STATE REGULATION OF BUSINESS ACTIVITY

September 1984

I. EXECUTIVE SUMMARY

Issue Title: **State Regulation of Business Activity**

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Subcabinet: **Jobs and Economic Development**

State regulation of business activity has significant effect on the formation, operation, and expansion of businesses in Minnesota. This issue study looked at possible regulatory improvements in five areas: securities regulation, corporate takeovers, public utilities regulation, antitrust, and general regulatory policy and operations. Issue team members were drawn from those executive branch agencies concerned with specific issues with impact and participation of regulated parties and other experts. In summary the findings and recommendations were:

Securities: Merit regulation of securities continues to be appropriate and should be retained. Certain statutes and rules relating to cheap stock, limited offerings, franchises, and the structure and operation of Minnesota business corporations should be changed. The Minnesota Department of Commerce has initiated action to amend rules and propose legislation to implement these recommendations.

Corporate Takeovers: Regulation of tender offers and corporate takeovers can be an important tool in apprising companies, their employees, and the communities in which they are located of pending changes in corporate control. The current Minnesota takeover statute raises constitutional issues on the limits of state power to regulate the alienability of corporate stock and to regulate the free flow of interstate securities transactions. **Recommendations were developed on this subject. However, because the Minnesota takeover statute is the subject of litigation in both federal and state courts at the time of this report (Sept. 28, 1984), no recommendations have been made. The Commissioner of Commerce, the Deputy Commissioner of Commerce for Securities, and the study director concur in making no recommendations at this time. As noted in the section on Appendices a background staff paper on the takeover statute remains available to interested parties.**

Public Utilities: Public utilities should continue to be regulated at the state level. The Public Utilities Commission should take a strong leadership role in statewide energy planning and policy analysis. Matters such as settlements and acquisitions below an economically, justified threshold should be subject to Commission oversight but no longer require Commission approval. Using procedures in place in the Department of Public Service and the Public Utilities Commission the process of public participation in the regulatory process should be improved. Funding of social welfare programs such as low income energy assistance should be accomplished

through the regular tax system. Recommendations on these subjects have been developed by representatives of the Public Utilities Commission, the Department of Public Service, the Department of Energy and Economic Development, and regulated utilities. These parties will be seeking to develop consensus legislative proposals for the 1985 legislative session.

Antitrust: Fundamental changes in Minnesota's antitrust statute are not necessary at this time. The state, however, should re-examine state and local laws to determine whether they have an unnecessarily burdensome anticompetitive effect on business.

General Regulatory Policy: In Minnesota the improvement of regulation and reduction of regulatory burdens does not require completely de novo efforts. State departments should be encouraged to use improvement efforts already in place in some departments. Principal among these efforts are: review of regulations, clear statements of regulatory policy, better training of staff, better dissemnation of information, creation of regualtory assistance programs. The recommendations developed on these subjects do not, for the most part, require new statutory authority and can be accomplished at modest cost.

II. BACKGROUND

The need for analysis of the issue. Regulation of business activity carries tremendous importance for at least four reasons:

- Regulations involve in many cases "individualized economic decisions" dealing with issues of individual and corporate liberty and property.
- Regulations affect the economic well-being not only of the regulated parties but also of the broader society of employers, suppliers, customers, and the total economic community.
- Regulations deal with questions of encouragement or limitation of competition, protection of public safety, health and welfare.
- Regulations, by being first and continuing factors in doing business, determine future social and economic behaviors.

Past state efforts. Past state efforts at regulatory improvement have focused on managerial or administrative changes in state regulatory agencies and their efforts. These include:

- Creation of regulatory assistance programs (e.g., the Environmental Permit Coordination Act; the Bureau of Business Licenses.)
- Change in the organization of regulatory agencies to make their activities more efficient, responsible and accountable (e.g., the 1983 reorganization of the Minnesota Department of Commerce; the Minnesota International Trade Office; the Minnesota Department of Energy and Economic Development; the movement of the Office of Consumer Services to the Office of the Attorney General.)
- Provision for increased legislative oversight of agency action (e.g., the efforts of the Legislative Commission to Review Administrative Rules).

THE ISSUE CHARGE

To examine current state regulatory efforts in areas of securities regulation, tender offers and corporate takeovers, public utilities regulation and antitrust; and, where appropriate, to recommend substantive, administrative, or procedural changes for improvement in such regulations.

ANALYSIS METHOD

In formulating the issues involved and the recommendations presented, the methodology used has been that developed by the American Bar Association's Commission on Law and the Economy for its 1981 study of federal regulation. That methodology required that regulators and regulated parties, independently of each other, frame the issues, debate their importance, and make a prima facie case for any recommendations affecting their position. In practice this activity was conducted by the development and exchange of working papers by the parties. The final recommendations were framed by the study director and presented to the parties for review, criticism, rebuttal or concurrance. Each set of recommendations contains, at its opening, a list of the participants and identification of those parties concurring or disagreeing.

ISSUE TEAM PARTICIPANTS

Securities Regulation and Regulation of Corporate Take-Overs

Michael A. Hatch	Commissioner, Minnesota Department of Commerce
Kris Eiden	Deputy Commissioner, Minnesota Department of Commerce
Samuel Crecelius	Deputy Commissioner, Minnesota Department of Commerce
Charles A. Schaffer	Minnesota Department of Energy and Economic Development
Mary J. Berg	Minnesota Department of Energy and Economic Development

Recommendations and comments were received from a Joint Committee of the Corporation, Banking and Business Law Section of the Minnesota State Bar Association and the Hennepin County Bar Association. The members of that committee were:

Ralph Strangis, Esq.	Kaplan, Strangis & Kaplan
William Lapp, Esq.	Lapp, Lazar, Laurie & Smith
Lindley Branson, Esq.	Gray, Plant, Mooty, Mooty & Bennett
Avron Gordon, Esq.	Briggs and Morgan
Jerry Rotman, Esq.	Briggs and Morgan

Timothy Heaney, Esq.	Fredrikson & Byron, P.A.
Gale Mellum, Esq.	Faegre & Benson
Edward Driscoll, Esq.	Larkin, Hoffman, Daly & Lindgren, Ltd.
Deanne Greco, Esq.	Curtin, Mahoney & Cairns
David Boehnen, Esq.	Dorsey & Whitney
Lee Mitau, Esq.	Dorsey & Whitney
Vernon Vander Weide, Esq.	Head & Truhn
Mary Beth Brody, Esq.	Stacker & Ravich
Steven Wellvang, Esq.	Oppenheimer, Wolff, Foster, Shepard & Donnelly

Public Utility Regulation

Terry Hoffman	Commissioner, Minnesota Public Utilities Commission
Kenneth B. Peterson	Deputy Director, Minnesota Department of Public Service
Robert W. Carlson	Minnesota Department of Public Service
Charles A. Schaffer	Minnesota Department of Energy and Economic Development
Mary J. Berg	Minnesota Department of Energy and Economic Development
Carl Cummins	Minnegasco
Merle Anderson	Northern States Power
David Sparby	Northern States Power
Roy Berglund	Northern States Power

Antitrust Enforcement

Stephen P. Kilgriff	Manager, Antitrust Division, Office of the Minnesota Attorney General
Leon Goodrich	Attorney, Oppenheimer, Wolff, Foster, Shepard and Donnelly Chairman, Antitrust Section, Minnesota State Bar Association
Charles A. Schaffer	Minnesota Department of Energy and Economic Development
Mary J. Berg	Minnesota Department of Energy and Economic Development

APPENDICES

Five staff papers have been prepared:

Securities Regulation
Tender Offers and Corporate Takeovers
Current Issues in Public Utilities Regulation
Antitrust
General Trends in State Regulation

These are available by calling the study director, Charles A. Schaffer, at 296-0617 or 296-3871 or writing him at the Minnesota Department of Energy and Economic Development, Economic Development Division, 900 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101; telephone (612) 296-3871.

Individual working papers submitted by the participants are available for reading and copying at the Minnesota Department of Energy and Economic Development, Economic Development Division, 900 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

III. FINDINGS AND CONCLUSIONS

SECURITIES

Merit regulation of securities in Minnesota continues to be appropriate. However, certain aspects of securities regulation appear to inhibit new business formation and capitalization in the state. Specifically, certain "cheap stock" regulations may discourage entrepreneurs and promoters from investing in securities issued by new Minnesota companies; the state's limited offering exemptions do not conform closely enough to similar federal regulations, thus increasing costs and creating confusion for firms attempting to raise capital in the state; and the broad drafting of the franchise statute may bring many arrangements under its regulatory requirements even though they are not traditional franchise situations. In addition, recent amendments to the Minnesota Business Corporation Act are said by some to discourage companies from organizing in Minnesota.

The foregoing findings and conclusions are supported by position papers submitted by members of the Minnesota securities bar and representatives of the Minnesota Department of Commerce. The position papers are supplemented by the results of a literature search of recent legal commentary on securities matters, particularly in the area of merit regulation.

TENDER OFFERS AND CORPORATE TAKEOVERS

Regulation of tender offers and corporate takeovers can be an important tool in apprising companies, their employees and the communities in which they are located of pending changes in corporate control. Advance notice of such changes enhances the possibility of a negotiated sale that is beneficial to all affected entities. Recent United States Supreme Court decisions have cast serious doubt on the validity of state regulations that interfere with the free flow of interstate securities transactions. In addition, such regulations may work to the detriment of Minnesota firms if their securities are unmarketable at the national level. Accordingly, commentators strongly urge that state statutes which regulate such transactions should be narrowly drafted to comport with constitutional requirements, and monitored carefully to ensure that they do not discourage entities from organizing in the state.

The above findings stem from two judicial decisions directly affecting tender offers in Minnesota: Edgar v. MITE Corp., 457 U.S. 624 (1982) and National City Lines v. L.L.C. Corp., 687 F.2d 1122 (8th Cir. 1982). In both cases, the Court invalidated on constitutional grounds state tender offer regulations that conflicted with federal regulation. Legal

commentators on these and similar cases caution strongly against tender offer legislation that goes beyond applicable federal regulation. This caution is in line with comments received on this issue from members of the Minnesota securities bar who participated in this study.

However, because the Minnesota takeover statute is the subject of litigation in both federal and state courts at the time of this report (Sept. 28, 1984), no recommendations have been made. The Commissioner of Commerce, the Deputy Commissioner of Commerce for Securities, and the study director concur in making no recommendations at this time. As noted in the section on Appendices a background staff paper on the takeover statute remains available to interested persons.

PUBLIC UTILITIES REGULATION

Public utilities should continue to be regulated at the state level. Regulatory authority should remain with the Public Utilities Commission, augmented by the Department of Public Service. The Commission should take a strong leadership role in statewide energy planning and policy analysis, coordinating its efforts with the efforts of related agencies. To free up Commission time for an expanded policy role without increasing regulatory costs, matters such as settlements and acquisitions below an economically justified threshold should be subject to Commission oversight but should no longer require prior Commission approval. A strong effort should be made to fine tune public involvement in the regulatory process in order to reduce costs while at the same time providing an effective mechanism for bringing public concerns and scrutiny to the process. Funding important social welfare programs, such as low income energy assistance, should be accomplished through the visible, progressive and publicly accountable tax system rather than through utility rates.

The foregoing findings and conclusions are supported by position papers submitted by representatives of the state's major regulated gas and electric utilities, the Public Utilities Commission, and the Department of Public Service, and have been agreed to by those participants. In addition, study team staff examined public utility regulation issues raised by current economic, financial and legal commentators. The commentary generally supports the findings, conclusions and recommendations of the study participants.

ANTITRUST

Fundamental changes in Minnesota's antitrust statute are not necessary at the present time. The state's antitrust laws and enforcement policy are consistent with the laws and policy of the federal government and other states, and

thus do not place Minnesota businesses at a competitive disadvantage with regard to antitrust requirements when compared to other states. The state should, however, re-examine state and local regulatory laws to determine whether they have an unnecessarily burdensome anticompetitive effect on business. Recent judicial decisions have drawn into serious question the validity of anticompetitive state and municipal regulation, and in some cases the conditions giving rise to regulation initially may no longer exist.

Sources utilized in this portion of the study included position papers submitted by Stephen Kilgriff, manager of the antitrust division of the Minnesota Attorney General's office and by Leon Goodrich, a St. Paul attorney who is chair of the State Bar Association's antitrust section, and recent legal commentary.

GENERAL REGULATORY POLICY

In Minnesota improving regulation and reducing regulatory burdens do not require completely de novo efforts. In areas both of substance and procedure there are a number of efforts already in place whose general application will substantially aid in improving regulation. These efforts include:

- provision of clear, legislatively stated regulatory policy to grade both regulators and regulated parties (for example, the policy on the need for licensure expressed at Minn. Stat. 116J.69).

- requirements for review of regulations and the affirmative burdens they impose (for example, the review for effect on small business imposed by Minn. Stat. 14.115).

- creation of regulatory assistance programs (for example, the operation of the Environmental Permit Coordination Act of Minn. Stat. 116C.22 to 116C.34 and the Bureau of Business Licenses at Minn. Stat. 116J.69 to 116J.71).

- coordination between departments regulating the same kinds of activities (for example, current efforts of the Minnesota Department of Health to coordinate with the Office of the Fire Marshall and the Department of Public Welfare in inspection of nursing homes).

- oversight by legislative committees and the Legislative Commission to Review Administrative Rules.

In formulating any regulations, and any regulatory improvement efforts, the standards of appropriateness, effectiveness, and efficiency should be paramount.

Issues of regulatory policy are for the legislature to decide. Operational procedures to implement those policies are best set by regulatory agencies using their specialized expertise.

In both initiating regulations and enforcing their application, regulatory decision-making should be clear, rational, and systematic in examining the need for, costs of, alternatives to, and projected consequences and achievements of regulation.

IV. ALTERNATIVE OPTIONS

SECURITIES

Several states have discontinued merit review of securities offerings, substituting for it a disclosure process similar to that utilized by the federal Securities and Exchange Commission. Under merit review, the state securities administrator determines whether the offering is "fair and equitable" to investors, whereas the federal approach assumes that, given adequate information, investors should be able to make their own decisions. While there is some support among members of the securities bar for abandoning merit regulation, others (including representatives of the Department of Commerce) feel strongly that merit review serves a valuable purpose, and that costs saved in discontinuing merit review are offset by increased enforcement costs. For these reasons, the study team recommends continuation of merit regulation at the present time.

Other recommendations made by the study team are based on relatively technical changes to the securities and franchise statutes and regulations. The recommendations were proposed by members of the securities bar after careful study of securities matters deemed appropriate to them. The recommendations are supported by representatives of the Department of Commerce involved in securities regulation.

The recommendations proposed by the study team will require legislative change or changes in certain rules of the Securities Division.

PUBLIC UTILITIES REGULATION

In addition to the recommendations discussed separately, the study team considered several alternatives for improving the efficiency, and reducing the cost, of public utility regulation. These alternatives included removing certain matters from Commission regulatory authority; centralizing case management (discovery) functions in a single agency; detailed allocation of responsibilities and functions for the Commission, Department of Public Service and state agency intervenors, and re-examination of the numerous items presently includable in or excluded from the utilities' rate base. Study participants uniformly agreed that resolution of these issues required substantial participation by experts, members of the public, and other entities affected by the proposals. Accordingly, it was felt these issues should be addressed in a broader forum.

Certain recommendations, such as those dealing with removal of monetary thresholds above which Commission approval is

required, will require legislative change. Other recommendations can be implemented by the Commission through exercise of existing regulatory powers. In general, study participants felt that detailed statutory limitations should be abandoned in favor of granting broad authority to the Commission to determine these matters by rule or on a case-specific basis. It was felt that the Commission has the flexibility and expertise necessary to make these determinations in a timely and cost effective manner that allows for broad participation by affected entities.

ANTITRUST

Several commentators observe a change in antitrust philosophy at the federal level, and have suggested that states consider adopting their own antitrust policies and enforcement efforts. The study group believes such efforts are premature because the thrust of federal enforcement efforts has not yet crystallized, and recent policy changes have not been fully tested in the courts. Similarly, although Congress and several states are considering legislation that would expressly provide for innovations such as research and development joint ventures, the study group believes Minnesota's efforts in this regard should be postponed. Not only is it important to avoid conflict with federal legislation in this area, but Minnesota has a strong record of encouraging such ventures, and thus specific legislation appears unnecessary.

The alternative to re-examination of the antitrust impact of state and municipal regulation is to do nothing at the present time. This approach risks litigation similar to that brought recently in other parts of the country. The cost of defending such litigation likely will exceed the cost of such a study.

Examination of the antitrust impact of state and municipal regulation probably does not require express legislative authorization. Such a mandate may be desirable, however, to underscore the importance of the project. In addition, an adequate level of funding will be required to support the study.

V. RECOMMENDATIONS

SECURITIES RECOMMENDATIONS

Concurring in recommendations one through four relating to matters under jurisdiction of the Minnesota Department of Commerce were:

Michael A. Hatch	Commissioner, Minnesota Department of Commerce
Kris Eiden	Deputy Commissioner, Minnesota Department of Commerce
Samuel Crecelius	Deputy Commissioner, Minnesota Department of Commerce
Charles A. Schaffer	Minnesota Department of Energy and Economic Development
Mary J. Berg	Minnesota Department of Energy and Economic Development

Recommendation numbers five and six relating to the Minnesota Business Corporation Act under the jurisdiction of the Office of the Secretary of State were reviewed by Bert Black, Director of the Securities Division of the Office of the Secretary of State. That Office, however, took no official position on these recommendations.

A number of administrative rule changes and legislative proposals for consideration during the 1985 legislative session have been developed by the Minnesota Department of Commerce to implement the substance of these recommendations.

1. Merit review of securities offerings should be retained. The experiences of other states in changing their regulatory approach from "merit review" to "disclosure" should be monitored to determine whether such a change is appropriate in Minnesota.

2. Exemptions contained in Minn. Stat. 80A.15 and related regulations should be amended to bring the state's exemption structure into conformity with comparable federal regulations.

   a. The "isolated sale" exemption [Section 2(a)] should be amended to permit up to ten isolated sales within a 12 month period without the need to comply with registration and reporting requirements.

   b. Regulations pertaining to such sales should clarify that sales under this exemption are not counted when calculating the number of sales under the Section 2(h) limited offering exemption.

c. The limited offering exemption [Section 2(h)] should be expanded to permit sales to up to 35 persons in a six month period.

d. The period in which limited offerings may be made should be decreased from twelve to six months.

e. Regulations governing calculation of the number of sales for purposes of the Sections 2(a) and 2(h) exemptions in circumstances involving relatives or the use of trusts, corporations and partnerships should be amended to conform to federal Regulation D.

f. Integration provisions contained in the Commerce Department's regulations should be amended to clarify application to single issuers.

3. Regulations pertaining to cheap stock should be amended as follows:

a. The maximum escrow period for cheap stock should be reduced from five years to three years.

b. Subject to forthcoming action of the National Association of Securities Administrators, securities acquired by the promoters for cash at the same price as that paid by nonaffiliates should be considered for removal from the definition of cheap stock.

c. Valuation of intangible assets contributed for stock should permit use of valuation methodologies other than independent appraisal, at the discretion of the Commissioner.

4. The franchise statute (Minn. Stat. 80C) should be amended to expressly exclude from regulation (including filing and escrow requirements) isolated sales and relationships which are outside the traditional concept of a franchise. Examples of these relationships may include intellectual property licenses, franchises sold to affiliates, employer-employee relationships and general business partnerships, and cooperative associations. In addition, the state should review the results of the current Federal Trade Commission study on the effectiveness of its franchising rule, and recent developments in other states, to determine whether Minnesota should abolish or modify its franchise registration requirements.

5. Further changes to the Minnesota Business Corporation Act should be made cautiously to avoid uncertainty about the Act that may encourage firms to incorporate in states

other than Minnesota. Specific recent changes to the Act may have this adverse effect, and accordingly should be repealed or appropriately modified.

a. Amendments to Minn. Stat. 302A.751 that permit a court to dissolve the corporation or grant other relief if it finds directors or others in control of the corporation act in a manner "unfairly prejudicial" to minority shareholders should be amended to reinstate the Act's prior requirement that such actions be "persistently unfair" before the court can grant relief.

b. Expansion of Minn. Stat. 302A.751 to give a right of action for dissolution or other judicial relief to shareholder employees of a closely held corporation in cases of alleged "persistent unfairness" toward them in their capacity as employees should be repealed. This provision may cause owners of closely held corporations to refrain from granting stock interests to their employees out of fear that a disgruntled employee might bring action for dissolution or liquidation of the firm.

c. Minn. Stat. 302A.751, subd. 3 should be repealed. This amendment creates a very high duty on shareholders of closely held corporations that goes further than general corporate law. In addition, in determining whether to grant relief, the court is required to consider the "reasonable expectations" of the shareholders as they exist at the time of incorporation and during the course of the shareholders' relationship with the corporation and with each other. These issues are more appropriately handled on a case-by-case basis in a judicial setting.

6. The Business Corporation Act's provisions pertaining to control share acquisitions should be permitted, but not presumed, to apply to corporations organized in the state. While these provisions can be useful in giving notice to directors, managers, employees and the community in which the firm is located of a pending takeover, they have extremely broad application. Accordingly, it is recommended that they apply only to those firms that affirmatively desire the additional protection of these provisions.

CORPORATE TAKEOVER RECOMMENDATIONS

Because at the time of this report Minnesota's takeover statute is the subject of litigation in both federal and state courts, the Commissioner of Commerce, the Deputy Commissioner of Commerce for Securities, and the study director concurred that no recommendations would be appropriate at this time. The staff background paper on the takeover issue remains available for those interested.

PUBLIC UTILITIES REGULATION RECOMMENDATIONS

Concurring in the recommendations were all those participating on this subject:

Terry Hoffman	Commissioner, Minnesota Public Utilities Commission
Kenneth B. Peterson	Deputy Director, Minnesota Department of Public Service
Robert W. Carlson	Minnesota Department of Public Service
Charles A. Schaffer	Minnesota Department of Energy and Economic Development
Mary J. Berg	Minnesota Department of Energy and Economic Development
Carl Cummins	Minnegasco
Merle Anderson	Northern States Power
David Sparby	Northern States Power
Roy Berglund	Northern States Power

The participants have agreed to initiate further discussion of issues and options noted here for possible changes in statutes and rules.

1. In general, public utilities should continue to be regulated by the Minnesota Public Utilities Commission. Centralized regulation is necessary to assure that utility services provided to Minnesota residents will continue to be adequate and reliable, and delivered as efficiently as possible, at fair and reasonable rates, consistent with the economic and financial requirements of the utilities. Centralized regulatory authority can be especially instrumental in promoting energy conservation

and in coordinating planning efforts to assure the availability of future supplies at an acceptable cost.

2. The composition of the Public Utilities Commission should remain essentially as presently established by statute. Specifically, the number of commissioners should remain at five, and appointees should continue to reflect the broad range of expertise mandated by statute. The present method of rotating the chair among commissioners on an annual basis should be retained.

3. The Public Utilities Commission should take a strong leadership role in statewide energy planning and policy analysis. To facilitate this role, advance plans presently filed by utilities with the Department of Energy and Economic Development also should be filed with the Commission. In addition, to free up Commission and staff time to strengthen this role, certain matters now regulated by the Commission should no longer require Commission approval. In such cases documentation of the utilities' decision making process with respect to these matters should be open to inspection by the Commission and the public, and controls should be established to ensure that the utilities' decisions are consistent with the goals of the public utility regulation. The Commission should have the authority to respond to problem areas as they arise. Matters to be considered for change include:

   a. The use of settlements may be appropriate and desirable in rate cases. The present legislatively imposed limit on such settlements is $500,000. Arbitrary dollar limits may be counterproductive to effective ratemaking, and thus it is recommended that the statutory dollar limit on settlements be removed.

   b. Develop a mechanism that will allow for the release of certain local pipeline distribution operations from the full regulatory requirements of Minnesota Statutes 116I. At present the statute requires any person proposing to construct a pipeline of any length to notify several governmental agencies of its plan; pay the cost of preparing an information book describing the pipeline proposal; hold a public meeting on the matter; comply with various requirements designed to protect public drainage facilities and agricultural lands; and pay the cost of county inspection. While the requirements appear appropriate for large scale pipeline operations, the absence of a length limitation brings smaller pipeline additions or extensions constructed by local distribu-

tion companies under the full set of regulatory requirements as well. Compliance with these requirements is unnecessarily burdensome for smaller projects and unduly drains governmental resources.

Accordingly, it is recommended that the statute be amended to reduce disclosure and other requirements applicable to smaller pipeline projects to those reasonably necessary to protect the individual landowners and to achieve state and local environmental objectives.

c. Increase to $500,000 (from $100,000) the statutory amount above which Commission approval is necessary for the sale, lease or acquisition of utility property to or from nonaffiliated companies. Inflation and the high cost of equipment have made the $100,000 limit unrealistically low. Requiring the Commission to approve routine purchases reduces the time available for more important matters.

4. The relationship between the Public Utilities Commission and the Department of Public Service and the allocation of responsibilities between the two entities should, in general, be retained. At appropriate intervals, using the mechanisms presently in place, it may be desirable to reexamine the allocation of responsibilities between the two agencies to assure that the skills and expertise of both agencies are utilitized effectively. Areas to be discussed may include responsibility for implementing the cold weather rule, responsibility for reviewing miscellaneous tariffs (to the extent such review is necessary at all), and matters of ultimate accountability such as custody of rate case records.

5. Future discussion should be held by the Public Utilities Commission as to whether certain items presently excluded by statute from recovery in rate cases should be includable. Items to include in such discussion might be:

   a. Acquisition of one public utility by another at an amount above the acquired utility's depreciated book value subject to prior Commission approval.

   b. Utility expenses that promote efficient use of the utility's distribution system or which inform and educate the public on the benefits and advantages of particular fuels.

6. Pubic participation in the ratemaking process should be retained. However, a strong effort should be made to "fine tune" public involvement in order to reduce

costs while at the same time providing an effective mechanism for bringing public concerns and scrutiny to the process. Specific recommendations include:

a. Improved coordination of state agency intervention. Currently, several state agencies have statutory intervention authority in utility rate cases. Each agency has a valuable perspective to bring to the process, but at present their discovery and testimony often overlap. It is proposed that existing mechanisms for coordinating agency participation be more fully utilized to avoid duplication and overlap.

b. Strict standards on the award of intervenor funding, by which the Commission makes an affirmative determination that the intervenor materially and significantly contributed to the Commission's decision before awarding intervenor funding, should continue in effect.

c. Alternative methods of obtaining effective public participation in the regulatory process should be explored. Some alternative suggestions include: use of generic hearings separately from or combined with evidentiary hearings to obtain public comment on regulatory issues; tailoring the extensiveness of the hearing to the facts of the case, including size of the utility, the area served, and the history of service problems; use of a 24 hour toll free number, to allow ratepayers to telephone their input; solicitation of written comments through billing inserts or media advertising, and scheduling a public hearing only on demand of a certain number of ratepayers.

7. Funding important social welfare programs, such as low income energy assistance, should be accomplished through the visible, progressive and publicly accountable tax system. Ratepayers served by utilities required to provide conservation improvement programs should not be required to subsidize the provision of such programs to residents of areas of the state not served by their utility.

8. Rules of the Public Utilities Commission should be updated to reflect current legislative requirements and Commission practice. In addition, Commission policy statements which are treated as having the force and effect of law should be formally issued as rules under the Administrative Procedure Act.

9. The Commission should consider taking jurisdiction over pole attachments. Jurisdiction presently is exercised by the Federal Communications Commission because of the absence of express state jurisdiction.

10. Consideration should be given to alleviating the "compaction problem" within the Public Utilities Commission whereby compensation of highly trained technical staff is limited by Commission salaries, which are relatively low.

ANTITRUST RECOMMENDATIONS

Concurring in the recommendations were all those participating on this subject:

Stephen P. Kilgriff	Manager, Antitrust Division, Office of the Minnesota Attorney General
Leon Goodrich	Attorney, Oppenheimer, Wolff, Foster, Shepard and Donnelly Chairman, Antitrust Section, Minnesota State Bar Association
Charles A. Schaffer	Minnesota Department of Energy and Economic Development
Mary J. Berg	Minnesota Department of Energy and Economic Development

These recommendations do not involve new legislative initiatives at this time.

1. Fundamental changes in Minnesota's antitrust statute are not necessary at the present time. The state's antitrust laws and enforcement policy are consistent with the laws and policy of the federal government and other states, and thus do not place Minnesota businesses at a competitive disadvantage with regard to antitrust requirements when compared to other states. Although federal antitrust enforcement policies are said to be changing, the thrust of federal enforcement efforts has not yet crystallized, and recent policy changes have not been fully tested in the courts. Thus, enactment of legislative changes which would either require Minnesota to follow federal precedent, or which would establish a "Minnesota Rule" different from the federal rule are premature.

2. Similarly, enactment of legislation that would expressly provide for such matters as research and development

joint ventures should be delayed. Numerous proposals are under consideration at the federal level and by other states. Enactment of a Minnesota statute specifically enabling such ventures risks the possibility that the Minnesota approach will be inconsistent with the federal statute. Further, Minnesota has a strong record of encouraging such ventures; thus, specific legislation in this area appears unnecessary. An informal mechanism presently exists within the Attorney General's office for testing the probable antitrust consequences of a proposed business transaction. This mechanism can achieve essentially the same result as legislation presently contemplated by Congress and other states. Because this mechanism is informal, however, it may be appropriate to formalize it by granting the Attorney General specific rulemaking authority in this area.

3. Minnesota statutes pertaining to state and municipal regulation of business activity should be reexamined to determine whether they have an unnecessarily burdensome anticompetitive effect on business. Recent judicial decisions have drawn into serious question the validity of anticompetitive state and municipal regulation. Further, commentators have noted that market conditions giving rise to initial governmental regulation may no longer exist. In many cases, market forces can regulate specific industries and pricing practices without the need for specific legislation. Where continued regulation is necessary for socially or economically justifiable reasons--such as to protect consumers from incompetents, to preserve clearly stated matters of public health and safety, or to inject competitive pricing into monopoly situations--the underlying legislative policy should be clearly articulated and the statute narrowly drawn to achieve that policy. The regulatory structure should be re-evaluated on a periodic basis to ensure that it continues to respond to current conditions.

GENERAL REGULATORY POLICY RECOMMENDATIONS

These are study staff recommendations developed in light of exposure to issues of regulatory policy and procedure raised in each of the individual study areas. Regulatory departments presently have the authority to implement these recommendations without new statutory language. Costs to implement these basically managerial and administrative efforts should be modest. As noted in the available staff paper on General Trends in State Regulation, these efforts do not have to begin de novo but may copy existing efforts in some state departments and use existing expertise as a general resource.

1. In formulating any regulations, and any regulatory improvement efforts, the standards of appropriateness, effectiveness, and efficiency should be paramount.

2. In both initiating regulations and enforcing their application regulatory decision-making should be clear, rational, and systematic in examining the need for, costs of, alternatives to, projected consequences and achievements of regulation. To those ends regulatory agencies should initiate actions:

   a. to ensure that full and balanced discussion takes place regarding the desirability of a regulatory activity.

   b. to ensure that staff are adequately and appropriately trained in the purposes, substance, and procedures of regulation.

   c. to ensure that operating procedures implemented in furtherance of regulation are effective and efficient.

   d. to ensure that any rules, policies, or procedures governing regulatory activity be as clear and simple as possible.

   e. to ensure that regulatory activity imposes no unnecessary burdens on regulated parties.

   f. to ensure that overlapping, outdated, or unnecessarily burdensome requirements are eliminated or amended and that regulatory activity which is inadequate to achieve its statutory purpose is strengthened.