MINNESOTA UTILITY REGULATION

JOHN GOSTOVICH

OCTOBER, 1980

STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES
RESEARCH DEPARTMENT
17 STATE CAPITOL
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PREFACE

This report is an introduction to utility rate regulation in Minnesota. It describes the legislative, administrative, and judicial decisions which shape the provision of gas and electricity to Minnesota retail customers. Utility regulation is a legislative creation. This report is designed to provide legislators with the background necessary to evaluate various proposals that will affect the cost and availability of gas and electricity. While not exhaustive, it should serve as a useful summary of the area and an overview of some of its more important issues.

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INTRODUCTION

This report discusses the regulation of gas and electric utilities by the Minnesota Public Utility Commission (PUC). It describes energy utilities, state regulatory procedure, ratemaking, regulatory costs, and the regulatory status of Rural Electric Cooperatives.

Utility regulatory issues have grown with the increasing cost of energy of all types. Last year, Minnesotans paid over $2,000,000,000 for gas and electricity from firms regulated by the PUC. This amount is likely to double in the next decade as gas is deregulated, coal prices increase, and inflation continues.

This report is an introduction to a very complex and important area. Legislative decisions on utility policy will continue to influence the basic cost and quality of utility services as well as overall state energy policy.

I. PUBLIC UTILITIES AND REGULATION

The list of businesses that are characterized as "public utilities" and are subject to some degree of state or federal regulation is a long one. It includes:

> . . . the generation, transmission, and distribution of electric power; the manufacture and distribution of gas; telephone, telegraph, and cable communications; common carrier transportation; urban and inter-urban passenger and freight; local water and sewage supply (to the extent at least that these continue to be provided by privately-owned companies); and, in a sense at the periphery, banking. The list could well embrace also, warehouses, docks, wharves, stockyards, taxis, ticket brokers, employment exchanges, ice plants, steam heating companies, cotton gins, grist mills, irrigation companies, stock exchanges, and express companies. (A. Kahn, Economics of Regulation (New York: John Wiley, 1970), Vol. 1, p. 10.)

All of these share a broad set of characteristics. They are "public" in operation, they "hold themselves out to serve the public," they are licensed or franchised, or they are common carriers. They represent a unique group of privately owned industries that are controlled by administrative commissions constituted for this purpose. Rather than competition or self-restraint as the determinants of economic performance, these companies are subject to direct governmental control over entry, price, and conditions of service.

There are two primary economic justifications for the regulation of these industries:

1. Regulated utilities are not competitive. They are what economists call "natural monopolies." These industries sell a product that is less expensive if there is a single supplier in a given area. Electricity is a good example. If two electric utilities were competing for customers in a municipality, each would have to extend a complete set

of poles, lines, transformers, and meters to any customer willing to pay the price. This duplication of fixed costs would insure that the electricity could not be sold as cheaply as it could under a franchise agreement with a single business. However, if the absence of competition enhances potential economic efficiency, it may leave the consuming public open to serious abuses of monopoly pricing, discrimination between classes of customers, and inadequate service.

2. Many of these industries provide goods and services that are absolutely essential to the economic and social well-being of firms and households. These regulated industries and the products they sell are the underpinnings of the rest of the economy.

REGULATED ENERGY UTILITIES IN MINNESOTA

Laws 1974, Chapter 429, requires the regulation of retail gas and electric utilities by the Public Service Commission.[1] At the time of enactment Nebraska was the only other state which did not have a commission with these powers. Prior to 1974, energy utilities providing retail service were regulated by the municipality granting them the franchise to be the sole provider of the service.

The Commission performs a quasi-judicial function. That is, it reviews the record established in an adjudicary proceeding and issues an order or promulgates a rule. The procedure followed by the Commission is detailed in the next chapter. The Department of Public Service (DPS), a separate executive agency, was established along with the Commission in 1974 to perform the administrative tasks necessary to execute and

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[1] Laws 1980, Chapter 614, changed the name of the "Public Service Commission" to the "Public Utility Commission." The latter term is used throughout this report.

enforce the orders and rules of the Commission. The Department routinely participates as an intervenor in proceedings before the Commission, presenting expert testimony and arguing what it judges to be in the overall interest of the state.

Public Utility Commission Jurisdiction

Originally, the Commission had regulatory responsibility over rates, service standards, and service areas for investor-owned utilities and cooperative electric associations selling gas or electricity at retail. This group included 8 investor-owned electric utilities, 56 electric cooperatives, and 13 investor-owned gas utilities. The law specifically excluded 129 municipal electric utilities and 18 municipal gas utilities from rate regulation. However, all utilities, including the municipals, were subject to the Commission's power to assign exclusive service areas.

Public utility law is largely confined to Chapter 216B of the statutes. This chapter begins with a statement of legislative intent that contains many of the economic justifications noted in the first section of this report. The statutory language is reproduced below as it appeared in 1974:

> [216B.01] [LEGISLATIVE FINDINGS.] 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 the public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes

> between public utilities which may result in inconvenience or diminish efficiency in service to the consumers. Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, it is deemed unnecessary to subject such utilities to regulation under Laws 1974, Chapter 429 except as specifically provided herein.

Municipal electric and gas utilities were deemed to already be effectively regulated by "the residents of the municipalities which own and operate them." Thus, state regulation was found to be unnecessary when the control and operation of the utility coincided with those who consumed the service. This same argument was used in 1978 when cooperative electric associations were exempted from regulation because they "are presently effectively regulated and controlled by the membership. . ."[2] Cooperative Electric Associations are discussed in detail in Chapter V.

Federal Regulation of Minnesota Utilities

In addition to rate regulation by the Commission, municipal governments and cooperative electric associations, there are various federal regulatory powers which apply to Minnesota energy utilities. Interstate sales of wholesale gas and electricity are regulated by the Federal Energy Regulatory Commission (FERC). The Rural Electric Administration (REA), a department of the United States Department of Agriculture, reviews the rates charged by its member cooperatives to insure

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[2] Laws 1978, Chapter 795. The terms "Rural Electric Associations," "Cooperative Electric Associations" and "Rural Electric Cooperatives" are all variously used to describe th same thing.

that revenues will be sufficient to retire low-interest loans owed to or guaranteed by the government.

II. MINNESOTA RATEMAKING PROCEDURE

In Minnesota a utility rate case typically begins when the utility files its proposed tariffs with the Commission. This filing consists of "statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and further shall state the change proposed to be made in the rates then in force, and the time when the modified rates will go into effect."[3] The utility is also required to give notice of the rate modification to all affected county and municipal governments. In the unlikely event that the Commission does not respond to the utility's filing, the utility may place the new rates into effect after 90 days have elapsed.

SUSPENSION PERIOD

During the initial 90-day period, the Commission may suspend the proposed rates by so notifying the utility. The suspension may not extend beyond 90 days after the time when the rates would otherwise have gone into effect. During this suspension period the Commission determines whether all questions of reasonableness raised by the Department of Public Service staff and other interested parties have been adequately addressed by the utility. A public hearing for a contested case is

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[3] Minnesota Statutes 1980, Section 216B.165, Subdivision 1.

required if the Commission desires or if the Commission is so petitioned by ten percent of the affected customers or 100 affected customers, whichever is less. If a hearing is required, the suspension may be extended for a period not to exceed nine months. If the Commission does not make a final determination within this extended period, the rates as proposed by the utility are deemed to have Commission approval. Thus, the Commission has one year from the utility's initial request to render its final decision.[4]

RATES UNDER BOND

Despite the suspension ordered by the Commission, the utility may place the proposed rates into effect at any time after the initial 90-day review period had elapsed. The utility must file a bond or other security with the Commission and pledge to refund with interest any difference between the proposed and final rates.[5]

CONTESTED HEARINGS

The contested hearing is conducted by an attorney from the Office of Hearing Examiners according to the provisions of Chapter 15. Citizens and interest groups may either petition to intervene as official parties, or take part in a number of informal public hearings which are held throughout the petitioning utility's service area. In the formal hearings, witnesses

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[4] Minnesota Statutes 1980, Section 216B.165, Subdivision 2.
[5] Minnesota Statutes 1980, Section 216B.16, Subdivision 3.

testify under oath and are subject to cross examination. Rebuttal testimony is allowed. At the close of the hearings parties submit proposed findings to the Hearing Examiner who then makes a recommendation to the Commission. All parties may file exceptions to the Examiner's proposal with the Commission. The Commission then issues a final order which must be supported by a majority of the Commissioners.

The final determination or order of the Commission becomes effective 20 days after it has been delivered to all parties to the proceeding. During this period, any party or other person may apply to the Commission for a rehearing. If this application is granted, the rehearing is conducted before the Commission following the general procedure adopted for the original hearing. The issues germane to the rehearing must be those set forth in the application. In addition, no party to the proceeding may bring an action in district court unless the grounds were first raised in an application for rehearing.[6]

III. RATEMAKING

The Public Service Commission sets retail rates for gas and electricity within a framework established by the Legislature. The overriding criteria is that rates be reasonable:

> Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be

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[6] Minnesota Statutes 1980, Section 216B.27.

> unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers. Any doubt as to reasonableness should be resolved in favor of the consumer. (Section 216B.03)

"Reasonableness" is further defined as a delicate balance between the needs of the public and the utility:

> The commission, in the exercise of its powers under this chapter 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. In determining the rate base upon which the utility is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. For purposes of determining rate base, the commission shall consider the original cost of utility property included in the base and shall make no allowance for its estimated current replacement value. (Section 216B.16, Subdivision 6)

REVENUE REQUIREMENTS

Essentially, each rate case presents the Commission with four major determinations:

1. The value of the utility's capital investment devoted to public use (rate base);

2. The reasonable rate of return or profit to be earned by the utility on the rate base;

3. The legitimate expenses of the utility; and

4. The appropriate allocation of increased revenue to the various classes of utility customers.

The first three of these determinations are illustrated in the following formula which shows the composition of a utility's revenue requirement:

Revenue Requirement = O + d + T + (V-D)R, where

O = operating expense
d = depreciation expense
T = taxes
V = original cost of utility plant
D = accrued depreciation
R = rate of return
(V-D)R = earning allowed on rate base (profit)

The simplicity of this formula can be misleading. Except for the original value of the utility's capital and the amount of accumulated depreciation, all of the factors are strenuously debated in a rate case.

The statutes require that the utility be granted revenues sufficient to earn a "fair and reasonable rate of return." The exercise of this responsibility is essentially a legislative decision which confronts the Commission in every rate case. It is important to note the magnitude of the discretion granted the Commission by the Legislature. The statutes do not say "rate of return equal to that earned by the utility industry as a whole" or "rate of return equal to ten percent." This discretion allows the Commission flexibility as it confronts the unique circumstances of each petitioning utility. However, the broad grant of legislative power may also give rise to a lack of continuity as economic and energy policy emerges in the regulatory process.

COST ALLOCATION

Once the appropriate level of gross revenues, expenses, and profits has been determined by the Commission, the focus of the rate case shifts to the distribution of the gross revenues among the classes of customers served by the utility. The Department of Public Service and, to a lesser extent the Commission, believe that the rates should be primarily based on cost of service. This means that industrial, commercial, and residential users should each bear their fair share of the utility's cost of serving them. This prescription appears simple but is extremely controversial in practice. The proper method to assess and apportion costs has as many forms as there are intervenors in a rate case. An entire language has grown up to describe various approaches, including "average embedded costs," "long-run incremental costs," peak responsibility," "inverse elasticity," and so on.

The allocation of costs within a class of customers is equally controversial. This part of the rate case determines the actual rate schedule that will be used to calculate each customer's monthly bill. For years, most user charges were figured using some form of what is called a "declining block rate," with average energy costs falling as consumption increased. Although such rates may approximate the costs met by a utility as it spreads its fixed costs over an increasing utilization of installed capacity, they may be an inappropriate price signal if they imply that increased usage does not cause new

generation facilities to be needed. For users whose consumption is large enough, meters are available to measure both usage (kwh) and demand (kw). This allows a billing structure which reflects the operating and capacity costs of the utility more accurately. The development of sophisticated metering technology and the rapid rise in the cost of electricity have encouraged the provision of rates which vary with the time of day to more accurately track the utility's on- and off-peak costs of service. Utilities are also experimenting with "load management," a collection of techniques which allow the utility to selectively influence the amount of power used by its customers during peak periods.

COMMISSION DISCRETION

Apart from the economic and technical justifications for various rate structures, there are a number of more subjective considerations which the Commission may consider whenever new rates are ordered. They include:

1. Uniformity and continuity with previous rates;
2. Customer acceptance and comprehensibility;
3. Impact on conservation and usage; and
4. Equity and ability to pay considerations.

The last two of these issues have assumed greater importance with the rising cost of energy and the adoption of policies designed to reduce usage and increase efficiency. These social considerations are a recent development in ratemaking and necessarily place the Commission in a more difficult position

as a regulator. Yet the broad authority to take these social matters into consideration has been firmly upheld by the State Supreme Court in St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, 312 Minn. 250:

> In the present case, for example, it is a matter of common knowledge that the custom of the commercial users is to employ electrical energy profitably, deduct the expense of such energy as a cost of doing business for income tax purposes, and add the residual cost to the price of the service or product which they produce, while it is similarly known that private consumers of electricity cannot so deduct or pass on electrical costs. Such facts allow the inference that in the majority of cases a rate increase must be fully paid for in cash by residential consumers, who may also end up paying for a portion of the commercial rate increase due to the pass-on effect just described. It is not a leap of logic to then say that for the most part commercial users of electricity are more "able to pay" a rate increase than residential users. While such assumptive reasoning would not ordinarily be employed by a court, which must in most cases confine itself to the evidence, it may be legitimately employed by a legislative agency attempting to serve the public interest at large in a way that courts cannot. 312 Minn. 256.

and

> As our previous discussion makes clear, however, rate allocation is not a judicial or quasi-judicial function. Once revenue requirements have been determined it remains to decide how, and from whom, the additional revenue is to be obtained. It is at this point that many countervailing considerations come into play. The commission may then balance factors such as cost of service, ability to pay, tax consequences, and ability to pass on increases in order to achieve a fair and reasonable allocation of the increase among consumer classes. This determination must result in rates which are "just and reasonable" and rates "shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers." Minn. Stat. 216B.03. It is clear then when the commission acts in this area it is operating in a legislative capacity, as the above cases have stated. The careful balancing of public policies and private needs is not a matter for the courts, unless statutory authority has been exceeded or discretion abused. 312 Minn. 260.

The proper extent of legislative control over the Commission is a major issue. If the legislative mandate were extremely specific about the appropriate treatment of every ratemaking issue, there would be no need for the Commission. On the other hand, an extremely broad grant of legislative authority to the Commission makes it impossible for the Legislature to coordinate the regulation of energy utilities with the state's overall energy policies. This coordination of the Commission's economic authority with the broader energy policies enacted by the Legislature and carried out primarily by the Energy Agency is a growing issue.

While the State Supreme Court has clearly upheld the right of the Commission to utilize non-economic considerations in reaching its conclusions, the extent to which these factors are employed is entirely up to the Commission. However, since each rate case decision is also an implicit statement of energy policy and social equity, the Legislature may want to define the Commission's role more carefully. Some of the redefinition has already occurred. The ten dollar limit on energy audit costs enacted last session represents a legislative decision that maximum participation in a conservation program is more important than the principle of cost-based rates.[7] The pilot program to require utility conservation investments allows utilities to earn a return on activities which are a basic departure from their usual role as energy

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[7] Laws 1980, Chapter 579, Section 17.

suppliers.[8] Although the Commission arguably had the authority to initiate both of these programs, it is unlikely that it would have without explicit legislative authority. Despite its broad discretion, the Commission is reluctant to deviate from a fairly narrow regulatory stance unless the Legislature requires it.

IV. COSTS OF UTILITY REGULATION

The direct costs of Minnesota utility regulation fall into two categories: those which are assessed by the Department of Public Service; and those which are incurred by the utility as it presents its case. The DPS assessment has two components. First, the Department levies an assessment equal to the actual cost to the state of regulating the utility. This fee cannot be greater than two-fifths of one percent of each utility's gross yearly revenues. Second, after direct charges are assessed to each utility, any remainder of Department expense is spread out over the entire group of utilities. This fee cannot be more than one-eighth of one percent of the gross revenues of the group.[9] This payment schedule results in a system of utility assessment that is proportional to the utility's energy sales within the state. As will be seen, larger utilities tend to have larger public and private regulatory costs.

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[8] Laws 1980, Chapter 579, Section 18.

[9] Minnesota Statutes 1980, Section 216B.62.

Every year, Minnesota's regulated utilities submit a detailed Annual Report to the Department of Public Service and the Federal Energy Regulatory Commission. The financial reporting format is prescribed by the federal government and facilitates the analysis of regulatory costs. The Annual Report lists yearly costs for each regulatory proceeding and indicates the level of Public Service Department fees and utility expenses. These are the public direct costs of Minnesota's regulatory system and are ultimately paid by the utility's customers.

The economic benefits of the state's regulatory process are not so easily measured. When a major rate case is resolved, the final revenue allowed the utility is invariably less than or equal to the original amount requested. This reduction results in lower energy costs and is attributable to the regulatory process.

There are other costs and benefits that are significant but difficult to measure. One measure of regulatory benefits requires the assumption that utility revenues would be larger than those requested in a rate case if the utility were completely deregulated. This is equivalent to saying that a monopoly can exact more for its product than a competitive firm. Unfortunately, one can only guess what an unregulated investor-owned utility could charge for gas or electricity. The price and availability of substitute fuels puts a ceiling on the level of monopoly profits; but they could vary within a substantial range.

A cost of regulation which has not been included here is the private cost of private and public bodies that choose to intervene. Since such intervention is voluntary, its extent varies from case to case. For the Office of Consumer Services, this cost comes out of its legislative appropriation. The costs incurred by other groups, like the Chamber of Commerce or Senior Federation, are generally paid through membership fees. Nevertheless, the costs are substantial and represent real income that individuals or businesses could have spent for other things.

Another cost of utility regulation falls on the stock and bondholders of the utility. Whenever the Commission trims a utility's revenue requirement and orders a refund, the reduced earnings are reflected in lower dividends, discounted bonds, and a shakier bond rating. If a utility's financial strength fails, it will find its cost of raising capital increasing. These increased expenses will eventually be reflected in higher rates.

REGULATORY COST COMPARISON

Coop Regulatory Costs

The cost of PUC regulation of 11 utilities during 1975-77 averaged to 31 cents per member per month, with per member costs higher for the smaller cooperatives. On the whole, the amount paid to regulate the retail coops was only slightly

more than the amount of regulatory rate relief granted during the same period.[10]

Investor-Owned Utility Regulatory Costs

To examine the regulatory burden on investor-owned utilities, two were chosen: Northern States Power Company with about 800,000 customers and Otter Tail Power Company with about 50,000 customers. The following table lists their regulatory costs over a three year period. These costs are related to a major rate increase request filed by each utility during the period chosen for study. Although the rate case itself lasts 12 months, pre- and post-hearing activity generates costs over a longer period.

RATE CASE COST SUMMARY

NSP Docket #E-002/GR-77-611

	Assessed By PUC		Utility Cost
1977	$251,613		$160,833
1978	293,175		135,017
1979	278,219		2,150
Total	$823,007		$298,000
GRAND TOTAL		$1,121,007	

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Otter Tail Docket #E017/77-916

	Assessed By PUC		Utility Cost
1977	$ 19,687		$ 9,607
1978	20,660		96,438
1979	44,904		3,255
Total	$ 85,251		$109,300
GRAND TOTAL		$194,551	

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10 The cost and refund data presented in this chapter are from PUC records and FERC reports annually prepared by the utilities.

Each of these cases resulted in large rate reductions and refunds ordered by the Commission. The following table compares the regulatory cost to the amount of rate relief finally granted. The ratio listed in the final column is the amount of rate reduction granted for each regulatory dollar spent.

RATE CASE REFUND SUMMARY

	Otter Tail E017/77-916	NSP E-002/GR-77-611
Regulatory Cost	$194,551	$ 1,121,007
Refund	$769,300	$30,230,439
Refund/Cost Ratio	3.95	26.97

For the two utilities chosen, the actual rate reductions ordered by the Commission were far greater than the expense of regulation. This trend appears to hold for all large utilities regulated by the PUC. From the available information, two conclusions are warranted:

1. Regulatory costs represent a shrinking share of utility cost as larger utilities are considered. This is because many of these costs are basically the same regardless of the utility's number of customers or gross revenues. The legal costs associated with complying with the provisions of Chapter 15 fall into this category. Similarly, an expert rate-of-return witness costs about the same regardless of the size of the revenue increase to be justified. The following table illustrates this by comparing total state regulatory costs to total utility income for three utilities in 1977. Per-customer costs are also compared.

Regulatory Expense vs. Gross Utility Income - 1977

	Wright-Hennepin	Otter Tail*	NSP
Gross Income	$6,728,855	$33,687,000	$478,028,000
Regulatory Expense	$ 28,134	$ 73,200	$ 412,446
Expense/Income	0.004	0.002	0.0009
# of Customers	15,380	48,819	780,672
Per Customer Cost	$0.15/month	$0.12/month	$ 0.05/month

* Otter Tail's regulatory expense is an average of 1977 and 1978 costs to avoid understating expenses related to the 1977 filing that were not billed until 1978.

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2. The consumer benefits of regulation appear to grow with the size of the regulated utility. Obviously larger utilities have a larger total budget that is subject to PUC scrutiny and possible refund. Larger utilities also tend to be in control of a greater share of their costs than smaller companies whose spending consists mainly of wholesale power purchases.

V. RURAL ELECTRIC COOPERATIVES

The first rural electric cooperatives were organized in 1919 around Webster, Iowa to bring electric power to farms that could not profitably be served by investor-owned utilities. In 1935, the Rural Electrification Administration was created by Congress to provide low-interest loans and loan guarantees to the coops.

Today, there are 56 electric cooperatives serving customers in Minnesota. These organizations serve upwards of 375,000 customers and generate yearly revenues in excess of $175,000,000. All Minnesota cooperatives are organized under the provisions of Chapter 308 and are generally defined as "any corporation or association of ultimate producers, consumers, or ultimate producers and consumers organized under any law of the state

providing for the incorporation of cooperative associations; also any central organization composed wholly or in part of such associations."[11]

COOP REGULATION IN MINNESOTA

Rural Electric Cooperatives provide electric service at retail. When electric utilities in Minnesota became subject to state regulation in 1974, the electric cooperatives were subject to the same regulatory standards as the investor-owned utilities. This regulation included matters pertaining to both rate-setting and service standards. In 1978, the Legislature removed cooperatives from rate regulation but continued the Public Service Commission's jurisdiction over service complaints, service areas, municipal franchies, and purchasers of public utilities by municipalities.[12]

When cooperative ratemaking was deregulated, two justifications were offered:

1. Cooperatives are owned and governed by their customers. This makes regulation expensive and unnecessary.

2. Cooperatives cannot overcharge their customers since all net revenues are held as a capital reserve and ultimately returned to the members on a pro rata basis.

Non-regulation of coop rates also has to do with the proportion of a coop's costs which are not subject to its direct control. The following chart shows the major expenses of the Dakota Electric Association in 1979.

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[11] Minnesota Statutes 1980, Section 308.42.

[12] Laws 1978, Chapter 795.

Dakota Electric Costs

Purchased Power	71%
Operating Expenses	8%
Interest	5%
Depreciation	4%
Margins	4%
Consumer Expense	3.5%
Taxes	3%
Salaries	1.5%
Total	100%

These are typical percentages and illustrate the extent to which many cooperatives are dependent on the availability of wholesale purchased power. For the 34 cooperative associations that comprise Cooperative Power Association and United Power Association, the majority of the retailers' expenses are the growing cost of wholesale electricity. The price of this power is not regulated by either FERC or the Rural Electrification Administration. The REA, as the banker for electric cooperatives, is primarily concerned with the ability of the cooperative to retire its debts and is not concerned with rate and expense issue per se.

COOP ISSUES

Since deregulation, a number of controversies have surfaced concerning electric coops. Some result from a lack of clarity in the statutes; some concern the relationship of the coops to state electrical energy policy in general; and some concern the amount of access a coop patrol has to his or her organization.

Petition Process

When the Rural Electric Cooperatives were exempted from state rate regulation in 1978, a method was devised to allow

re-regulation. The decision to come under state regulatory jurisdiction must be "approved by a majority of members or stockholders voting by mail ballot initiated by petition of no less than five percent of the members or stockholders of the association."[13] In practice, the statutory procedure has not worked smoothly. The legislation does not specifically define "member" for the purposes of signing a petition. Because of this, the voting rights of spouses has been challenged by the coops. A law enacted at the end of the 1980 legislative session allows voting by a member's spouse if the member chooses.[14] A recent ruling by the Special Assistant Attorney General for the Commission states that the spousal voting privilege extends to petition signing as well.

The statutes also require that the form of the ballot be approved by the directors of the coop and the Department of Public Service. Unfortunately, there is no provision to resolve any disagreement. The law directs the Department to mail the ballots to the members. Voting might be encouraged if the ballot were sent along with the monthly bill.

Public Utility Commission Jurisdiction

As was noted above, the coop de-regulation law exempted coops from rate regulation but continued PUC authority over matters pertaining to service areas and practices. A problem arises when a careful distinction is attempted between "rates"

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[13] Minnesota Statutes 1980, Section 216B.02, Subdivision 4.
[14] Laws 1980, Chapter 586.

and "services." Clearly the unit cost of electricity is a rate and is, therefore, not subject to PUC jurisdiction. It is not so clear, however, whether a late payment penalty is a rate or a service practice. To clarify this, last session's omnibus energy bill requires all utilities, including coops, to express any late payment penalties in terms of a percentage of the overdue amount.[15]

The Commission is currently developing rules to govern utility late payment fees. The law cited above will govern the thrust of the rules, but the rules may not bind the coops. This is true for other PUC rules as well. Thus, the Commission cannot impose statewide uniformity in coop service standards and practices and must deal with each coop individually through a complaint process.

The Legislature may want to clarify the difference between rates and services in the statutes. Furthermore, there may be some coop operations that may best be prescribed by rule.

Cost Containment

Cooperatives do not earn profits as such. Rather, any excess of revenue over expenses is returned to the members or held as capital reserve. Utility regulation, if it only judged the size of dividends or margins, would make little sense for coops. However, one of the major factors contributing to regulatory protection of consumers is the ability of state or federal authorities to critically examine allowable expenses.

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[15] Laws 1980, Chapter 579, Section 31.

When the price of wholesale power increases, electric distribution coops send the new costs along to their customers. If the cost is fuel-related, the adjustment is passed through with no review. If the wholesale cost to the coop includes expenses that would generally be disapproved by the PSC, there is no comparable forum to examine these costs and reject them. It is this absence of an impartial review of coop expenses at the retail and wholesale levels that has caused much of the demand for re-regulation. People seem unwilling to assume that coop board members will be able to examine the books as carefully as would an independent governmental body. The legislative judgment in this instance must weigh the self-governing role of cooperatives against the possible benefits of state review at some level.