there exists . . ." If this is true then what kind of relief effort are you in support of?

Page 319, fourth line from top: Is MEPA supposed to do all this? Has it failed in all cases?

Page 363, the last two sentences of the first full paragraph; I do not understand them. They do not follow each other. Is all the needed acreage in the flood plain?

One general comment that another individual identified as a potential help in large reports such as this, where each chapter is separate (yet the paging continuous) and referenced with its own set of reference numbers, would be to have the chapter pages also numbered differently. The chapter numbers preceding the page numbers would also aid those seeking to check on a particular reference. One would not have to turn back to the beginning of the chapter to be reminded which chapter one is in.

This ends the detailed comment on the report at this time. Overall I think there is a vast amount of information and many good ideas, but the report comes off to me as being too large for the legislature to use and having a definite lack of coherence. There is also a significant amount of repetition of ideas. If the report is to be published and disseminated, I think it should be rewritten. It has lost a lot of the public service function by being very voluminous. Also though there is a lot of information presented, there is a lack of reference to other specific cases or places in the country where the recommendations made by the author have either succeeded or not succeeded. For example, research of investigators trying to evaluate public participation and other programs does exist, and should be included in this evaluation.

I think the report also magnifies adversarial relationships and several instances comes across identifying the author as biased having made up his mind prior to the compilation of the information and writing of the actual report. The compilation of these recommendations in one place which have appeared in several other different scattered locations before is useful, but the legislature should be warned about the lacking objectivity and comprehensiveness of these as solutions to the conflicts over siting of large electric facilities.

JGM/dw

**NSP****NORTHERN STATES POWER COMPANY****MINNEAPOLIS, MINNESOTA 55401**

February 26, 1980

The Honorable Wayne Olhoft  
29 State Capitol  
St. Paul, Minnesota 55155

Dear Senator Olhoft:

After a great deal of discussion with other utilities and the staff of the Science and Technology Project, we have reluctantly spent significant time and effort in a review of the draft report on "Regulating Electrical Utilities in Minnesota." We submit the attached comments for your information.

We recommend the Joint Committee give serious consideration to not publishing this report in final form. This recommendation is made principally because we feel the report and legislative proposals which may develop from it would create new expectations among the public that changes, as suggested in the report, would "fix" everything in the utility regulatory area. These expectations would likely not be met, and only more public dissatisfaction would result. I believe what may be most helpful in increasing public acceptance of utility regulatory procedures, at this time, is some stability. Constantly changing these statutes and the regulations only creates confusion and distrust among the public, even for those who have gone through the process before.

Finally, our comments should not be interpreted as an effort to improve this report, nor should they be interpreted as future positions on legislative proposals which may come from the recommendations. Because we did not comment on certain recommendations does not mean that we agree with them. In fact, just the opposite could be true.

Thank you, Senator Olhoft, for visiting with me last week about this, and I hope you understand and appreciate my concerns in this matter.



Merle Anderson, General Manager  
State Public Affairs

## Comments on a report entitled

REGULATING ELECTRICAL UTILITIES IN MINNESOTA:THE REFORM OF LEGAL INSTITUTIONS

Recommendations 1, 2 and 3 primarily deal with ways of increasing the public's awareness that hearings are being conducted on energy related issues. The recommendations contain nothing new in that the Minnesota Energy Agency (MEA) and the Minnesota Environmental Quality Board (MEQB), at the present time, have statutory authority to implement any of the three recommendations. Therefore, it must be assumed that it is the intention of the author to mandate that these three recommendations be followed in all cases before the MEA and the MEQB. These three recommendations seem to stem from two assumptions on the part of the author. These assumptions are:

1. That the public, at this time, is not aware that hearings are taking place on energy related issues, and
2. The public, at large, cares about all energy related issues.

These assumptions do not appear to be valid concerning citizen participation at public meetings and hearings during the Certificate of Need phase and the siting phase of energy related facilities. For example, at the siting phase of transmission lines it is not uncommon to have 100-200 people attending hearings and testifying on the appropriate location for the transmission lines. It is clear from this type of participation that people are being notified and are choosing to participate. Notification procedures usually followed by the MEQB for large projects included radio, local newspapers, local community information newsletters, and contacting specific interest groups in the area. In short, for large projects, the MEQB already follows all of the recommendations included in the report. This type of notice is appropriate for large projects.

However, not all projects require this type of notification. For example, NSP recently submitted an exemption application for a 345 kv substation to the MEQB. The substation will occupy approximately three acres of land under the intersection of an existing 345 kv line and a 115 kv line. As the regulations provide, NSP notified adjacent landowners and the communities and counties within which the substation was to be located. It is doubtful that providing additional notice such as on wire services, television, and radio throughout the state of Minnesota would have increased the public participation on this rather insignificant project. However, under the recommendations included in the Reagan Report it would have been mandated.

Comments... Regulating  
Electrical Utilities in  
Minnesota  
page two

In conclusion, the regulatory agencies have all of the power to implement recommendations 1, 2 and 3 as the scope of the project warrants. The regulatory agency should have the discretion to use those types of procedures that they feel will provide the target population with the information they need, yet not unduly inundate the rest of the population with notices.

Recommendation 4: Recommendation 4 deals with the creation of a public advisor in the Energy Agency, Pollution Control Agency (PCA) and the Public Service Commission (PSC). Further, the recommendation suggests that the office of the public advisor be an independent agency in a manner similar to the office of the Hearing Examiners. The position of the public advisor was created during the 1977 legislative session. Since that time the MEQB has dealt with only three projects, and thus there is only limited experience with the public advisor. However, the experience to date suggests that the public advisor is beneficial for citizens. The public advisor provides citizens with an information point within the agency and a person who can identify appropriate people or reports on the subject within the agency. It also provides a person who can explain the rather complicated procedures of siting power plants or routing transmission lines.

Procedures during the Certificate of Need process, rate proceedings and the environmental impact statement process, are every bit as complicated as those in routing transmission lines and siting power plants. A public advisor may be a very useful tool in encouraging public participation in these forums.

The second part of the recommendation deals with where the public advisor should be located within state government. There are both good and bad points concerning the idea of creating an office of public advisors. The good points are that the public advisor would tend to be more independent and the public would perceive the public advisor as an independent person outside of the jurisdiction of the regulatory agency. The bad points are that in creating another agency there will be a certain amount of duplication that will cost the taxpayers money. In addition, being located outside of the regulatory agency the public advisor would be less aware of who within the agency can provide information to the public, and where that information should be, strengthen idea of close contact with project, and the public advisor would tend to lose contact with the project under consideration.

Recommendation 5: Recommendation 5 suggests that the MEA, MEQB, PSC, and the PCA coordinate their information gathering and provide a joint clearing-house for energy related information.

It is not clear from the text of the report, nor the recommendation what data the author is referring to. The MEA and the MEQB already require joint forecasting reports from utilities. All of these documents are public



Comments... Regulating  
Electrical Utilities in  
Minnesota  
page three

information and most, if not all, agencies see them at one time or another. Similarly, draft environmental impact statements, environmental reports, and other environmental documents are distributed to any, and all, interested agencies and the public. Therefore, it appears that where possible agencies within the state of Minnesota are already implementing this recommendation to the extent practical. The major problem with this recommendation is that the term "energy related information" is so broad and encompassing, and if taken literally, it would require a public library type operation. Nowhere in the report does the author define what type of information is not getting to the public, or describe the type of information that he believes should be getting to the public. Nowhere in the report does the author show that the people of Minnesota have been denied or unduly inconvenienced by the method that is known operation for gathering energy related information. In short, the author has proposed an unmanageable solution to a problem which does not seem to exist.

Recommendations 6 and 7: Recommendations 6 and 7 deal with the citizen's right to have access to information within agency files or possession.

It appears that Recommendation 6 and 7 are not needed. Under the Freedom of Information Act, a citizen already has unqualified right of access to any nonpersonnel information contained by any agency of government including state agencies in Minnesota. The author has asked that all information be indexed, and it's not clear what he means by this. As previously mentioned, there is a great deal of information on energy related subjects. It would seem to be almost impossible to index all of this information. It should be recognized that government employees have specific jobs to do and must carry out these jobs to continue their employment. It appears that adopting Recommendations 6 and 7 would be making librarians out of government employees and would not allow them time to carry on their other duties.

Recommendations 8: Recommendation 8 deals with providing transcripts at little or no cost, removing multiple-filing requirements, and giving citizens open access to agency experts as witnesses or advisors.

The author contends that it is too difficult and costly for citizens to effectively participate in the process, and these recommendations attempt to make it easier for a citizen to participate. The present system already responds to two of the recommendations. Transcripts are available at the MEQB library, as well as regional libraries around the state. The Hearing Examiner already has the authority to subpoena witnesses if it can be demonstrated that the testimony has potential relevance to the matter of the hearing. Although the subpoena authority is not quite as direct as allowing citizens to call their own witnesses, some mechanism is needed to prevent the introduction of irrelevant testimony and unduly burden government employees.

The third portion of this recommendation asks that multiple-filing requirements be eliminated. The process, as it now stands, requires parties to a proceeding to submit information not only to the hearing examiner but to all other parties. This practice originated with the concept that a person should have an opportunity to face his accusers and also have an opportunity to know of what he is being accused. The extension of this concept to civil hearings is that parties to a proceeding have a right to know what information is going to the Hearing Examiner so that they can respond. Elimination of this duty would not be in the best interest of a fair and impartial hearing.

Recommendation 9, 10 and 11: Recommendations 9, 10 and 11 deal with the rights of individuals to intervene in siting energy facilities, and the duties of agencies in making decisions.

It appears the author has based the need for Recommendations 9, 10 and 11 on examples at the federal level of government. In the Power Plant Siting Act, there are few differences in the rights of a person (which is defined as anyone) and an intervener. Both have the right to call witnesses, provide testimony, and cross examine witnesses. About the only difference is that a party has the right to receive the prefiled testimony of the applicant (and the corresponding duty to provide all other parties with copies of their prefiled testimony), and the guaranteed right to address the MEQB. However, this last right is somewhat superfluous since the MEQB usually allows any citizen wishing to address them to do so. The MEQB has recognized the right of citizens to participate and has drafted regulations which allows them to do so. Increasing the number of parties does not appear to be a problem, but it will create more paperwork which seems to run counter to Recommendation 8.

Consideration of all interests is a proceeding substantially different than considering all relevant interests. Any agency, board or hearing examiner has the responsibility to consider all relevant interests within the context of the applicable law or regulations. To mandate that an agency must specifically respond to each suggestion, or piece of information no matter how outlandish, would tend to confuse and detract from the salient issues. In addition, considering all issues is different from agreeing with all issues. In any proceeding where there are opposing groups one side will win and the other will lose, and the side that loses will always feel that their interests were overlooked.

Recommendations 13, 16 and 17: Recommendations 13, 16 and 17 suggest that a variety of institutions and agencies be created to represent and fund unrepresented interests.

These three recommendations are among the most far reaching in the entire report. In essence, what they conclude is that our present system of government has failed and that a new system should be instituted.

Comments... Regulating  
Electrical Utilities in  
Minnesota  
page five

The author contends that despite recent attempts by the legislature to involve citizens in administrative decision making (i.e., the citizens board of the Pollution Control Agency, citizen members of the MEQB, citizen advisory committees for siting energy facilities) the "public interest" is still not being represented by the regulatory agencies or in the decision making process. We cannot agree with the author on this point.

Adoptions of Recommendations 13 and 16 would significantly increase the time and expense of constructing any energy facility. Court challenges of agency decision would be automatic because they would cost an individual nothing since expenses are paid either by the state or by the applicant. In addition, Recommendation 17 would invite a flood of legal actions against administrative agencies, because it is relatively easy to demonstrate that one has a "legitimate issue" in questioning an agency's decision. For example, when the MEQB decides to issue a route permit, it usually must select from several alternative routes, each route having a mix of environmental, economic, human impact and land use advantages and disadvantages. The time for public participation is during the route selection process, not after the agency decision is made based on all evidence presented. There are few pure right and wrong agency decisions regarding controversial project alternatives. For the state to fund any party who challenges an agency decision by meeting the low threshold requirement of presenting a "legitimate issue" could result in an extravagant waste of public funds.

Recommendation 14: The present process for plant licensing takes approximately 10 years from the first application to the commercial in service date of the unit. The major problem with the process has been the inability to plan, design and license units that far into the future. The author's recommendation of a two- to five-year extension of this process puts the public in a position of responding to utility or agency proposals with even less certainty than we now have. As fast as environmental standards and energy forecasts are changing, this would be counterproductive to good public input and participation.

Recommendation 19: The author contends that size, type and location decisions must be made together. Trying to decide a location for an energy facility without knowing what size and type is extremely difficult. The combinations available increase when one looks at coal plants, refuse plants with sizes ranging from 50 to 800 megawatts. It may be helpful in the long run to put the need and siting decisions under one agency, but processing the need and siting applications in parallel so that locations are known during the need process may be the best solution.

Recommendations 20, 21, 22, 23 and 24: The author's main intent seems to be to force a complete environmental impact statement during planning stages and have the agencies do generation and transmission planning for the whole

Comments... Regulating  
Electrical Utilities in  
Minnesota  
page six

state of Minnesota. A number of federal agencies have attempted to prepare general EIS's, and they end up creating a very confusing picture and no definite answers. The end result is that there still must be review of specific projects on a case-by-case basis to determine the environmental impact of a project.

Apart from the time and confusion caused by attempting to have a generic EIS that is updated periodically, the author has called for a process here which adds, according to his time schedule, two years to the plant licensing time period. This is based on very conservative time estimates which will probably not hold true during actual licensing. He has also changed the content and direction of an EIS by making it a decision-making document. This causes problems because of the general nature of an EIS and also the great number of subjects it must cover, with the result that a lot of writing and opinions are spent on issues which have no specific standards or regulations. This puts the utilities in an almost undefendable position.

Recommendations 26 through 36: This group of recommendations deal with changes in the Eminent Domain statute. Although some changes are necessary, we do not believe the entire law is in need of overhaul. Some of the changes suggested by the author such as providing the landowner with a handbook describing his rights, requiring the commission to explain the basis for the award in writing (or raising the amount allowed for appraisal) are sound. Requiring the condemnor to pay legal expenses has been tried in other states with mixed results, and there is not total agreement even among attorneys who represent landowners that it is a sound practice.

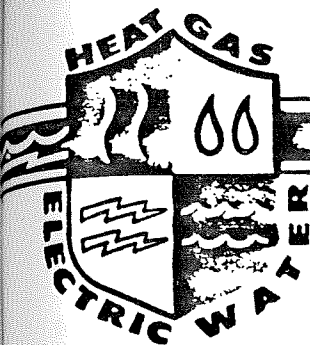
Recommendations 37-39: Recommendations 37 through 39 deal with routing and siting issues. These recommendations were examined by the legislature during the 1977 hearings to amend the Power Plant Siting Act. The legislature, after reviewing these and other suggested changes in depth, choose not to adopt them into law. However, even though they are not law the MEQB has the authority to implement Recommendations 37 and 38 at its discretion. There are many examples where the MEQB specified exactly where a transmission line should be located giving neither the utility or the landowner any flexibility in the location of a line. If it is necessary and justified, the MEQB can order the utility to follow land lines or designate the exact placement of structures at this time.

Recommendation 39 cannot be adopted as a regulation by the MEQB without without further clarification in the statute. At the present time, the law calls for a balancing between the environment, costs and reliability to excluding prime farmland would upset this balance and could only be implemented by a change in policy enunciated by the legislature.

Comments... Regulating  
Electrical Utilities in  
Minnesota  
page seven

Recommendation 40: Recommendation 40 is that a utility must complete both the MEA and MEQB processes before eminent domain action can begin. This recommendation is nothing more than what already happens. Since the MEA has jurisdiction over need, and the MEQB over siting, a utility has nothing to condemn until the process is complete. The example used by the author in citing the need for this type of change is the Tyrone Nuclear Plant in Wisconsin. The example is not applicable since the Tyrone site was purchased before the court ruled that the Tyrone Project was under Wisconsin PSC jurisdiction. This recommendation seeks to solve a problem that is not a problem.

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**OWATONNA PUBLIC UTILITIES**

208 SO. WALNUT • P.O. BOX 800 • OWATONNA, MINNESOTA 55060

February 21, 1980

Science and Technology Research Office  
Room 49, State Office Building  
St. Paul, Minnesota 55155

Attention: Mr. Patrick Lee Reagan,  
Consultant

Subject: Comments - Regulating Electric  
Utilities in Minnesota

Dear Sir,

The following comments are the writer's and do not necessarily reflect the views of the Owatonna Public Utilities or any other organization the writer may belong to. They are based on the writer's 20 years experience in the utility field.

In reviewing the above mentioned document, I wish to make several general comments before offering specific comments to the recommendations of the report. The overall document appears to be setting the stage for further polarization of the citizens of Minnesota as it applies to the utilities and the regulatory agencies of Minnesota.

The report makes a serious inditement of the whole legislative and regulatory process for the State of Minnesota. I do not believe that the data that was gathered for the report can substantiate this conclusion. It is my understanding that a total of 600 questionnaires were sent out, of which 400 were sent to interested persons, with only 18 responses. There were also nine responses from the utilities and seven from government agencies. If this, in fact, forms the total data base for this study, then I have to say that this study cannot be used for any true reform of the regulatory process in the State of Minnesota.

The report says in essence that more state agencies and more laws are necessary to reform a situation that exists only in the author's opinion, not supported by data, and if the report is an inditement of the regulatory process then how does the author perceive that more regulatory impediment is

Page 2

Mr. Patrick Lee Reagan

going to cure the problem. It appears that the regulatory and legislative processes are currently in place to do what the author wants to be done. All it needs is time to truly test out some of these procedures. It is interesting to note that to date there has not been a power plant sited under the complete regulatory process as it now exists, but the author is inditing that regulatory process even though it has not been tried to its fullest extent.

While public participation is needed and welcomed since it affects all the citizens of the State of Minnesota in the siting of power plants and transmission lines, a line is going to have to be drawn eventually as to how much the regulatory process can be slowed down by interested groups, even though these interested groups may only represent a very, very small minority of the total population that is affected by a given project. It appears from the recommendations that if we were to implement them completely, any voice being given the opportunity to intervene and supported by tax funds or portions of the electric utility's revenues would, in fact, eventually do more harm to the citizens of Minnesota than the rules and regulations are trying to prevent in their current form.

The best way for all citizens to be heard is through the legislative process and not through administrative procedures and agencies that do not have direct accountability to the citizens. If the citizens do not like the action of the legislature, they can indicate so by their letters and phone calls to the representatives, or if worst comes to worst, voting them out of office at the correct time. Whereas regulatory agencies are not accountable in any direct manner to the citizens for their actions or inactions.

#### RECOMMENDATIONS 1, 2, and 3

The Minnesota Energy Agency and the Minnesota Environmental Quality Board already have the authority to implement any of these three recommendations and to allow flexibility to the agencies. I believe it would be best to leave it as is. All projects do not require the same type or degree of notification, and some flexibility should be allowed for the determination of the project size and importance.

I do believe making reports available to all of the public libraries in the affected area would promote better access. However, I question how many of these reports will really be read.



Page 3

Mr. Patrick Lee Reagan

#### RECOMMENDATION 4

The advisor should be located in the agency rather than a separate entity. An advisor located within the affected agencies will be better informed and able to answer the questions from the public better than a separate office. In addition, there is the additional layer of bureaucracy that will result from a separate office. The advisor within the agency currently has worked very well on those limited projects where it has been used.

#### RECOMMENDATIONS 5, 6, and 7

Recommendation 5 has already been implemented. Concerning recommendations 6 and 7, there is no information to suggest that citizens have been denied the right of access.

#### RECOMMENDATION 8

To turn over the multiple filing requirements to a state agency or another agency other than the parties affected, is removing due process, in my opinion, from the parties that are affected. This recommendation makes the assumption that the agencies will at all times act 100% in favor of the intervening parties. It also assumes the agency will make no mistakes in making sure that all affected parties receive copies. Since it is very hard, at the present time, to make sure those affected parties get correct notice and correct opportunities, it is rather hard for this writer to understand why someone would want to relinquish this right.

#### RECOMMENDATIONS 9, 10, 11, and 12

Assuming there is a problem, it should be remembered that the group that loses will always feel their interests were in some manner overlooked. Therefore, considering all issues is certainly different from agreeing with all issues which is the losing parties particular stance.

#### RECOMMENDATIONS 13, 16, and 17

For the legislature to create more institutional mechanisms to provide presentation to unrepresented interests, indicates that the author does not feel that all interests are being represented. I would call the author's attention to the fact that it appears that the interests of everyone in the state are pretty well represented or have a chance to be represented in the administration of the rules and regulations. This can be evidenced by the amount of intervention on the part of various groups for power plants and transmission lines, etc. With the amount of mailings that are sent out by the agencies to those interested people and the responses that are received, I would certainly think the interests that want to be represented are, in

Page 4

Mr. Patrick Lee Reagan

fact, being represented. Has it occurred to the author that sometimes groups do not have any particular position on a particular project. Therefore, they do not appear in behalf or against these projects. Consequently, to say that these interests are not represented is totally inappropriate.

#### RECOMMENDATION 14

Recommendation 14 proposes in essence to add an additional two to five years onto the already long process of placing a power plant into commercial service. Currently it is ten years, as admitted by the state agencies themselves. It is very hard to project all of the variations that can occur over a ten year time frame, let alone a twelve to fifteen year time frame. It should also be bore in mind, the technology is changing rapidly enough that these long delays of now ten years are precluding some advantage being taken of the new technologies. Therefore, we would be further ahead to speed up the process so that we do not have so much time and money invested into a siting process that it becomes nearly impossible to back out of it. What the author is really saying is that a current application for a power plant as filed in 1980 would not be on line until 1990, provided everything went well in the permitting and construction process. According to the author of the report, if recommendation 14 was implemented, we would be talking 1995 before this same power plant could be in service if it was submitted for application this year, 1980.

#### RECOMMENDATION 15

Collecting rates under bond has generally been recognized as an effective way to avoid the effects of regulatory lag and have the revenues more closely match the expenses and the rate base. Since rates are based upon rates of return to the utility, it is very incumbent upon the utility to file and receive, if necessary, rate increases as close as possible to its estimation that additional rate recovery is necessary. Since Minnesota has a 90 day suspension of the application for a rate increase to make sure the application is complete and proper, this allows a quick review, but it does offer the regulatory agency much longer time to clearly investigate whether the rate increase is justified. The utility gains the advantage that it is recovering its costs more closely to their actual occurrence and the customer gains from the fact the utilities financial position is able to be kept in better shape to reduce the amount of borrowings necessary to finance current expenditures and future additions to the system. This holds true whether these utilities would be investor owned or consumer owned such as municipals or the REAs. If there is perceived to be a problem that utilities are raising monies through the rate process, then supposed abuse could be handled in much more satisfactory ways than eliminating the rates under bond.

Page 5

Mr. Patrick Lee Reagan

RECOMMENDATIONS 19, 20, 21, 22, 23, and 24

It would appear that the state would be much better off if we were to pattern our process to work with the federal EIS structure rather than trying to implement a structure for EIS. Permitting this is completely not in step with the federal EIS structure. If the federal EIS does not specifically cover Minnesota in its applications, then an addendum could be worked out to the EIS process to cover the unique, if any, applications for Minnesota. However, to require several EIS or partial EIS procedures in the permitting process, is just adding more obstacles to the already rather cumbersome project applications. What the author is suggesting is that the current process, if it worked perfectly, requires 3½ years, but would now require 4½ years. This seems rather unacceptable, especially if it is considered the preparation time for the Certificate of Need is not included in here. If that is included, then we have 5½ years, almost two more years than is currently required.

RECOMMENDATION 25

The use of life line rates has been studied in many other states, and as of this writing, no conclusive evidence has been submitted that the intent of life line rates really works. Some assumptions are made that the low energy users are in fact, the poor or the fixed income people. This has not been borne out in actual fact. The life line rate also is a broad brush approach to a problem that is more properly handled in other agencies that are currently in existence to handle these specific problems, such as the amount of income that a person can afford to spend on energy. There has been several recommendations to the Minnesota legislature as studied by the various committees, such as the Committee on Commerce and the House Select Committee on energy. Both of these have come to the conclusion that a life line concept cannot be supported in Minnesota.

RECOMMENDATIONS 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36

Dealing with eminent domain covers territory where the attorneys are much more expertise in knowing what is acceptable in the legal process. However, from the writer's standpoint, the recommendations as submitted certainly make sense and should be pursued in the best efforts so that it treats the property owner with all due process and the proper respect and importance is given to the individual's rights as a property owner.

Page 6

Mr. Patrick Lee Reagan

RECOMMENDATIONS 37, 38, and 39

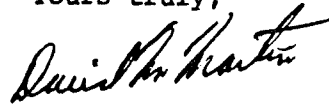
The MEQB already has authority to order exact locations. The MEQB has authority to implement recommendations 37 and 38 at its discretion and if prime agricultural land is excluded (no definition being given for prime agricultural) it appears that in parts of Minnesota there would be little if any transmission line construction able to take place. Even with small power plants located next to the primary energy users, transmission lines are still required to bring power to the energy users and to connect other small power plants for reliability. The need for transmission lines still exists and to exclude large amounts of real estate from transmission lines would endanger the economic safety and welfare of many of the citizens of Minnesota, rural as well as urban.

RECOMMENDATION 40

Recommendation 40 is already happening. A utility has nothing to condemn until the MEA and the MEQB has, in fact, completed their processes. This problem cannot exist since it is not currently a problem.

I would be most happy to discuss these recommendations and any questions you may have concerning my comments any time. Please feel free to write or call me.

Yours truly,



David M. Martin,  
General Manager

DMM/mm

A COMMENTARY ON  
THE DRAFT REPORT

Regulating Electrical Utilities

in Minnesota:

The Reform of Legal Institutions

INTRODUCTION:

One of our most serious concerns with the report is that it is directed at problems that may exist only in the mind of the author. A total of about 600 questionnaires were sent out. Of about 400 questionnaires sent to "interested persons", only 18 responses were received. These 18 responses plus nine from the utilities and seven from government agencies supposedly form the total data base on which dramatic and far reaching changes in the statutory structure are proposed. Yet, the responses play almost no role in the analysis. There is very little in these responses that suggests a serious problem exists. It appears that the author reviewed in great detail what has been proposed in other states and at the federal level and then uncritically and without evaluation, proposed that many of these changes be instituted in Minnesota.

Unfortunately, the report seems to take the position that the only solution to the perceived problems is the formation of new or expanded government agencies. At our count, four new governmental organizations would result if this report were implemented. It does not seem reasonable to us that solutions to either real or perceived problems in the administrative decision-making process are best achieved by instituting new administrative agencies. If problems really do exist, we suggest that

other solutions more consistent with the existing administrative structure could be found. However, we seriously question whether this report represents anything other than the opinion of the author. The report does not include any data or documentation to suggest that this opinion is indeed "public opinion".

Over the past several years, the Legislature and the administrative agencies have responded to recognized pressures for more public involvement in administrative decisions, by instituting citizens' boards, citizens' advisory committees and numerous public hearings. This report appears to have disregarded or consider them inadequate for some reason. The report implies that the regulatory structure for energy facility permitting, citizens' advisory committees, public hearings, public information meetings, etc., are all inadequate and must be augmented substantially. Have these efforts failed? How? Will more administrative agencies provide a better solution? We doubt it.

The Minnesota Wisconsin Power Suppliers Group is supportive of broad public participation in administrative decision-making as has already been mandated by the Legislature. We see no pressing need for new institutions or major modifications. It is our belief that public opinion is most effectively reflected through the Legislative process and not through quasi-judicial administrative structures that are remote from public accountability. The Legislature has the power to review administrative rules and to oversee agency decisions. In addition, all agency decisions must reflect the policy of the Legislature and these decisions are subject to judicial review.

Finally, we would hope that if modifications are made to increase public involvement, that those steps would be directed at promoting consensus, not polarization. We believe the structure of agencies

proposed in this report will promote polarization and will set up a structure in which any voice, regardless of how biased, is given an arena in which to perturb decision-making. In closing these introductory general comments, we hope that this report will be viewed as what it is, a single report providing one individual's attempt to address many highly complex issues without any real data, no actual experience with the processes being studied, and without significant outside input.

In the following specific comments, we have tried to combine a number of recommendations under general groupings in order to facilitate consensus among the diverse utilities included with the M/WPSG.

#### RECOMMENDATIONS 1, 2 and 3

Recommendations 1, 2 and 3 deal primarily with ways of increasing the public's awareness that hearings are being conducted on energy related issues. The recommendations contain nothing new, since the Minnesota Energy Agency and the Minnesota Environmental Quality Board already have statutory authority to implement any of the three recommendations. Therefore, it appears that the author's intention is to require (by statute) that these recommendations be followed in all cases. However, not all projects require this type of notification. The regulatory agencies should have the flexibility to use those procedures that seem most appropriate and effective considering the project and the impacted population.

Although we have no quarrel with more extensive notification to the public in regard to energy issues, we find very little basis for the assertion that there is not enough notification of formal proceedings now. If there is a complaint about lack of information, it is generally in reference to that period of time prior to the formal application by the

utilities (either need or site) and thus, prior to a formal hearings announcement. The utilities are working to minimize this difficulty by making a positive effort to open up the planning process to the public during the development of applications and prior to submittal of formal applications for agency decisions. This effort by the utility is illustrated in the early public involvement in the UPA's Benton County to Milaca transmission line, the early announcement of the planning process for NSP's consideration of a metropolitan generating facility and the early announcement of the Southern Minnesota Municipal Utilities Association's potential for generating needs in southern Minnesota. In all three of these examples, public announcements were made through news releases and meetings with local government and public groups prior to any formal applications in order to alert the public at the earliest stages of planning.

#### RECOMMENDATION 4

In the short experience that the utilities have had with the public advisor concept, they have found it works reasonably well. The reason is that the public advisor has been a generally knowledgeable single point of contact within the agency and has acted as a facilitator rather than an advocate. That is, the public advisor has provided a central point within the agency for citizen inquiry about a project. At the same time, the public advisor has provided the citizens with an objective explanation of the process and their rights.

One of the main advantages is that the public advisor is located within the MEQB. The disadvantage of being located outside of the agency is that the public advisor would not be aware of who within the agency can provide information to the public and what information exists. Thus, we



do have difficulty with the second part of this recommendation -- the creation of a new office of public advisor. This will simply promote conflict and misunderstanding rather than resolution and understanding. As we have said above, government works best as a facilitator -- advocacy in government simply institutionalizes special interests.

#### RECOMMENDATIONS 5, 6 and 7

We see no problem with promoting coordination between the agencies and the provision of adequate information to citizens. In fact, the MEQB was established specifically to accomplish these ends. Thus, Recommendation 5 has already been implemented.

The other two recommendations appear to be based on the assumption that citizens have been denied the right of access. We have no information that would suggest this to be true. Citizens already have unqualified right to access to non-personal information held by any agency. No one, as far as we are aware, has been denied information by the agencies in any procedure related to environmental review. We agree with the need of open and free access to public information, but at the same time, we oppose the idea that our governmental agencies should act as public librarians for potentially aggrieved special interest groups.

#### RECOMMENDATION 8

We agree that transcripts should be made available to the public, but there should be reasonable limits. It would seem worthwhile for transcripts to be placed at all public libraries within the study area (whether that area be a route or site). We cannot agree however, that the multiple file requirements should be removed, and we do not feel that this is in the best interest of the parties involved. The question would

appear to be one of due process--notification of the other parties. The process as it now exists, requires the parties to a proceeding to submit information not only to the Hearing Examiner, but to all other parties. This practice has its roots in the concept that each of us should have the opportunity to face our accusers--and also have the opportunity of knowing of what we are being accused. The extension of this concept to civil law requires that parties to a proceeding have a right to know what information is being provided to the Hearing Examiner in order to adequately respond. Transferring this right and duty to the State would not be in the best interest of a fair and impartial hearing--and most certainly not in the best interest of the parties involved.

As far as we know, the public already has access to agency staff--within reason, of course. However, the staff cannot be unqualified in their response to individuals. The agencies have statutory requirements placed on them by the Legislature and these must be met--this is the primary duty of the agencies in their response to the best interests of all citizens as expressed by the Legislature.

#### RECOMMENDATIONS 9, 10, 11 and 12

These four recommendations again simply assume that there is a problem where there is no substantiation that one exists. In what specific instances have the solutions suggested in Recommendations 9, 10, 11 and 12 been needed? We do not see where and in what instances there have been problems. If there is no problem, no solution is required.

In regard to Recommendation 11, the agencies now have the responsibility to listen and to respond to all relevant interests. Consideration of all interests is substantially different from consideration of all relevant interests. Any agency, board or hearing

examiner has the responsibility to consider all relevant interests within the context of the applicable law or regulations. To mandate that an agency must specifically respond to each suggestion or piece of information, no matter how unreasonable, would tend to confuse and detract from the actual questions at issue.

In addition, considering all issues is different from agreeing with all issues. In any proceeding where there are opposing groups, one group will win and the other will lose. The group that loses will always feel that their interests were overlooked.

The responsibility of the agencies is to notify and listen to the interested public and then evaluate the information received. However, "all interests" is simply not determinable.

#### RECOMMENDATIONS 13, 16 and 17

These recommendations are the most far reaching of all those in this report and our comments in the introduction are directed most specifically at these recommendations.

The key to these recommendations, in our minds, is the first sentence in Recommendation 13. The sentence reads: "The Legislature should create a variety of institutional mechanisms to effectively provide representation to unrepresented interests in governmental decision-making". Who are these unrepresented interests? Why are they not represented by our elected officials as we all are? How will the formation of an Office of Public Counsel, an Office of Citizens' Advocate or a Center for Intervention assure adequate and fair representation of the best interests of our total citizenry? Which "public" or citizen group gets representation in a process where several routes or sites are being considered? Is the only solution to real or perceived problems in

the administrative agencies the formation of additional administrative agencies.

Recommendation 17 would invite a flood of legal actions against administrative agencies because it is relatively easy to demonstrate that one has a "legitimate issue" in questioning an agency's decision. Requiring the State to fund any party who challenges an agency decision by meeting the low threshold requirement of presenting a "legitimate issue" would result in chaos and unending delay.

In the past, the Legislature has acted responsibly to try to ensure effective citizen involvement in administrative decisions. The citizens' board of the Pollution Control Agency was an early effort at this, as are the citizen participants in other agencies -- particularly the citizen members on the MEQB. In addition, we have the Citizens' Advisory Committee on the Power Plant Siting Program and the numerous advisory committees on site and routing decisions. In what way have these many citizen participants failed in their intended purpose? The report has not even attempted to evaluate the effectiveness of these groups, but has only -- blindly, in our opinion -- proposed additional administrative agencies.

#### RECOMMENDATION 14

The present process for power plant licensing takes approximately 10 years from the first application for a Certificate of Need to the commercial in-service date of the unit. This already presents a major problem because of the difficulty and uncertainty in forecasting, planning, designing and licensing units. Forecasting need, 10 years into the future, is fraught with uncertainties -- and the uncertainty increases as the length of time increases. One should attempt to structure the

Certificate of Need as close as possible to the proposed in-service date. The author's recommendation of a two to five-year extension of this process puts the public in a position of reacting to utility or agency proposals with even less certainty and dependable information than we now have. Considering how fast environmental standards, technology, and the economic conditions change, we believe that this would be counter-productive to effective permitting and public participation.

One should recognize that extending the process two to five years, as this report proposes, would mean that all system additions scheduled for 1990 would already be two to five years behind schedule.

#### RECOMMENDATIONS 19, 20, 21, 22, 23 and 24

In regard to environmental regulations, the general comments are appropriate. First, the structure of the statutes and the regulations have been changed so often, we have yet to see a power plant application and only one transmission line application come under the entire process. In the one transmission line application (UPA-TR-2) where the entire process was followed, the process worked without controversy on either side and produced general public consensus. In fact, the utilities' efforts to work with local citizens and the Citizens' Advisory Committee resulted in a scheduled hearing in which no adverse testimony was presented. The Citizens' Route Advisory Committee, the utility involved, the MEQB staff, and apparently the broader public, all supported the final route recommendation that was brought before the MEQB for approval. In regard to the questions of power plant permitting, no proposal has yet gone through the entire process from Need through Siting through EIS. It seems unwise to change a process that has not even been tested on no more evidential basis than that presented in this report. There are

problems -- particularly of the extended time required for the process as discussed below -- but since the process seemed to work well in its first complete test, it does not make good sense to change it without evidence that it is either unworkable, unfair or flawed.

The second difficulty that we have with the proposals contained in these recommendations is the time required to complete the permitting process. This is one of the most significant obstacles that proposers face in this State. The present structure, if it functioned perfectly and without extensive data requirement, would take approximately two and one-half years to go from Application for Need through Siting and to a complete EIS. Since for a power plant, MPCA requires one year of site specific data prior to the EIS, if the system worked perfectly, without delays, it would require about three and one-half years. As the individual parts of the system (Need, Siting, EIS) have operated historically, we estimate that about four and one-half years are required to go through the entire process to obtain a final construction permit. This does not include the time required for preparation of the application for a Certificate of Need. In the document under review, the process would require five and one-fourth years -- almost two more years (not including the time required for the preparation of applications for Certificate of Need and Site Certification and the time for data collection).

It also appears that the author intends to propose at least two complete Environmental Impact Statements, starting during the planning stage and ending with a final project EIS. Further, it is proposed that the agencies do generic EIS's and generation and transmission planning for the whole State. We should learn from the federal experiences in this regard. A number of federal agencies have attempted to prepare generic

EIS's and they have resulted only in confused analyses and no definitive answers. The end result will be that proposals will still have to be reviewed on a case-by-case basis. Very little, if anything, would be gained.

To complicate matters even more, the state process -- even as it exists today -- must be integrated with the federal requirement for an EIS. The federal process consists of a single step -- preparation of a Federal Environmental Impact Statement (FEIS) -- prior to formal permitting or licensing procedures. The FEIS is intended to incorporate statements concerning all issues of concern into a single effort: i.e., need; alternative energy systems; alternatives of size, siting or fuel; conservation; etc. Because of conflicting and duplicative requirements, federal and state requirements completed concurrently now can require six or more years for completion rather than the approximately four years that the state process would take alone.

If we must change, why not pattern the process to work better with the federal EIS structure?

#### RECOMMENDATIONS 37, 38 and 39

Recommendations 37 through 39 deal with exact locations in routing and siting. Although not law, Recommendations 37 and 38 are present general practice for utilities. In any event, even though not law, the NEQB has the authority to implement Recommendations 37 and 38 at its discretion. There are a number of instances where the NEQB has specified exact locations, giving neither the utility nor the landowner any flexibility for negotiation.

Since following property lines where ever practical and negotiating locations with landowners is the present general practice -- and since the

MEQB already has authority to order exact locations, these recommendations simply express today's practice.

If prime agricultural land is included as an exemption, it would appear that there would be very little, if any, transmission line construction in the southern part of the State. It does not appear to us that this makes much sense in terms of reliability, costs or the best interests of the people of southern Minnesota.

#### RECOMMENDATION 40

Recommendation 40 is that a utility must complete both the MEA and MEQB processes before eminent domain actions can begin. This recommendation is nothing more than what already happens. Since the MEA has jurisdiction over need and the MEQB over siting, a utility has nothing to condemn until the process is complete. The example used by the author in citing the need for this type of change is the Tyrone Nuclear Plant in Wisconsin. The example is not applicable since Tyrone site was purchased before the court ruled that the Tyrone Project was under Wisconsin PSC jurisdiction. This recommendation seeks to solve a problem that is not a problem.





# MINNESOTA POWER & LIGHT COMPANY

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PHONE (AREA 218) 722-2841

THOMAS A. MICHELETTI  
Director of Governmental Affairs  
and Assistant Secretary

February 21, 1980

FEB 25 1980

The Honorable Wayne Olhoft, Chairman  
Joint Legislative Committee on  
Science & Technology  
29 State Capitol Building  
St. Paul, Minnesota 55155

Dear Senator Olhoft:

Pursuant to our earlier communications I am enclosing Minnesota Power & Light Company's comments on the draft report, Regulating Electrical Utilities in Minnesota; The Reform of Legal Institutions. Additionally, on behalf of the Environmental Committee of the Minnesota/Wisconsin Power Suppliers Group (M/WPSG), you will find a joint response and commentary on the major environmental/regulatory portions of the report: specifically, Recommendations 1-14, 16, 17, 19-24 and 37-40. For your information, the Power Suppliers Group consists of the following electric utilities serving Minnesota and Western Wisconsin:

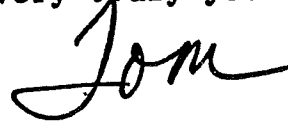
Cooperative Power Association	Minnesota Power & Light Company
Dairyland Power Cooperative	Minnkota Power Cooperative
Interstate Power Company	Northern States Power Company
Lake Superior District Power Company	Otter Tail Power Company
Minnesota Municipal Utilities Ass'n.	United Power Association

As you know, the report is voluminous and the issues very complex. We have reluctantly devoted a significant amount of man-hours to this effort. Considering that complexity and that several utilities may have differing views, the M/WPSG comments represent only those areas where reasonable consensus could be developed. Also, for the most part, the comments are to grouped recommendations rather than individual recommendations and each of the utilities has retained the prerogative of responding individually. In this regard, because of the breadth and depth of the report, the lack of comment on any specific issue or recommendation should not be taken to imply approval or lack of disagreement. Further, our comments are directed only at this report and the recommendations therein. If, in fact, legislative proposals surface regarding various issues touched on in the report, we will address these as they arise.

The Honorable Wayne Olhoft  
February 21, 1980  
Page 2.

To summarize generally, we are of the opinion that while portions of the Report may be worthy of further consideration and study, the bulk of the recommendations are unsupported, undocumented, and erroneous. We would suggest that the Report does not warrant publication.

Very truly yours,



Thomas A. Micheletti

TAM:ed  
Enclosures

Bcc; ✓ Dr. John G. Malinka (w/e)

MINNESOTA POWER & LIGHT COMPANY'SADDITIONAL COMMENTS ON THE DRAFT REPORT,"REGULATING ELECTRICAL UTILITIES IN MINNESOTA:  
THE REFORM OF LEGAL INSTITUTIONS"

Recommendation 15: Response is contained in the two attached papers from the Minnesota Investor-Owned Electric Utility Information Guide.

Recommendation 18: (Was omitted from Report Summary)  
Presently all agency fees are paid by the utilities in the MEA, MEQB or MPSC either by the annual assessment, a contested case assessment, or direct billing on a per hour basis. We have never encountered a situation where such an agency billed a "plaintiff" for any services the agency performed.

Recommendation 25: Response is contained in, An Analysis of the Lifeline Rate Issue, a study conducted by Mr. Randall J. Falkenberg. The study pertains to lifeline rates and MP&L customers.

The Legislature has considered the energy assistance proposals as a more efficient and effective method of assisting low income people with their home energy costs. MP&L has supported the energy assistance concept since 1978.

Recommendation 26: MP&L currently mails the petition with the Notice of Hearing as a matter of courtesy to the landowner. The petition should definitely not have to be published as notice as it is too long and publishing would be costly.

Recommendation 27: The non-contiguous tracts of land provision as covered under MSA 117.086 should be left as presently written. To allow the commissioners to determine whether the tracts are dependent and use connected may impose a burden of decision upon the commissioners well in excess of their capabilities. When the propriety of use relationship is debated, this seems clearly to be an area reserved for appeal before a salaried judge.

Recommendation 28: It should also be noted that an appeal from a commissioners' award is a Trial de Novo. That is, the commissioners' award has no binding precedent on the jury when an eminent domain appeal is heard. Therefore, requiring the commissioners to make findings of fact would not cause a legal delay in a challenge to those findings and a subsequent appeal. Any problems with the commissioners' findings would generally be ignored when the matter goes into an appeal before a jury because the damages are totally examined for a second time without regard to the prior findings.

Recommendation 29: MP&L concurs.

Recommendation 30: Inasmuch as it is often difficult in a small county to locate a qualified real estate appraiser who is unbiased to either party to the action under consideration, the following may be more appropriate: (1) a real estate broker, (2) a qualified real estate appraiser or other person familiar with real estate values, and (3) an attorney knowledgeable in eminent domain or real estate law.

Recommendation 31: In regard to burden of proof on appeal, it usually is the case that the landowner wants more money and the utility wants to pay less. In other words, if one party appeals, the other party generally enters an appeal in the opposite way even though the second party may not have appealed had the first party not appealed. It may be appropriate to require each party to shoulder the burden of proof as to any value different from the commissioners' award. In other words, the utility would have the burden of proof of showing that the land is worth less and the landowner would have the burden of showing that the land is worth more. This, of course, would change existing law, but in fact, would probably not make a major difference in jury awards.

Recommendation 32: Initially, this recommendation changes existing procedure followed by MP&L to the extent that awards in all actions, regardless of whether the project falls under MEQB jurisdiction or not, can be received by the landowner in ten installments, the balance drawing interest. It is improper to have to pay interest on a commissioners' award that is either refused by the landowner or that cannot be tendered due to liens or other encumbrances on the property. In the case of appeals, should the award rendered by the jury exceed that awarded by the commissioners in the initial action, interest may then appropriately be payable on the initial amount of the commissioners' award for the period of time from the filing of the report and award of commissioners until the jury award payment is made to the landowner. There is no point to be materially gained by applying a retroactive clause to include all awards presently held by the courts to this provision of proposed legislation. Finally, to allow the money deposited with the Court to be released upon landowner demand places an undue burden on the Clerk. He must then decide whether all reasons causing the initial deposit have been satisfied. This should remain a judge's decision.

Recommendation 33: To require the utility to pay all appraisal, witness and attorney fees in appeals is simply going to encourage landowner appeals, even in the case of a satisfactory award, as the element of risk becomes almost nil. Present law calls for covering responsible appraisal fees up to \$300. (MSA 117.085) It would seem that all related expenses should be included on the commissioner level only if the award exceeds our offer by at least \$700. This margin would eliminate the tendency of the landowner to completely disregard our offer.

It should also be noted that many attorneys accept eminent domain cases on a contingent fee basis, especially when a major taking is involved. Therefore, paying attorneys' fees would be a major burden on the utilities in a large settlement, and if there is not a large increase in value, the landowner would have to pay very little or no attorneys' fee.

Recommendation 34: Although it is generally MP&L's present practice to have appraisals done and offer that price to the landowner, it can cause some major delays and potential issues at trial in regard to whether the Company properly negotiated the matter. If such a statute is passed, a section should be placed therein which states that the burden is on the landowner to show that the Company did not attempt to negotiate properly.

Recommendation 35: The nature of condemnation generally indicates that someone is not totally satisfied with the taking of his property, either due to the value or to a general objection to the facility in the first place. Therefore, as a general matter, feelings are on edge, and it would be much more likely that a landowner would accuse the utility of misdealing.

Recommendation 36: Presently, utilities are working with the MEQB in its proposed Post Designation Program. Part of that program calls for the development of a handbook. The Wisconsin handbook is very complex and confusing to the landowners.

Recommendation 37: This could in some cases create a domino effect on structure placement, involving repeated calls on landowners with whom negotiations have been completed. MP&L is opposed to this for the reason that time limitations will often be overrun and more ill will may be created than positive feelings toward the utility.

Recommendation 38: The following of land lines with transmission lines under MEQB jurisdiction is presently a recommended procedure and as such should not have to be pursued further. To amend this to a mandatory status may, in some instances, invoke an unnecessary hardship on the landowner.

Recommendation 39: If the MEQB amends its policy to include prime agricultural land as an exemption, it would appear that there would be very little, if any, transmission line construction in southern and western Minnesota in the future. The increased cost of fossil fuels and their related scarcity is going to create a greater need for electric power in all parts of the state. This type of restriction, therefore, creates a burden to utility and consumer alike that overshadows benefits to individual landowners.

Recommendation 40: We doubt that any court would allow condemnation prior to a Certificate of Need or Consturction Permit or Certificate of Site Compatability being issued. The law, as it presently exists, seems to indicate that the state must first grant these particular permits. Further, a utility would not proceed to condemnation prior to having a site or a route due to the fact that it would be spending money for something it was not sure it would need. As a matter of fact, such a condemnation procedure could serve to turn the dccision away from that site or route.

DISCUSSION MEMORANDUMRATES UNDER BOND

Minnesota Statutes Chapter 216B which provides for state regulation of gas and electric utilities was enacted by the 1973-74 legislature after many hours of testimony and discussion.

After very extensive consideration, the legislature added the following provisions to the proposed Statute:

216B.01 Legislative Finding. It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, --- provided herein.

216B.16 Subd. 6. The Commission, in the exercise of its powers under Laws 1974 Chapter 429 to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.

Regulatory lag is one of the biggest obstacles preventing a utility from earning a fair and reasonable return on its investment. A major factor contributing to regulatory lag is the delay in time from the time the utility files for a needed increase in rates and the time the utility actually starts collecting the higher rates.

The 1974 legislature recognized this fact and as a result included the rates under bond procedure in the regulatory statute they adopted.

Under present procedures, when a utility desires a major change in rates, it files a notice with the Commission. The contents of this filing are covered by Rules of Filing which the Commission has adopted. These rules provide for a very complete filing of the material required to make a determination of the need of a utility for a change in its schedule of rates including the prepared testimony of all witnesses that the utility intends to have testify.

The statute provides that the Commission has 90 days to determine if it should suspend the rates. A suspension may be for an additional 90 days and during this time the Commission is to determine whether there can be a resolution of all issues raised by the Department Staff or others to its satisfaction. If not, the matter goes to the Office of Hearing Examiners for hearing and the suspension is extended to 9 months. If the filing is suspended (which it always is for any material change), the statute provides that the utility may put the filed rate schedules into effect under bond after the 90-day period. If the final findings of the Commission provide for less revenue than what the utility filed for, then the utility must refund to the customers the difference plus interest at the prime rate in a manner approved by the Commission.



If the Commission has not made a final determination by the end of the 9-month suspension period, the schedule filed by the utility is deemed to be approved by the Commission.

Some of the advantages of the "rates under bond" procedure are:

1. The Commission has 12 months in which to reach its final decision. This removes pressure on the Commission for a quick decision and gives ample time for complete study and consideration of all the complex issues involved.

The procedure followed by the Commission in Minnesota is probably the most complete and thorough of any state. It provides for the following:

- a. Time for the Commission staff to review the filing to determine that it is proper and complete before rates go into effect under bond.
- b. Time for complete evidentiary hearings before a professional hearing examiner so that a complete record is compiled for the Commission.
- c. Time for public hearings so that a record of the concerns of members of the public are available to the Commission.
- d. Time for the hearing examiner to make his recommendations to the Commission.
- e. Time for the Commission to hold hearings to receive oral arguments on exceptions that any party may take to the hearing examiner's recommendation.
- f. Time for the Commission to review the complete record and reach a final decision.

2. The customer pays the actual costs of the service he receives as determined in the Commission's final order. Any excess which the customer may have paid under rates under bond will be refunded to him plus interest at prime interest rates. The refund procedure prescribed by the Commission results in the customer's ending up having paid only what he would have paid had the final rates prescribed by the Commission been in effect the full time. In addition, the customer receives the interest paid on the money refunded.
3. Regulatory lag is lessened and therefore the Commission has been able to justify a lower rate of return to the utility. A lower rate of return results in lower rates to the customer.
4. The procedure helps to eliminate earnings attrition which helps to maintain a higher financial rating for the utility. This results in a lower cost of borrowing money and therefore lower rates to the customer.

The Public Service Commission had this to say about regulatory lag in its Order on Northern States' 1975 rate case:

"Under the Minnesota Public Utilities Act, a utility may put proposed rates into effect subject to refund as soon as one month (now 90 days) after the date on which it applies for the rates. Furthermore, the Commission must act on the utility's application for a rate increase within 10 months (now 12 months) of the date on which the application is filed or the rates go into effect automatically. The effect of these provisions of Minnesota law is

to decrease substantially the regulatory lag which has plagued utilities in other jurisdictions. In times of high inflation such as these, regulatory lag is a major contributor to earnings attrition experienced by utilities. It is obvious that this attrition is one of the facts which an investor takes into consideration in determining what rate of return he will require in order to invest in utilities stock. Accordingly, these favorable statutory provisions decrease the risk of earnings attrition to the investor and thus reduce the rate of return he will require."

Some of the objections that have been raised as to the rates under bond procedure are:

1. Customer is charged rates that have not been approved by the Commission.

This is not really valid, since the rates the customer actually ends up paying are those ultimately approved by the Commission; and if that is less than the interim amount collected under bond, the difference is returned to the customer with interest.

2. Results in a big windfall for the utilities since they can file for revenues far in excess of what is justified and they will have the use of the excess revenue collected free or at very low cost of money.

When a utility files for an increase in revenues, the filing must include all necessary documents to substantiate the need, as specified by Commission rules. The Commission will reject the

filing and the proposed increase if they determine that the filing is incomplete.

The Commission has also in their rules established "prime interest rate" as the rate a utility shall pay on the money to be refunded as a result of the Commission's final order. Since utilities can borrow money directly from a bank at the prime interest rate, there is no incentive to purposely collect excess amounts from customers.

Actually many utilities can borrow money at less than prime interest rates by selling commercial paper.

3. Results in involuntary use of customer's money by the utility and thereby creates a hardship for the customers.

This argument is blown way out of proportion, since the amount of refund the average residential customer gets usually is less than \$25.00. The amount of protection the customer receives under the current rate procedures in Minnesota more than justifies this small amount of inconvenience.

We believe that anyone who fully understands the "rates under bond" procedure and fairly evaluates it will agree that it is essential in order for a utility to have any chance of actually earning the return on its investment that the Commission determines to be "fair and reasonable", that it allows adequate time for the Commission to make a fair decision, and that it fully and fairly protects the interests of the consumer.

The utilities will need to be in sound financial condition in order to be able to attract the capital necessary to build the facilities that will be required to meet the future needs of their customers. Without the "rates under bond" procedure, it will be very costly and maybe impossible for them to do so.

August 15, 1978

SUPPLEMENTAL TO  
RATES UNDER BOND

The following will supplement other information being provided with respect to Rates Under Bond and will discuss specifically the matter of what effects the discontinuation of Rates Under Bond would have on MP&L's revenues.

MP&L's 1977 revenues were examined with the results graphically presented on Figure 1 attached.

As a result of the extensive hearings and investigation into MP&L's 1976 and 1977 rate filings, the Commission determined that MP&L's cost of serving its customers was approximately \$200 million in the year 1977 as shown by the first bar graph. This included a 13.25% return on common equity for the rates in effect during January through April and a 13% return on common equity for rates in effect during May through December. The Commission permitted MP&L to charge rates which produced those revenues. This \$200 million represented by the first bar graph includes all major components of cost of service - fuel and purchased power, labor, depreciation, operation and maintenance expenses, interest on bonds, taxes, and a return on stockholder's investment.

The Company actually collected \$187 million in calendar 1977. Of this amount \$14 million was revenues collected from MPSC jurisdiction customers subject to refund which the Company was allowed to keep after the February 1978 Commission ruling. This is illustrated by the middle

bar graph. Actual financial results were worse than anticipated in the filings because of an iron mining workers' strike of four months in the last half of 1977, and due to generating unit problems which increased purchased power costs.

However, without the current rates under bond provisions the Company would not have been able to collect the \$14 million the Commission found to be due the Company. Since expenses such as fuel and purchased power, labor, O&M, property taxes, and bond interest all must be paid first it would be MP&L stockholders who would have suffered this loss, along with some reduction in income taxes. This is illustrated by the bar graph on the far right. Earnings for common stock would have dropped well below the level of dividend payments, requiring cuts in dividends or borrowing to pay dividends. This would have been a clear case of confiscation of investor capital, an unfair practice and one which investors will not tolerate.

Since the 1977 filing covered only about eight months of calendar 1977, the full impact of not having Rates Under Bond available would have been much worse than shown in Figure 1. The full impact, part of which would have been felt in calendar 1978, would have been to almost completely wipe out earnings for common shares. The Company could not finance its future construction programs on any kind of reasonable basis with such an adverse financial picture for equity investors.

It is easy to see that the Company could never receive the return on investment which the Commission determines is appropriate if Rates Under Bond were not permitted, because of inflation and increases in the

amount of investment committed to serving consumer needs from year to year. Figure 2, attached, illustrates year to year deficiencies and points out further the inherent inequity of removing the Rates Under Bond provisions. Each year as costs of providing electric service go up there will be uncollectible revenues.

It should be noted that in 1980 the impact will be extremely severe because MP&L will finish construction of a \$400 million power plant, Clay Boswell #4. During that year cost of capital expenses alone will total nearly \$40 million on that plant. If MP&L isn't allowed to place into effect Rates Under Bond in 1980 the stockholder will be stuck for the additional expenses on the plant because there would be a year's delay before rates covering these expenses could be put into effect to recover them from the ratepayers.

Figure 2 shows MP&L's projected total costs to serve and assumes that Boswell #4 commences operations on January 1, 1980 and it is not permitted to make application for a rate change and place rates in effect under bond. There will be some \$46 million of uncollectible expenses during the first year of operation. It would be grossly unfair to the investors and totally unrealistic from a rational point of view to deny investors their rightful compensation for the use of their capital. It is the customers (ratepayers) who are receiving the benefits of the plant and should be paying for the cost of the capital.

Rates Under Bond provisions should be maintained because they protect the consumers interests by refunding with interest any amounts determined by the MPSC to be in excess of what should be allowed, and helps assure the financial viability of the electric utilities. The



inconvenience, if any to the consumer is fully compensated for by the interest paid on refunded amounts, and the consumer enjoys the very important added benefit derived from having available an adequate and reliable supply of electric service.

August 15, 1978

1977 MP&L FINANCIAL STATISTICS

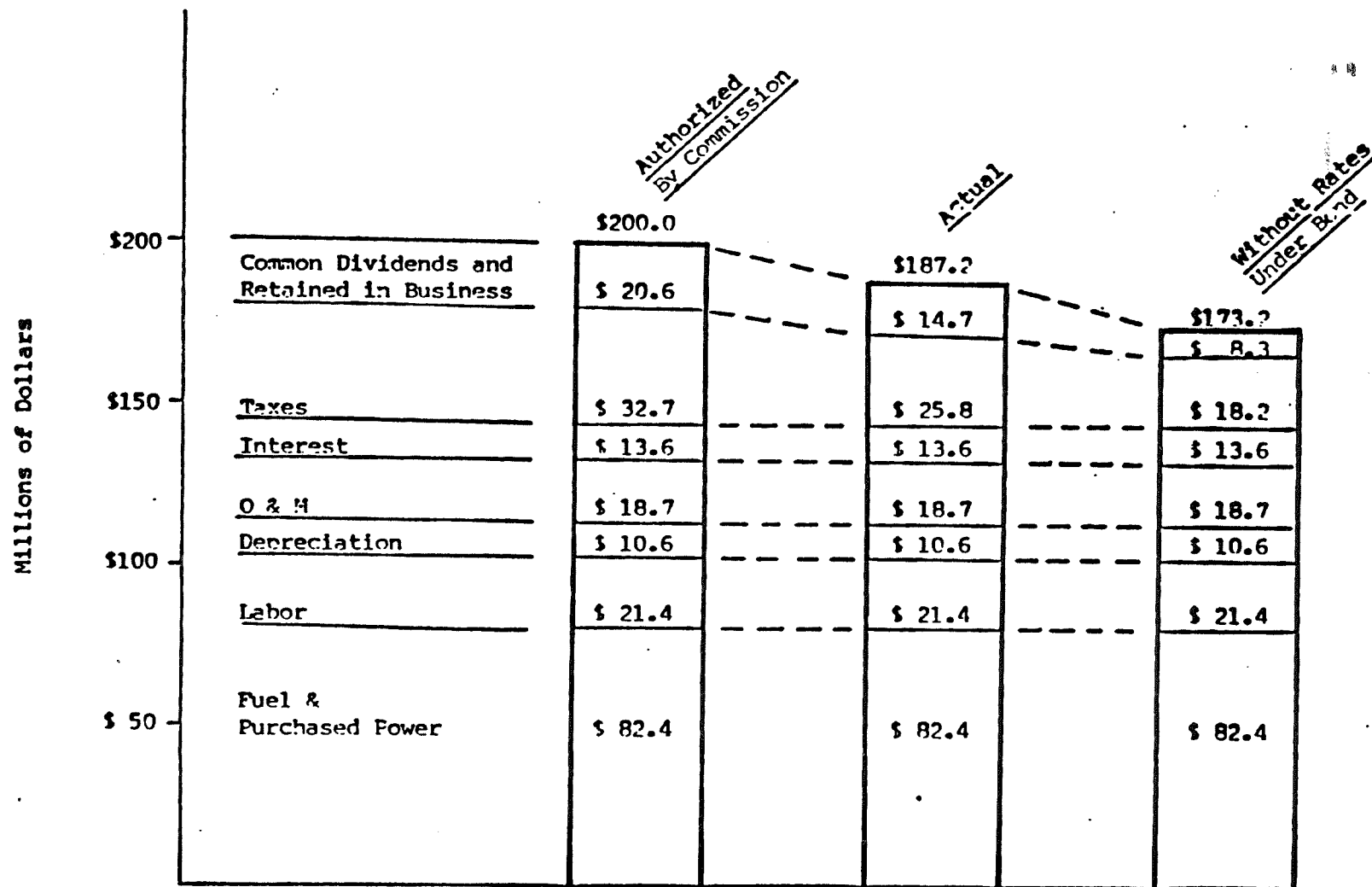
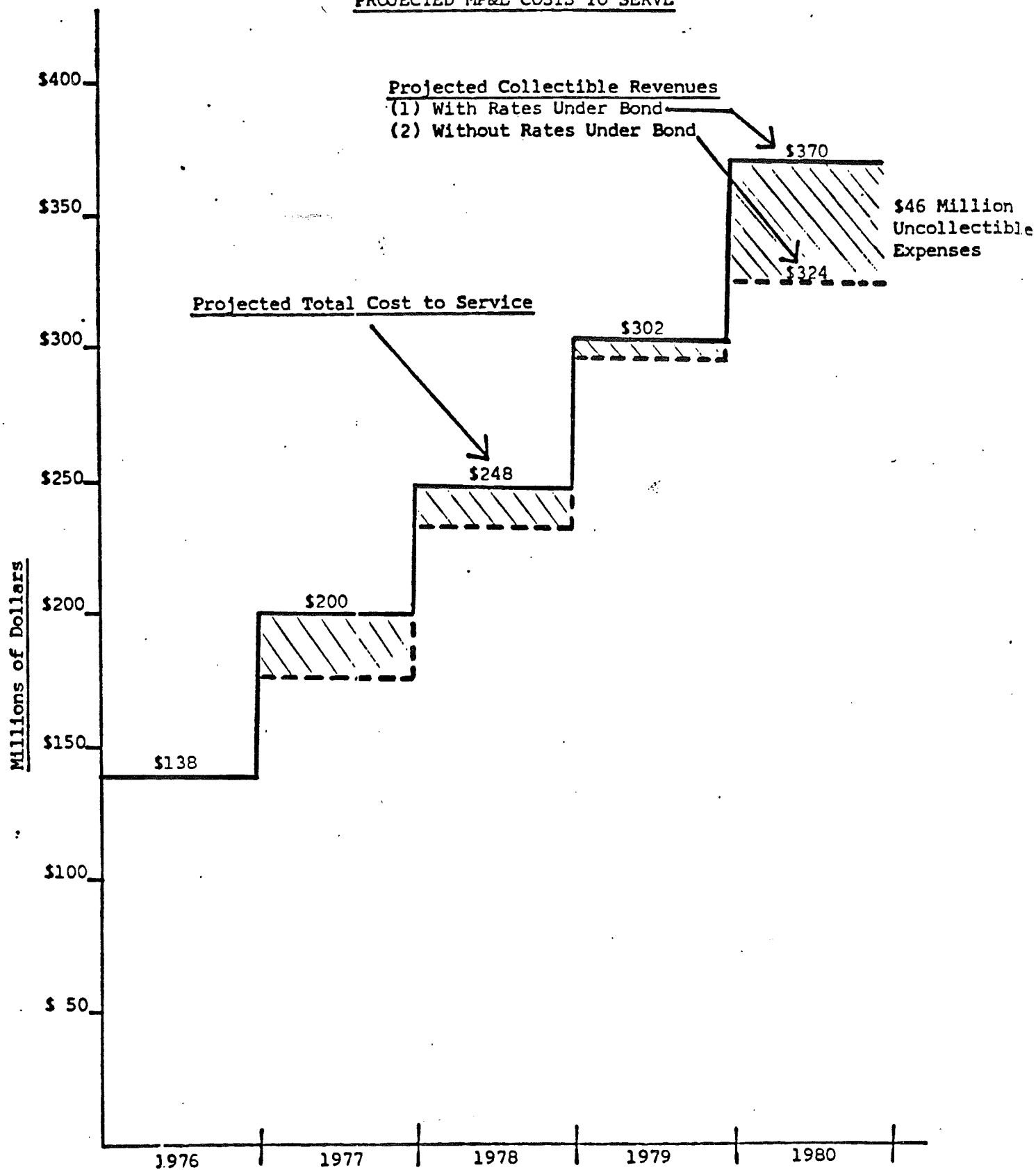


Figure 1

PROJECTED MP&L COSTS TO SERVEFigure 2

**An Analysis of the Lifeline Rate Issue**

**Randall J. Falkenberg  
Rate Engineer  
Rate Department  
Minnesota Power & Light Company  
December 15, 1977**

President Carter has called the energy crisis "the moral equivalent of war". Whether or not one agrees with the President's assessment of the situation or his energy program, nearly all agree that the energy crisis is a collection of extremely complex technical and social problems. This paper will deal with one of these problems: What kind of social policy will best help alleviate the burden rapidly rising energy prices have placed upon those living on low or fixed incomes? Many proposals dealing with this problem have been debated in the Minnesota Legislature, but to date no unified social policy has emerged. Proposals have fallen into two general categories: 1.) Price administration through restructuring the electric utility rate table (the so-called "lifeline rate" plan) and 2.) Some form of tax relief or income supplementation through the state taxes. An example of the latter type of proposal is the bill proposed by Minnesota Public Service Commissioner Katherine Sasseville. This act would set aside annually up to \$20 million from the sales taxes on sales of electricity, natural gas and other fuels. This money would then be redistributed in lump sum payments to those meeting income requirements. In this study both types of programs will be discussed.

First we shall examine the arguments for lifeline proposals. Lifeline supporters argue that electricity is one of life's necessities and there is some quantifiable minimum amount necessary to sustain life. They also contend that the low income consumers are by necessity among the smallest users of electricity. "Lifeliners" conclude that selling a "subsistence" amount of electricity (typically 300-500 kWh per month) at reduced rates will insure that low income families will be able to afford the minimum necessary amounts. By requiring that kWh consumed above the lifeline level be sold at a higher rate, lifeline proponents contend that higher income consumers will make up the revenues lost on the lifeline sales and will be encouraged to conserve energy.

Upon closer examination of the technical details of lifeline rates, we shall see that lifeline legislation will not promote conservation and will not benefit all low income families. Before a deeper analysis of these technical details is done, it should be pointed out that the basic premise behind lifeline rates is in error (i.e., there is a quantifiable minimum necessary amount of electricity). While energy is a necessity of life, electricity is just one of its forms. No two consumers need or use the same amount of electricity, so it is nearly impossible to quantify the minimum necessary amount. What would be sufficient for a customer with a gas water heater would be insufficient for a customer with an electric water heater (which average 375 kWh per month). 1/

All lifeline proposals, in effect, require that the lifeline amount of electricity be sold below the cost of producing and delivering the energy. This is because residential electric customers are already being sold the first few hundred kWh's per month at the lowest possible price. For example, a bill introduced into the Minnesota Legislature last year specifically required that the lifeline amount be sold at as

1/ "The Residential Demand for Energy: Estimates of Residential Stocks of Energy Using Capital." by Data Resources Inc. January 1977, Section 4, Page 1.

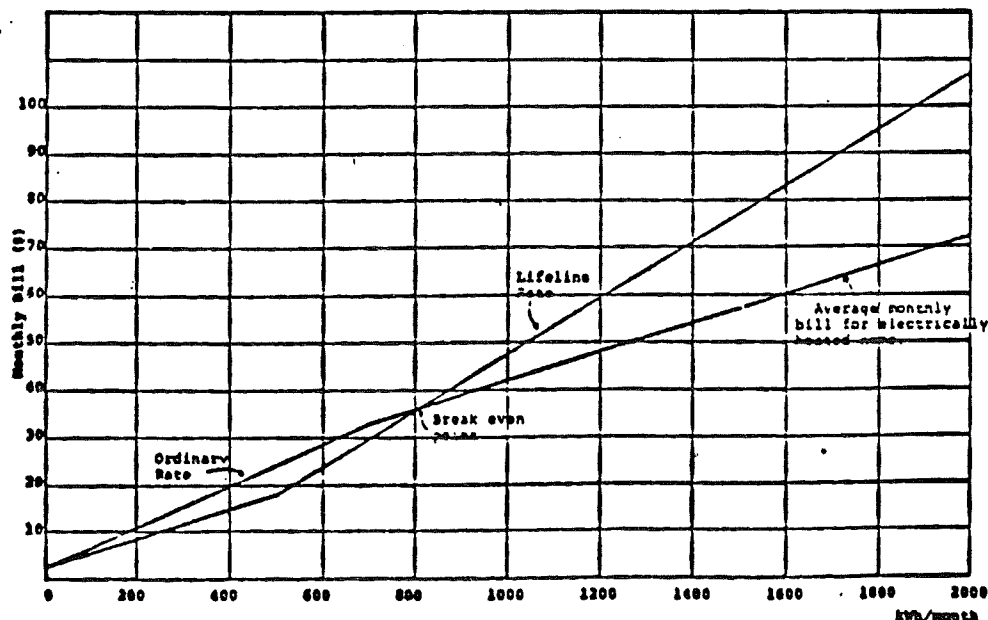
much as 50% below cost. If the lifeline amount of energy is sold below cost, then the rate on other sales must be increased to recover the lost revenues. As noted before, "lifeliners" are in general agreement with this proposition. What would happen to a customer's monthly bill should lifeline rates go into effect? Let us assume for the moment that the lifeline level is set at 500 kWh per month. All customers would pay less per kWh on the first 500 kWh and more on additional kWh used. Whether one's total monthly bill would be higher or lower under lifeline rates depends on how much he uses. This is because after having saved on the first 500 kWh, it would take a few hundred more kWh under the penalty rate before one's bill is higher under lifeline rates than under ordinary rates. The monthly usage separating those whose bills would go up after implementation of lifeline rates from those whose bills would go down, the "break-even point", can be thought of as separating those who get service below cost from those who pay more than cost for service. The "break-even point" is a figure of central importance in the consideration of any lifeline rate plan because it is the division line between those who are subsidized and those who subsidize. Table I shows a lifeline rate designed to sell the first 500 kWh per month at a reduced rate.

TABLE I

Lifeline Rate	Ordinary Rate
\$3.00 Service Charge, plus 3¢ per kWh for the first 500 kWh 6¢ per kWh for all additional kWh	\$3.00 Service Charge, plus 4.2¢ per kWh for the first 700 kWh 3.0¢ per kWh for all additional kWh

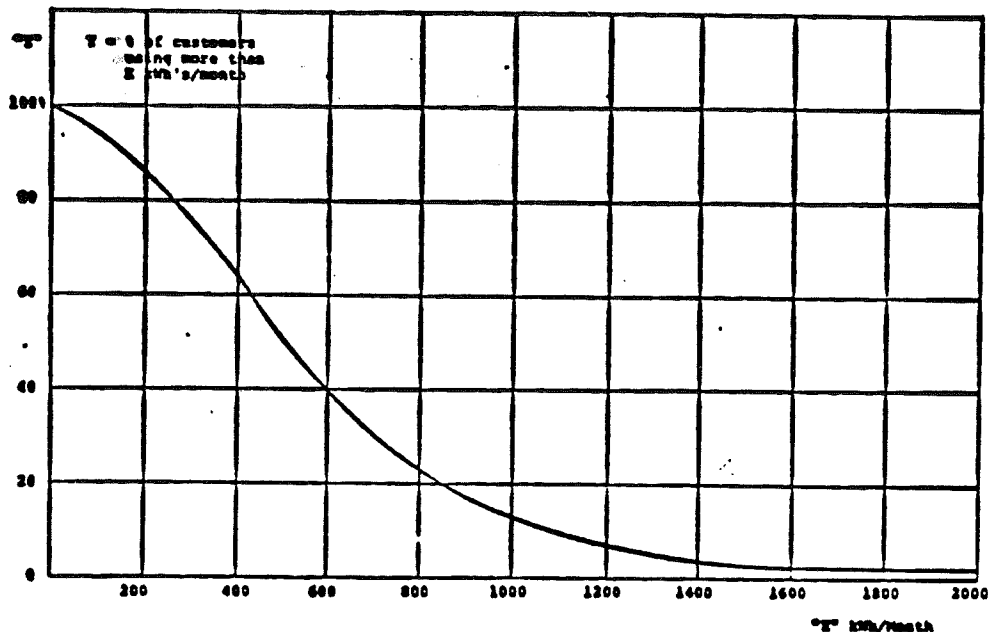
We have attempted to make this rate realistic and typical of lifeline rates. For comparison MP&L's ordinary residential rate (proposed rate subject to refund) is also listed. Figure 1 shows the monthly bill a customer would have under both rates vs. monthly energy use.

Figure 1  
This figure shows monthly bill vs. month consumption  
under ordinary and lifeline rates.



It can be seen that the break-even point is 800 kWh per month, so everyone (regardless of income) using above 800 kWh per month subsidizes everyone using below 800 kWh per month. Naturally every lifeline rate plan will produce a different rate, but all share the features illustrated here. Figure 2 shows what percentage of customers would benefit under lifeline rates.

Figure 2  
MP&L Co. Residential Customer Energy Distribution



This graph shows the percentage of customers who use above any given monthly kWh level. It shows 23% of MP&L's residential customers use more than 800 kWh per month. This leaves 77% of MP&L's customers below 800 kWh per month and therefore benefiting under the example lifeline rates. If the only purpose of this rate is to aid low income customers, it seems to have missed its mark because 77% of MP&L's residential customers do not fall into the low income category. Later we shall see that some low income customers do fall into the 800 kWh per month or greater group. In this example many dollars originally intended to provide relief to low income households go to subsidizing middle class and affluent customers. As can be seen from Figure 1, the impact on those customers who do pay more can be quite severe. (Owners of electrically heated homes could expect an average monthly increase of around \$25.00.) Some lifeline supporters might argue that this is actually desirable, because those who conserve are rewarded while those who waste a lot of electricity are penalized. This is not a sound argument. Price elasticity is the measure of how much a change in price causes a change in consumption. Due to difficulty in measurement, no precise value for the price elasticity of electricity is known. It is known, however, that for some customers the demand is relatively inelastic (i.e., increases in prices do not cause decreases in consumption). Examples of this would be owners of electrically heated homes. Such individuals can only turn down their thermostats so much. For these individuals, lifeline rates would artificially cause a large jump in prices and would constitute discrimination more than an incentive to conserve.

It is by no means clear that distortion of pricing structures encourages conservation. Many economists believe that such distortions actually work counter to the efficient allocation of resources by preventing consumers from receiving proper price signals. Clearly the 77% of MP&L's residential customers who would be able to buy electricity below cost would not be encouraged to conserve. Furthermore, those customers using above 800 kWh per month are not necessarily wasting electricity. Table 2 shows the results of an MP&L appliance saturation survey.

TABLE II: Appliance Saturation Survey and Customer Characteristics Data

% of MP&L customer with air conditioners = 13%

Average monthly consumption for all electric homes = 1700 kWh

Average consumption for MP&L rural residential customers = 850 kWh

Estimated average monthly kWh consumption for a household with a given # of occupants. (Excluding air conditioned and electrically heated homes)

# of Occupants	Estimated Monthly kWh
1	280
2	490
3	680
4	860
5	1030
6	1190
7	1350
8	1500
9	1650

#### Customer Characteristics

	Customers Using more than 800 kWh/month	Customers using less than 800 kWh/month
Avg. # occupants/household	4.5	2.5
Avg. % use electric ranges	88%	62%
Avg. % use electric water heaters	Above 94%	48%

Residential customers using above 800 kWh per month tend to have bigger families and a higher percentage of electric ranges and water heaters than customers using below 800 kWh per month. These customers have higher consumption because their appliance mixture is weighted towards the use of electricity (as opposed to gas) for cooking and water heating. Because of their larger families (hence more cooking, water heating and washing), they are not likely to be able to reduce their electricity consumption. Reducing air conditioner use is probably the only area where many residential customers could save a significant amount of electricity. However, Table 2 shows that only about 13% of MP&L's residential customers have air conditioners. Due to our climate, they are expected to have relatively few hours of usage. In southern Minnesota where there is more air conditioning, a pricing policy might have some impact on consumption. NSP has implemented seasonal rates which charge more per kWh during the air conditioning season.



Another group of residential customers with above average consumption are farmers. MP&L's rural customers average 850 kWh per month so a significant number of farmers could expect higher bills under lifeline rates. Farmers have a high monthly consumption because they have large motor loads (for material handling), refrigeration loads (especially dairy farmers) and they use electricity for heating animals and equipment. In Vermont, farmers lobbied against lifeline legislation because they recognized the effect it would have on their bills.

So we have seen it is not true that residential customers with higher consumption are necessarily big wasters. Many are farmers, owners of electrically heated homes, have larger families and use electricity for cooking or water heating. In Minnesota most electricity is generated by coal, nuclear power or hydro power. Penalizing those who use electricity in order to subsidize those who use gas or fuel oil, for example, would seem to be a poor conservation policy and contrary to our national objectives of maximizing our utilization of less scarce resources.

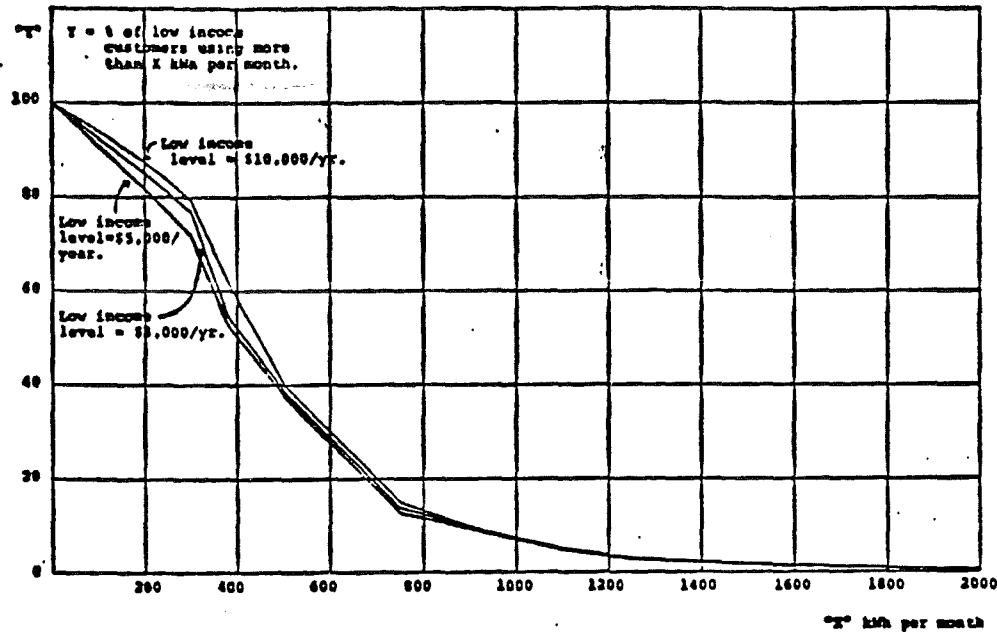
Other studies support these conclusions. In a February 1977 study on utility rate design conducted by the FEA <sup>2/</sup>, it was concluded that lifeline rates offer no net energy savings, while reducing the overall fairness of electricity rates and working counter to the efficient allocation of resources.

Lifeline supporters might argue that the main purpose of the lifeline plan is to provide rate relief to low income consumers and any conservation or rate equity considerations are secondary. It could be argued that the example rate was poorly designed and that lowering lifeline level could remove its deficiencies. However, it can be shown that even with the high lifeline level and break-even point, of the example rate, a significant portion of low income citizens fail to benefit under the lifeline plan. In Minnesota 10-15% of all low income families have their electric bill included in their rent. These people are not likely to benefit from any lifeline rate legislation. The 120 municipal electric utilities, serving nearly 200,000 residential customers, do not have their rates regulated by the MPSC. Minnesota's 51 rural electric co-ops, serving 450,000 customers, may be removed from rate regulation by the MPSC (depending on the outcome of pending legislation). Since the Legislature will almost certainly have to use the Public Service Commission as the vehicle to implement the lifeline legislation, all low income customers served by municipals and perhaps all those served by co-ops will not receive any benefit from lifeline legislation.

2/ "Electric Utility Rate Design Proposals" Interim Report by the Federal Energy Administration. February 1977, Pages 76-78.

In addition, there is a significant portion of low income consumers who would actually pay more under lifeline rates. Figure 3 shows the percentage of low income customers using more than any given monthly kWh level.

Figure 3  
MP&L Low Income Customer Energy  
Frequency Distribution.



This graph was produced from an MP&L customer survey performed by Reichman Research Inc., an independent marketing research organization. This survey, with over 90 low income customers, has a reasonably high degree of statistical validity. It will be noted that the actual income level designated as low income is not critical because there is not a significant difference between the shapes of the \$5,000, \$8,000 and \$10,000 per year curves. This graph shows that about 12% of MP&L's low income customers use more than 800 kWh per month. These individuals will be faced with a peculiar hardship; their electricity bills will go up to subsidize other customers, who in many cases actually have higher incomes.

The example lifeline rate has been shown to have no effect on at least 10-15% of Minnesota's low income families and could create a hardship for an additional 12%. All in all, about 25% of all low income families receive no benefit under the example lifeline rate which, as previously remarked, is a very generous rate. Any lifeline rate with a lower lifeline level will benefit even fewer low income families. Figure 3 makes it easy to see what the effect of lowering the lifeline level (and hence the break-even point) would be. A low use lifeline (lifeline level 300 kWh per month giving a break-even point of about 500 kWh per month) would cause increased bills for 38% of MP&L's low income consumers. However, Figure 2 shows 48% of all MP&L customers (low, middle and upper class) would get lower bills under this lifeline rate. The facts are simply that the correlation between income and monthly kWh consumption is not strong enough to design a viable lifeline rate. Many of

Minnesota's low income families are large energy consumers because they have large families, they farm (approximately 10-15% of low income families farm) or use electric water heaters (25-50% of low income families use electric water heaters). Furthermore, many higher income consumers may use little electricity because they are single or have small families or they may use gas for cooking and water heating. The Minnesota Legislature will have to decide if such individuals should receive the benefits of a subsidy intended to aid (and partially financed by) low income citizens.

These arguments have been substantiated in recent lifeline rate studies carried out by the Tennessee Valley Authority. <sup>3/</sup> The TVA found that under lifeline rates 26% of low income customers would have paid more for electricity while 49% of the affluent and middle class customers would have paid less.

The facts are that lifeline rates pose an insoluble problem in rate design. Setting the break-even point too low causes a significant portion of low income families to pay higher bills. Setting the break-even point too high creates extreme hardships for those who do end up paying more and will produce no net energy savings.

A final point is that only a small part of low income customers needs would be met by lifeline rates. The "expected value" to low income customers of a lifeline rate is their average savings under the rate. Taking into account the fact that some will lose money, for customers earning below \$10,000 a year the "expected value" of the example lifeline rate is only about \$1.30 per month. This amount hardly seems adequate for its intended purpose. When it is realized that for most families home heating fuels (which are not affected by lifeline legislation) are a much bigger portion of their monthly budget than expenditures for electricity, it can be seen that lifeline rates provide at best, only a partial solution to the problem.

Other experts agree that lifeline rate plans are very questionable. In direct testimony regarding MP&L's 1977 rate case, Kennedy E. Lange, an Economist and Senior Rate Analyst for the MPSC, testified "The difficulties with such income transfers are several. One peculiar characteristic is that it applies to only one necessity in no particular relationship to other needs ... it provides the recipient with no options, except in the comparatively minor sense of freeing up a portion of income which might otherwise be dedicated to use of electricity."

"But the needs of such individuals are not limited to electricity and the problem is not the price of electricity. It is their lack of income. The obvious (and appropriate) solution is income adequacy not price administration. An effective and efficient means to provide adequacy exists at the disposal of our legislature in the form of the income tax."

"The national or state legislatures are or can be exposed to all relevant criteria in determining income adequacy, can index that judgment to all costs of necessity and possess the near perfect tool to administer that

<sup>3/</sup> See "Lifeline Rates" Fact Sheet October 1977 by Reddy Communications. The June 1977 TVA Study is discussed.

judgment through their taxing authority."

Lange also mentioned the significant benefit targeting problems previously discussed and later suggested that in the absence of a negative income tax, the next best solution would be some kind of lump sum reimbursement or tax credit for low income taxpayers. In order that wasteful energy consumption would not be encouraged, the size of the tax relief would be unrelated to the individual's energy consumption. This seems to be the form of the proposal of Commissioner Sasseville. In this study we will not analyze or recommend any specific piece of legislation. Suffice it to say that several options exist which do not suffer from the draw backs of lifeline rate plans. Minnesota's progressive tax structure could easily accommodate tax relief programs in one of several ways. Such a program could be built into the Minnesota low income tax credit, senior citizen tax credit or into the renters or circuit breaker tax credit. The chief advantage of such a program would be that aid would be directly tied to income level. In this manner no dollars would get sidetracked to economic classes who are not intended to receive benefits.

The Minnesota State Legislature is faced with a question of basic social policy: will assistance be provided to low income families to help them meet the rising cost of energy? If so, will they provide an efficient solution? Will they risk creating hardships for some of those they intend to help? Will they target certain groups (such as farmers or owners of electrically heated homes) for increased prices? Will they try to provide a complete solution or will they implement a 5% solution?