

G,E-999/CI-90-1008 ORDER REQUIRING FURTHER FILINGS IN  
INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Patrice M. Vick	Commissioner

In the Matter of an  
Investigation into the  
Competitive Impact of Appliance  
Sales and Service Practices of  
Minnesota Gas and Electric  
Utilities

ISSUE DATE: May 6, 1991  
DOCKET NO. G,E-999/CI-90-1008  
ORDER REQUIRING FURTHER FILINGS  
IN INVESTIGATION

**PROCEDURAL HISTORY**

On August 21, 1990, Minnegasco, Inc. (Minnegasco) filed notice of its intent to merge with and into Arkla, Inc., a Louisiana company. The Commission created Docket No. G-009/PA-90-604 (the 604 docket) to deal with issues related to the merger.

On September 11, 1990, the Minnesota Alliance for Competition (MAC), a trade organization of plumbing, electrical and appliance associations, filed a petition to intervene in the 604 docket. Among other things, MAC stated that Minnegasco's regulated operations unfairly subsidize its appliance sales and service business, to the detriment of MAC's members. MAC urged the Commission to investigate Minnegasco's practices in the 604 docket.

On September 14, 1990, the Commission issued its ORDER ESTABLISHING PROCEDURES AND DENYING PETITION TO INTERVENE in the 604 docket. In that Order, the Commission found that the issue of alleged subsidization of Minnegasco's unregulated business by its regulated business could be raised and examined independently of the merger proceeding. The Commission assured MAC that although MAC had been denied intervenor status, it could appear and offer comments or evidence as a participant in the 604 proceeding.

On October 15, 1990, MAC filed comments in the 604 docket. MAC alleged that Minnegasco has an unfair competitive advantage over other unregulated companies which sell or service appliances. MAC stated that Minnegasco is engaged in unfair use of utility bills for non-utility billing, its ratepayer lists and other information, and the Minnegasco name, service personnel and equipment.

On January 4, 1991, the Commission issued its ORDER INITIATING INVESTIGATION AND REQUIRING REPORT in the current docket. In that Order the Commission stated that MAC's questions regarding appliance sales and service by utilities merited further investigation. The Commission directed the Department of Public Service (the Department) to initiate an investigation of the appliance sales and service practices of all Minnesota gas and electric utilities. The Department was instructed to file a report of its investigation, including recommendations for future actions, with the Commission within 60 days.

The Department filed its report on March 5, 1991. The Commission issued a Notice of Comment Period on March 8, 1991. On March 25, 1991, MAC submitted its comments. On April 1, 1991, comments were filed by the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), Northern States Power Company (NSP), Minnesota Power (MP), Peoples Natural Gas Company (Peoples), and Minnegasco.

The Commission met to consider the matter on April 25, 1991.

## **FINDINGS AND CONCLUSIONS**

### **The Department Report and Recommendation**

To gather information for its report, the Department reviewed past relevant Commission Orders, interviewed MAC representatives, and surveyed gas and electric utilities which sell or service appliances. The Department reported that six Minnesota utilities are engaged in selling and financing appliances: Minnegasco, Great Plains Gas Company, Midwest Gas, Peoples, Minnesota Power and Dakota Electric. Six utilities are in the business of servicing appliances: Minnegasco, Northern Minnesota Utilities, Great Plains, Midwest Gas, Peoples and Northern States Power Company.

The Department focused on three main issues in its report: the use of regulated customer lists by utilities in their unregulated enterprises; separation of costs between regulated and unregulated activities, including the allocation of indirect costs; and the use of utility name and good will. The Department recommended that further investigation, if required, should be conducted by other state agencies more directly involved with unfair trade practices.

### **Commission Authority**

All parties were in agreement that the Commission has authority to monitor issues related to cross-subsidization between

regulated and unregulated utility enterprises. The Commission's authority is implicit in Minn. Stat. § 216B.03 (1990), which reads in part as follows:

#### REASONABLE RATE

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 unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of customers.

Rates imposed upon ratepayers in an effort to subsidize a utility's nonregulated activity would not be just and reasonable and would be unreasonably prejudicial. The Commission has the authority to oversee utility activities to ensure that such rates are not charged.

#### Issues Raised by the Parties

MAC stated that utility appliance programs harm ratepayers and consumers, that utilities should place appliance programs in separate entities with different names, that utilities should provide access to utility resources such as customer lists for competitors and that appliance service contracts should be regulated by the Department of Commerce.

The commenting utilities stated that ratepayers are protected by the utilities' adequate, ongoing cost separation methods. The utilities stated that customers, especially in rural areas, want and need the sales and service provided by the utilities. Since ratepayers do not pay for utility goodwill or name, they are not indirectly paying for these benefits to the nonregulated entity. The utilities also stated that a general rate case is the place in which to examine issues of cross-subsidization and cost separation. The utilities agreed that MAC had not stated sufficient facts upon which further investigation should center. They advocated terminating the investigation.

#### Commission Action

At the April 25 meeting, a representative of MAC showed a twelve-minute videotape to the Commission. The videotape purported to show actions by various utility employees which MAC alleged constituted an unfair relationship between the utilities' regulated and unregulated entities. At the meeting MAC also submitted a group of other videotapes and related written transcripts which MAC alleged would show further unfair utility practices.

The Commission finds that there was a sufficient concern regarding cross-subsidization and impropriety raised in the videotape to warrant keeping the investigation open. The Commission notes that at this point no formal, factual complaint has been submitted. The Commission is not at this time making a judgment as to the eventual outcome of further investigation. It will be best, however, to have any and all allegations aired at this time. All interested parties should have the opportunity to examine the tapes submitted by MAC and to comment upon them. At that time, the Commission will convene a further meeting and decide if any issues raised by MAC should be investigated further. If any further investigation is necessary, the parties should seek to limit and define the issues as closely as possible.

**ORDER**

1. Within ten days of the date of this Order, any party who wishes to examine a copy of the videotapes and/or transcripts submitted by MAC shall file such a request with the Commission and serve it upon MAC.
2. MAC shall promptly provide copies of the videotapes and transcripts to any requesting party or shall make the videotapes and transcripts available for copying by said parties. Upon serving of the videotapes and transcripts upon all requesting parties, MAC shall file an affidavit of service.
3. When all parties have been served with or made their requested copies, the Commission will serve the parties with a Notice of Comment Period, providing 20 days to comment.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)