

E-999/CI-93-894

ORDER DECLINING TO ADOPT THREE FEDERAL CONSERVATION AND ENERGY
EFFICIENCY STANDARDS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of an Investigation into
Standards Regarding the Encouragement of
Investments in Conservation and Energy
Efficiency by Electric Utilities under Section
111 of the Energy Policy Act of 1992

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PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On October 24, 1992, the federal Energy Policy Act of 1992 (the EPACT) was signed into law. The EPACT amended the Public Utility Regulatory Policies Act of 1978 (PURPA) to require all state regulatory agencies to consider three new sets of standards. The standards concern long-term wholesale purchased power and conservation and energy efficiency standards for both gas and electric utilities.

The Commission has dealt with the first two sets of standards:

- On October 25, 1993, the Commission issued an Order in which it determined that the four evaluative issues under Section 712 of the EPACT regarding purchased power would be considered in integrated resource planning proceedings, competitive bidding dockets, and any other regulatory procedures in which long-term wholesale purchased power contracts are relevant.
- On May 4, 1994, the Commission issued an Order declining to adopt the two standards on gas integrated resource planning and investment in conservation and demand management under Section 115 of the EPACT.

On August 15, 1994 the Commission issued its Order initiating the investigation to consider a third set of EPACT standards: conservation and energy efficiency standards for electric utilities.

On October 3, 1994 parties filed their initial comments with the Commission. The parties included the Minnesota Department of Public Service (the Department), the Residential Utilities Division of the Office of Attorney General (RUD-OAG), the Izaak Walton League of America (IWLA), Center for Energy and Environment (CEE), AlliedSignal, Inc. (ASI), and the National Alliance for Fair Competition (NAFC). On the same date, joint comments were filed by four electric utilities (Joint Utilities), including: Northern States Power Company (NSP), Interstate

Power Company (IPC), Minnesota Power (MP), and Otter Tail Power Company (OTP).

On November 1 and 2, 1994 response comments were filed by Dakota Electric Association (Dakota Electric) and the Department, respectively.

On September 28, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. STANDARDS CONSIDERED IN THIS ORDER

The remaining set of standards to be considered is found under Section 111 of the EPACT. This section amends Title I of PURPA and requires state regulatory agencies to consider the following new standards with respect to electric utilities:

- Integrated Resource Planning. Each electric utility shall employ integrated resource planning that compares supply and demand options on a systematic and comparable basis.
- Investments in conservation and demand management. The rates charged by a State regulated utility shall be such that the utility's investments in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving consideration to income lost from reduced sales resulting from such programs, as its investments in and expenditures for the construction of new generation, transmission and distribution equipment.
- Energy efficiency investments in power generation and supply. The rates charged by any electric utility shall be such that the utility is encouraged to make investments in and expenditures for, all cost effective improvements in the energy efficiency of power generation, transmission and distribution. State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment.

III. COMMENTS OF THE PARTIES

A. Office of the Attorney General

Regarding the proposed standard on Integrated Resource Planning, the RUD-OAG stated that the planning approach embodied in the Commission's rules and practice encourage utilities to identify and plan for least-cost resource options that will facilitate the advent of an increasingly

competitive environment. The RUD-OAG recommended that the Commission find that the EPACT integrated resource planning (IRP) standard has already been adopted in Minnesota.

As to the proposed standard for investments in conservation and demand side management (DSM), the RUD-OAG suggested that Minnesota law already provides the Commission with the authority to set rates to recover lost revenues from, and the expenses for, DSM measures, as well as awarding bonuses based on performance. Also, the RUD-OAG noted that the Commission has established a work group to examine current incentive mechanisms and propose improvements. In the RUD-OAG's view, the foregoing provides support for cost-effective DSM investments while maintaining compatibility with the changes occurring in the electric industry.

Finally, with respect to the proposed standard regarding investments in generation, transmission and distribution, the RUD-OAG suggested that the state's current IRP should address the issues of upgrading and maintaining a utility's system and answer the question of whether further investment in energy-efficiency raises or lowers system costs. However, the evaluation of improvements such as replacing uneconomic plant go beyond the IRP and are the subject of the ongoing national debate regarding stranded investment.

The RUD-OAG noted that the Commission is already considering the incentives and disincentives of alternative forms of ratemaking through the Chair's Roundtable. Supply-side energy efficiency investments that cannot appropriately be evaluated in the IRP, could be addressed as part of an incentive ratemaking proposal which could evaluate conservation goals, increased efficiency and equitable rates together.

In sum, the RUD-OAG found no need to adopt the proposed EPACT standards.

B. The Department

The Department supported the goals of EPACT's amendment to the PURPA. However, it argued that Minnesota processes already incorporate many of the standards included in the Act's amendment. To formally adopt the PURPA standards would duplicate existing practices.

In its reply comments, the Department noted that most of the commenting parties agreed with the Department that formal adoption of the Act is not necessary. Some parties proposed adoption of specific parts of the Act or had suggestions for improvement of current practices. Nevertheless, the Department maintained its position that Minnesota's current statutes, rules, and practices will achieve the goals of PURPA without its formal adoption.

C. Joint Comments by the Utilities: NSP, Interstate Power, Minnesota Power and Otter Tail Power

The Joint Utilities stated that adoption of the EPACT standards at this time is neither necessary nor in the best interests of Minnesota consumers. While recommending changes to both the IRP and the CIP process, the Joint Utilities noted that formal adoption of the federal standards is not necessary to accomplish improvement. Further, they believe adoption could operate as an impediment to the Commission's existing flexibility to address issues and concerns in a manner that best serves the interests of the State.

D. Dakota Electric Association

Dakota Electric, a transmission cooperative, noted that Laws of Minnesota for 1993 (codified as Minn. Stat. 216B.2422) expands the utilities required to file resource plans with the Commission. All generation and transmission cooperatives, investor-owned utilities, and municipal suppliers must submit integrated resource plans consistent with Commission rules. The Department reviews all plans and the Commission acts on each plan. In addition, all generation and transmission (G&T) cooperatives must submit resource plans to the Western Area Power Administration and to the Rural Electrification Administration. Dakota Electric stated that all of these filing requirements support its internal analysis to ensure that all resource additions are in the best interest of customers.

In sum, Dakota Electric argued that the Minnesota Legislature has enacted statutes, and the Commission has established rules, that efficiently and effectively achieve the goals in Section 111 of the Act. Thus, Dakota Electric recommended that the Commission not adopt the standards in the Act.

E. Izaak Walton League of America

IWLA did not recommend formally adopting the EPACT standards, but focused instead on the areas that need improvement, specifically IRP and DSM. IWLA recommended that utilities be required to provide periodic updates to verify compliance with approved, or modified IRP plans. IWLA also recommended that the Commission seriously consider removing the nexus between a utility's sale of electricity and its profits, or what is known as decoupling.

F. Center for Energy and the Environment

CEE noted that the goals behind the EPACT conservation and energy efficiency standards closely resemble Minnesota's energy policy goal: to maintain reliable, reasonably priced, efficient, economically sound energy services through environmentally responsible resource use.

To achieve Minnesota's energy goal, various laws and regulatory processes have been established over the last ten years relating to integrated resource planning and investments in conservation and energy efficiency. CEE suggested that given the Commission's promotion of these goals through its decisions and Orders, there is no need to formally adopt the new EPACT standards. CEE stated, however, that we are only part way through a dynamic process that has the potential to achieve the goals of PURPA and we have a long way to go.

G. National Association for Fair Competition

NAFC is primarily concerned with the protections afforded small business competitors contained within EPACT. NAFC argued that adoption of the standards contained in EPACT would be beneficial and recommended that the Commission act favorably in this regard.

NAFC noted that if the EPACT standards and the small business protections contained therein were adopted by the Commission, a well-defined process could be designed to eliminate unfair competition before it occurs. By protecting small business competitors, ratepayers are also protected with assurances against unnecessary rate increases

H. AlliedSignal, Inc.

As a supplier of amorphous-core transformers, AlliedSignal Inc. (ASI) focused on the third Section 111 EPACT standard. This section requires consideration of existing disincentives and/or providing for incentives for investments in cost effective improvements in generation, transmission and distribution. ASI stated that eight percent (about one month's supply) of the energy generated in Minnesota is lost through transmission and distribution. ASI estimated the loss of energy, through distribution transformer cores alone, to be 500 million kilowatt hours. It noted that technologically advanced transformers can reduce those losses to less than one-fifth or 100 million kilowatt hours.

ASI encouraged the Commission to remove the barriers to investments in generation, transmission and distribution by accelerating cost recovery, sharing the resulting savings, providing a higher rate of return on efficiency investments, standard offer rates, or accelerated depreciation. ASI argued that such incentives should be based on savings rather than expenditure.

IV. COMMISSION ANALYSIS

As required by EPACT, the Commission will consider each of the three standards:

A. Standard on Integrated Resource Planning

The IRP standard requires each electric utility to employ integrated resource planning that compares supply and demand options on a systematic and comparable basis.

Minnesota's current IRP process, under Minn. Stat. 216B.2422, and Minn. Rules Chapter 7843, requires biennial filings by the State's major power providers. The biennial filings must include an integrated analysis of supply- and demand-side resources. The process includes a public comment period. In addition, while the resource planning rules initially only applied to the four publicly held electric utilities operating in Minnesota, the 1993 Legislature expanded the process to include large wholesale generation and transmission cooperatives and municipals.

Only one party, NAFC, recommended formal adoption of the EPACT IRP standard. While the Commission agrees that the concern raised by NAFC regarding potential subsidization of utility affiliated interests by ratepayers is important, NAFC did not explain how adoption of the standard in question would provide businesses better protection from unfair competition than do Minnesota's current laws and practices.

Three parties raised the following questions regarding the current state of integrated resource planning in Minnesota:

- the IWLA suggested that the requirement that a utility's IRP plan be implemented should be strengthened and enforced
- the CEE believes that the planning process could be improved by enhancing the standard comparing supply and demand options on a systematic and comparable basis
- the Joint Utilities suggested that the application of integrated resource planning to

utilities currently exempt from the state practice could be addressed; they also believe the current IRP process could be shorter and made less adversarial

Adoption of the EPACT standard on integrated resource planning is neither the cure or a prerequisite for addressing these concerns. The Commission finds that IRP is already being appropriately implemented in Minnesota and formal adoption of this standard is not necessary.

B. Standard on Investment in Conservation and DSM

The EPACT standard on investment in conservation and DSM requires that a utility's investments in energy conservation and DSM be at least as profitable as investments in the construction of new generation, transmission, and distribution.

Minnesota law already provides the Commission with the authority to set rates to recover lost revenues from energy conservation investments. The Commission can also set rates to encourage vigorous and effective implementation of utility conservation programs (i.e. award bonuses based on performance).

Specifically, under Minn. Stat. 216B.16, subd. 6b, all investments and expenses related to conservation improvement programs are to be recognized and included in the determination of rates. Under this subdivision, the Commission is also permitted to approve annual recovery of the costs of energy conservation improvements. The Commission has approved conservation improvement program annual adjustment mechanisms for a number of utilities.

Under Minn. Stat. 216B.16, subd. 6c, the Commission may order utilities to file incentive plans for the recovery and accounting for conservation expenditures and savings. The Commission has approved conservation expense tracker accounts and financial incentives to encourage investment in DSM for almost all the electric utilities it regulates. These DSM financial incentives do everything that the conservation/DSM standard would do, i.e. require that a utility's prudent expenditures and investments in DSM measures be at least as profitable as prudent supply-side expenditures and investments.

In February 1994, the Commission convened a work group to evaluate the effect of financial incentives on utility behavior and to make a recommendation to the Commission on the future of financial incentives. In February 1995, the work group issued a report recommending that the Commission continue to offer financial incentives in order to encourage electric utilities to invest in cost-effective DSM. Several electric utilities have already filed requests for approval to continue financial incentives into 1996 and beyond. These requests will be considered by the Commission sometime in the next two months.

In addition to laws allowing for specific rate treatment of conservation investments, utilities are required to make certain minimum investments in energy conservation. Minn. Stat. 216B.241, subd. 1a requires that a utility furnishing electric service in Minnesota spend 1.5 percent of its Minnesota gross operating revenues on energy conservation improvements. (NSP is required to spend and invest at least 2 percent of its Minnesota jurisdictional gross revenues.)

Accordingly, the Commission finds that the EPACT investment in conservation and DSM standard is already being implemented in Minnesota.

The only commenting party to recommend formal adoption of this standard, NAFC, did not argue the necessity of the standard *per se* but only as a prerequisite for considering adoption of further standards on small businesses. Even if it were appropriate to adopt the initial three EPACT standards to gain the opportunity of considering adoption of additional standards on small business, NAFC did not provide the motivation to do so. It did not show that small businesses in Minnesota would have better protection under EPACT's small business standards than they currently have under Minnesota's current laws and practices.¹

In these circumstances, the Commission will decline to formally adopt this standard.

C. Standard on Energy Efficiency Investments in Power Generation and Supply

The standard on energy efficiency investments in power generation and supply requires that rates be charged that encourage utilities to make investments in and expenditures for all cost effective improvements in the energy efficiency of power generation, transmission, and distribution. It also requires that the Commission consider existing disincentives for investments in cost-effective improvements in generation, transmission, and distribution.

AlliedSignal Inc. (ASI) recommended that this standard be adopted. It recommended that the Commission review the regulatory barriers that impede utilities from investing in all cost-effective T&D efficiency improvements.

The Commission agrees that this standard has been less explicitly examined and implemented than the other two standards. However, as noted by other commenters, the existing ratemaking treatment does provide utilities with incentives for efficiency investments in power generation, transmission and distribution. Parties also noted that adequate opportunities exist to address this

¹ To illustrate: Minn. Stat. 216B.241 specifically protects small businesses (or vendors) selling energy-efficiency products by allowing participants free choice of vendor or material whenever possible. The Department enforces the statute through the CIP process by reviewing both the utility bidding processes and overall program design. Historically, local businesses and agencies have provided the goods and services required by the CIP programs. In addition, Minn. Stat. 216B.48 governs utility affiliated interests and allows the Commission to exercise its authority over affiliated interests in order to protect businesses from unfair practices.

issue in existing processes and proceedings. Whether the existing incentives are effective is an issue that will likely be developed further in any future development of performance-based rate making and industry restructuring.

In these circumstances, the Commission finds that forums already exist for addressing this issue and that formal adoption of this standard is not necessary.

V. COMMISSION ACTION

Based on the foregoing analysis, the Commission will decline to adopt the conservation and energy efficiency standards for electric utilities as set forth in Section 111 of the federal Energy Policy Act of 1992.

ORDER

1. The Commission, after a hearing duly noticed and conducted, declines to adopt three standards proposed for state adoption in Section 111 of the Energy Policy Act of 1992, for the reasons set forth in the text of this Order.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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