

G-008/C-91-942 NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Complaint
of the Minnesota Alliance for
Fair Competition Against
Minnegasco, a Division of Arkla,
Inc.

ISSUE DATE: May 5, 1993
DOCKET NO. G-008/C-91-942
NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

I. Proceedings to Date

On November 27, 1991 the Minnesota Alliance for Fair Competition (MAC), a trade organization of plumbing, electrical and appliance associations, filed a complaint against Minnegasco, a regulated gas utility. Among other things, the complaint alleged that Minnegasco subsidizes its unregulated appliance sales and service operations through its regulated utility operations. The Commission responded to the Complaint by removing Minnegasco from an ongoing investigation of all utilities' appliance sales and service operations and establishing this complaint docket. ORDER SEVERING MINNEGASCO FROM THE INVESTIGATION DOCKET, GRANTING DISCOVERY RIGHTS, REQUIRING REPORT AND AUTHORIZING COMMENTS, this docket (January 29, 1992).

That Order also granted MAC discovery rights and required MAC to file a report on the results of its investigation. MAC filed its report on June 12, 1992. The Company and two other parties, the Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments and presented oral argument after the report was filed. On November 10, 1992 the Commission issued its ORDER ESTABLISHING ACCOUNTING PROCEDURES AND REQUIRING FURTHER FILINGS, copy attached. In that Order the Commission found

Minnegasco's current cost allocation procedures do not identify the costs of unregulated operations with enough precision, do not deal equitably with fixed, utility-related costs, and do not reflect a unified approach to cost allocation.

November 10, 1992 Order at page 7.

To correct these deficiencies, the Order required the Company to adopt and implement the cost allocation principles developed by the Federal Communications Commission (FCC). It also required the Company to charge the entire cost of carbon monoxide checks to unregulated operations, since those checks were necessitated by its appliance sales and repair operations. The Order required the Company to make a detailed explanatory filing on its winter gas leak detection program, which is conducted by unregulated operations and charged to regulated operations. Finally, the Order required the Company to make filings demonstrating its compliance with the Order's terms.

On November 30, 1992 the Company made the compliance filings required under the Order. On April 22, 1993 the compliance filings, and the other parties' comments on them, came before the Commission. MAC contended the Company had failed to implement FCC allocations properly and that its regulated operations continued to subsidize its appliance sales and service operations by some \$12.4 million per year. MAC urged structural separation of the Company's regulated and unregulated operations.

The Department recommended that the Commission initiate contested case proceedings on cost allocation issues and request accelerated treatment to allow the decisions in this docket to be incorporated into the Company's next rate case. The RUD-OAG concurred, as did the Company.

FINDINGS AND CONCLUSIONS

II. Jurisdiction and Referral for Contested Case Proceedings

The Commission has general jurisdiction over the Company under Minn. Stat. § 216B.08 (1992) and specific jurisdiction over the Company's accounting and recordkeeping practices under Minn. Stat. § 216B.10 (1992).

The Commission finds that it cannot determine, on the basis of the record before it, whether the Company's regulated operations subsidize its appliance sales and service operations. Neither can it determine the precise accounting procedures the Company should put into place to prevent subsidization and ensure efficient monitoring of cost allocations in the future. These determinations turn on specific facts which are best developed in formal evidentiary proceedings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

III. Issues to be Addressed

Parties shall address the following issues in the course of the contested case proceedings ordered herein:

- (1) Under the Company's current cost allocation practices, do its regulated operations subsidize its appliance sales and service operations?
- (2) If subsidization is occurring, what steps should be taken to end it and ensure that it does not recur?
- (3) Will the application of FCC cost allocation principles make the Company's cost allocations comprehensible to and auditable by outside parties? If not, what steps should be taken to accomplish this goal?
- (4) Is the Company's winter gas leak detection program prudently designed and operated? Are the costs properly allocated?

The parties may also raise and address other issues related to allocating costs between the Company's regulated operations and its unregulated appliance sales and service business. In the past, for example, the parties have questioned the Company's allocation of the costs and regulatory assessments incurred in connection with this and other investigations of unregulated operations, the allocation of the salary and benefits of the Vice-President of Appliance Service, and whether plant should be allocated on a net or gross basis.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2542.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1992); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present

evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1992).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen or Anu Seam, Special Assistant Attorneys General, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147; (612) 296-0410 or 296-0413.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

C. Intervention

The parties to this proceeding are the Company, the Minnesota Alliance for Fair Competition, the Department of Public Service, and the Residential Utilities Division of the Office of the Attorney General. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this matter on Wednesday, May 26, 1993, at 10:00 a.m. in the Large Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Persons participating in the prehearing conference should be prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, and similar issues.

E. Time Constraints

The Company has stated it intends to file another general rate case on or about September 1, 1993. That case would be the

logical vehicle for incorporating into rates the cost allocation decisions made in this docket. The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of this and asks the Administrative Law Judge to submit his final report by November 1, 1993. The Commission would then expedite deliberations so that decisions made in this docket could be reflected in the rates set in the rate case.

F. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq. (1992), apply to ratemaking proceedings. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

G. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held to determine whether Minnegasco's current cost allocation procedures result in a subsidy from its regulated operations to its appliance sales and service operations and to determine how the Company should conduct cost allocations in the future.
2. The contested case proceeding shall begin with a prehearing conference on Wednesday, May 26, 1993, at 10:00 a.m. in the Large Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
St. Paul, Minnesota 55101-2147

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of the Minnesota Alliance for
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MPUC Docket No. G-008/C-91-942

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judge:

Richard C. Luis, Office of Administrative Hearings, Suite
1700, 100 Washington Square, Minneapolis, Minnesota 55401-
2138; (612) 349-2542

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the
above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____