

G,E-999/CI-90-1008 ORDER REQUIRING FURTHER FILINGS BY UTILITIES

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: August 28, 1991
DOCKET NO. G,E-999/CI-90-1008
ORDER REQUIRING FURTHER FILINGS
BY UTILITIES

PROCEDURAL HISTORY

On September 14, 1990, the Commission issued its ORDER ESTABLISHING PROCEDURES AND DENYING PETITION TO INTERVENE in Docket No. G-009/PA-90-604, In the Matter of the Proposed Merger of Minnegasco, Inc. with and into Arkla, Inc.. In that Order the Commission faced concerns regarding competition raised by the Minnesota Alliance for Competition (MAC), a trade organization of plumbing, electrical and appliance associations. MAC had alleged that Minnegasco's regulated utility operations unfairly subsidize its unregulated appliance sales and service business, to the detriment of MAC's members. In the September 14 Order, the Commission found that MAC's concerns should be addressed outside of the Minnegasco/Arkla docket.

On January 4, 1991, the Commission issued its ORDER INITIATING INVESTIGATION AND REQUIRING REPORT in the current docket. In that Order the Commission found that issues regarding unregulated appliance sales and service by regulated 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 with the Commission within 60 days.

The Commission met to consider the Department's report and parties' comments on April 25, 1991. At the meeting, MAC presented 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. In one instance, the videotape showed an incident in which a Minnegasco sales

representative seemed to link preferential regulated utility service with patronage of Minnegasco's unregulated sales and service department.

On May 6, 1991, the Commission issued its ORDER REQUIRING FURTHER FILINGS IN INVESTIGATION. In that Order the Commission expressed concern regarding the allegations of utility cross-subsidization and impropriety raised by MAC. The Commission granted any interested party the right to examine MAC's videotapes and transcripts upon filing a request.

After the parties had examined MAC's material, the Commission issued a Notice of Comment Period. The Department and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed comments on June 18, 1991. From June 5, 1991, through June 20, 1991, comments were filed by Minnegasco, Minnesota Power, Northern States Power Company, Peoples Natural Gas Company, Midwest Gas Company and Great Plains Gas Company.

Reply comments were filed on July 9, 1991 by MAC, the Department, and Minnegasco.

The Commission met to consider the matter on August 2, 1991.

FINDINGS AND CONCLUSIONS

The concerns raised by MAC, the Department and the RUD-OAG fall under the headings of cost separation and discriminatory treatment.

Cost Separation

For ratemaking purposes, costs of providing regulated utility service must be separated from costs of providing unregulated sales and service. Several issues raised by the parties stem from the necessity for cost separation:

1. Whether costs are appropriately allocated and charged to unregulated operations by utilities;
2. Whether certain intangible resources (e.g. name, goodwill) shared between regulated and unregulated operations should be quantified and allocated to unregulated operations;
3. Whether more distinct separation should occur between regulated and unregulated operations in order to protect ratepayers from inadvertent or deliberate subsidization of unregulated operations.

The investigation revealed that regulated/unregulated cost separation and cost-accounting vary by utility. At least one utility uses an allocation formula to assign the amount of time spent in unregulated activity rather than accounting specifically for actual time spent. Some utilities have a significant number of personnel involved in both regulated and unregulated activities.

While the results of the investigation do not prove that improper cross-subsidization of unregulated activity by regulated activity occurs, clearly the potential for such cross-subsidization is present. The Commission finds that a legitimate concern still exists regarding the sufficiency of record-keeping for rate-making purposes. The Commission will therefore require the utilities to file their cost separation methodologies and actual 1990 cost separation data for Commission review. This information will enable the Commission to determine if more stringent cost separation methods should be imposed upon the utilities or if the present methods are sufficient for rate case purposes.

Discriminatory Treatment

Any regulated utility which based preferential treatment upon a customer's use of the utility's unregulated service would be in violation of Minn. Stat. § 216B.03 (1990), which reads in part:

Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of customers.

Real concerns are thus raised by the videotapes, which allegedly show a Minnegasco employee offering preference in utility hookup to a customer if that customer purchases an appliance from Minnegasco. In filings following the videotape presentation, Minnegasco stated that it has taken concrete steps to address those concerns and to prevent such a situation from occurring. Minnegasco has expanded its written ethics policy to include a specific section forbidding preferential treatment for utility services. Minnegasco has communicated to its dealer representatives its policy forbidding preferential treatment to its customers. The Company has instructed its dealer representatives to inform private heating, ventilating and air conditioning dealers that they may contact Minnegasco directly for processing natural gas service requests.

The Commission notes that only one apparently discriminatory conversation was shown on the videotape; it is unclear if the discriminatory hookup ever occurred. No complaint was filed by MAC or any other party regarding Minnegasco's alleged

discriminatory treatment. No other utility was shown on the videotape in a discriminatory situation. The Commission will not refer Minnegasco or any other utility for further investigation at this time.

At the same time, the Commission remains concerned regarding the implications of possible discrimination. The use of a regulated utility service in a preferential manner would be directly against Commission and public policy. The Commission urges each utility to guard against any such practice. The Commission further urges any party who may become aware of a discriminatory utility practice to report any such incident to the Commission in a formal complaint.

As a further safeguard against illegal discrimination, the Commission will direct each gas and electric utility to work with Commission staff to develop a customer brochure which will clarify the regulated and unregulated services offered by the utility. If a utility offers unregulated sales or service of any kind, the brochure should clearly state the nature of the unregulated service and contrast it with the utility's regulated services, which are paid for in rates. Each potential customer of a utility's unregulated entity should be informed that he or she can buy an appliance or obtain service from other sources as well as the customer's gas or electric provider. A well-written brochure distributed to customers should alleviate confusion and lessen the opportunity for inappropriate discriminatory service.

ORDER

1. Within 60 days from the date of this Order, each Minnesota gas and electric utility shall file its cost separation methodologies and actual 1990 cost separation data.
2. Within 60 days from the date of this Order, each Minnesota gas and electric utility which offers unregulated sales or service of any kind shall develop and submit a proposed customer brochure as described in the preceding paragraph.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)