

E-999/CI-95-135

ORDER SOLICITING COMMENTS AND INITIATING FORMATION OF A WORKING  
GROUP TO ADDRESS OTHER NEAR-TERM ACTIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of an Investigation into  
Structural and Regulatory Issues in the  
Electric Utility Industry

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**PROCEDURAL HISTORY**

On May 8, 1995, the Commission issued its ORDER DETERMINING SCOPE OF INVESTIGATION AND REQUIRING FILINGS in the above-captioned matter. The Order posed a series of questions and invited all interested parties to respond, and to provide the Commission with their thoughts on the appropriate degree and direction for electric industry restructuring in Minnesota.

On or about July 7, 1995, the Commission received comments from 30 parties, including all five investor-owned utilities, the Department of Public Service, and the Office of the Attorney General, as well as parties representing several large electricity consumers, low income consumers, environmental interests, labor, cooperative electric associations, municipal utilities and other electric utilities.

By September 11, 1995, 20 parties provided the Commission with response comments.

On September 11, 1995, a coalition of municipals, cooperatives, environmental, consumer and labor groups filed a joint statement of public interest principles on electric industry restructuring.

On December 7, 1995, the Commission met to consider this matter.

## FINDINGS AND CONCLUSIONS

### **A. BACKGROUND**

Over the past several years, the Commission has overseen the gradual deregulation of certain aspects of the industries it has been charged to regulate: first telecommunications, then the natural gas industry. Many of the decisions opening these industries to competition were made at the federal level. However, electric industry restructuring is likely to be very different because traditionally, the regulatory authority over the electric industry has been concentrated in the states. It seems likely, therefore, that the Commission and the Minnesota legislature will play a significant role in deciding exactly how and to what extent competition and deregulation will occur in the state's electric industry.

State commissions and legislatures all over the country are in the midst of proceedings like this one, each trying to determine how best to serve the needs of their electric consumers, large and small. These decisions cannot be made in isolation. They must be made with an eye toward the actions or likely actions of neighboring states and the federal government. They must also take into consideration commitments made under the present structure: commitments which ensured among other things a highly reliable and safe electric system, universal access to service at reasonable rates, and a cleaner environment.

### **B. JURISDICTIONAL ISSUES**

Many parties suggested that the Commission postpone any action until the Federal Energy Regulatory Commission (FERC) makes a final ruling on its Open Access Notice of Proposed Rulemaking (NOPR). The NOPR has indeed raised some important issues and questions for states. For example, there is a concern that states may lose authority to set rates for the retail transmission of electricity if they unbundle transmission rates in order to permit retail wheeling. It is true that the FERC decision will impact whatever action states may take on restructuring. However, the FERC has promised quick action on the NOPR, and the basic framework is unlikely to change substantially. While the Commission may not be able to take final action before the NOPR is finalized, it can use this time to study issues, plan directions and educate the public on industry restructuring issues.

### **C. COMMISSION ANALYSIS**

As the Commission noted in its Order initiating this investigation, the restructuring of the industry cannot be achieved through Commission action alone. Major reforms will need to be addressed by the legislature.

Many of the states that are seriously addressing this issue, however, are using the regulatory arena to bring together stakeholders, to provide a public forum, and to reach key agreements among interested parties as a prelude to legislative action.<sup>1</sup> As the state agency responsible for

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<sup>1</sup> The states of Rhode Island, Massachusetts and Vermont, for example, have used Commission-initiated workgroups to develop broad principles for restructuring. The

the regulation and oversight of the retail electric industry in Minnesota, the Commission is uniquely positioned to guide the restructuring debate in an even-handed manner, appropriately balancing the needs of utilities, shareholders, and various consumers.

The first step in this process will be the establishment of a set of principles within which reasonable restructuring alternatives can be developed, and a set of action steps which could be undertaken to thoroughly examine and develop key elements needed to ensure the continued effective delivery of electric service in a restructured industry.

Carefully crafted principles, developed with the input of a broad group of stakeholders, will allow the Commission to ensure that the public interest is the primary focus in the restructuring dialogue. In this Order, the Commission presents a set of draft principles based on the comments of the parties to date and requests interested parties to provide comment on them. After comment and with whatever revisions the Commission deems necessary, final principles will be established.

### **Draft Principles**

The draft principles that follow do not attempt to provide solutions to all the problems involved with restructuring the electric industry in Minnesota. They are intended to serve as discussion guides, and to provide a framework for achieving shared solutions among the many parties that have an interest in the outcome of this proceeding. In this Order, the Commission is seeking comments from interested parties regarding these draft principles as an assist to the Commission in further refining these principles. See Ordering Paragraph 1 of this Order.

1. *A deliberate, step-wise approach to restructuring.* It is possible that increased competition in the electric industry, especially in the generation sector, will result in lower costs, higher efficiency and more innovative service offerings for electricity consumers. However, in a rapid and ill-defined move to a retail competitive market for electricity, the benefits of competition could be selectively conferred on a small number of participants, to the detriment of other participants and the public interest. Therefore, the state of Minnesota should only proceed to implement retail competition for electric generation when essential elements to ensure the fairness of a competitive market and to protect the public interest are developed and in place. **These elements must begin with the achievement of an open transmission system and the establishment of a robust wholesale competitive market.**
2. *Availability of the benefits of competition to all customer classes.* A restructured

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Wisconsin Public Service Commission (PSC) appointed an advisory committee on electric utility restructuring which has formulated recommendations for that state; the PSC is holding public hearings on restructuring and will issue its recommendation in early December. Other state commissions are undertaking similar actions. The emerging model for resolution of these issues appears to be one where stakeholders work together in an effort to fashion solutions which address the needs of all interested parties.

industry should not be organized in such a way that a select group of customers benefits by shifting a portion of their legitimate costs of service onto other customers.

3. *Competitively neutral laws and regulation.* The industry should be governed by competitively neutral laws and regulations for all providers of electric energy within the state, regardless of structure or size, and all consumers, regardless of class or economic status. Programs and services which are considered essential components of electric service in this state must apply to all providers and/or consumers, with no opportunity for bypass.
4. *Equitable and efficient unbundling of generation, transmission and distribution rates and services.* Prices for each component must be set to ensure no cross-subsidy between competitive and monopoly services. In addition to unbundling rates, the generation operation should be at least functionally unbundled from other utility operations. Unbundling should serve the purpose of determining whether alternative providers contribute to greater economic efficiency.
5. *Obligation to provide distribution service.* The distribution system is and should remain a regulated monopoly service. Distributors should maintain exclusive service areas and have the obligation to provide distribution service to all customers in the distribution service area. This service would be subject to reasonable service extension policies, including customer contributions for certain extensions.
6. *Universal energy service.* Universal service at reasonable rates should be a primary goal of the state. All retail sellers of electricity should share in the responsibility to provide universal energy service at reasonable rates. There are a variety of ways to achieve this goal, including the establishment of a universal service charge and the allocation of customers who are unable to obtain energy service in the competitive market to each provider of energy service, according to some measure of market share.
7. *Attention to the needs of residential consumers.* Electric service is a basic necessity. Any transition to a retail competitive market must address the needs of residential consumers, and in particular, low-income consumers. There must exist fair mechanisms for all consumers to participate in a competitive market, without undue complexity in options or procedures. In situations where a competitive market cannot operate, residential consumers must have access to reliable, low-cost service.

8. *Public participation.* There should be an opportunity for extensive public input into the ultimate structure of the industry. In addition, the public must be fully educated as to the impact of industry restructuring on electricity service.
9. *Performance standards.* The electric system must continue to be operated in a manner which is reliable and which assures the protection of public health and safety. There must exist quantifiable performance standards for safety and reliability in order to set requirements for future industry safety and reliability and to measure any impacts of competition on safety and reliability
10. *Fair and immediate treatment of transition costs.* The recovery of net, unmitigatable transition costs (“stranded costs” and other costs related to a move to a new market structure) should be shared by all stakeholders, including investors and customers. Proposals to recover stranded investment must include consideration of deferred taxes and other ratepayer contributions currently on the books of the utility
11. *Environmental improvement.* Any transition to a retail competitive market should include a plan to improve the environmental quality of the state. This plan should address both the improvement or retirement of older, dirtier fossil-fuel generation and the provision of clean new resources to serve the citizens of the state.
12. *State participation in transmission planning.* The state’s interest and participation in transmission planning issues, particularly as they impact the environment as well as cost and reliability of service to the state’s electric consumers, must be maintained.
13. *Diverse portfolio of energy resources.* It is in the long-term interests of the electricity consumers in the state to ensure that their needs are being met through a diversified portfolio of energy resources, so as to minimize the risk of heavy dependence on a single fuel or technology. To that end, the state must support and promote participation of cost-effective demand-side management, renewable energy and other diverse resources. In addition, support for the continued research and development of electric generation and delivery technologies must be assured.
14. *A competitive state economy.* A restructured industry should promote prosperity of the state’s economy, including the fostering of cost-effective in-state energy resources.
15. *Streamlined regulation.* In a fully restructured industry, regulatory and administrative processes should be streamlined, while maintaining the appropriate level of oversight to ensure effective protection of the public interest. The focus of regulation may change from ratemaking to ensuring fair competition.

## **Action Steps**

After the Commission adopts the principles that will guide the restructuring endeavor, the actual mechanisms for the creation of a fair competitive market and the delivery of public benefits will need to be debated and resolved. In this Order, the Commission encourages interested parties to file comments regarding the action steps that have been presented in this matter. For a full statement of those action steps, see Ordering Paragraph 1, below at pages 8-9 of this Order.

However, in addition to receiving comments on the action steps, individually and taken as a whole, there are several near-term steps in connection with electric industry restructuring in Minnesota that the the Commission is prepared to take in the current Order:

### **1. FERC and MAAP Actions**

The FERC actions are essential to the creation of a robust wholesale generation market. The decisions made by the FERC in its Open Access and Stranded Cost NOPRs may also alter the lines of authority between the FERC and the state on some matters impacting restructuring. In addition, the formation of a Midwest Area Power Pool (MAPP) Regional Transmission Group (RTG) will present both issues and opportunities for the state as it addresses restructuring issues. The Commission should actively participate in these forums both to maintain an awareness of the direction of these proceedings and to impact their outcome.

Therefore, the Commission will continue to participate in and monitor the FERC rulemaking and other actions relating to open access transmission, and the MAPP efforts to form a regional transmission group

### **2. Formation of a Working Group**

The Commission will establish a Wholesale Competition Working Group to examine methods to bring robust wholesale competition to Minnesota. Commission Staff will prepare a proposal for such a group, including a list of potential members representing all stakeholder interests. The proposal will also include an outline of the work to be done by the group.

### **3. Increased Utility Flexibility**

Utilities subject to Commission regulation are sometimes unable to respond quickly to customer needs for innovative service agreements. With input from the Working Group, the Commisison will examine the desireability of and the potential for increasing the flexibility of rate-regulated utilities to negotiate rates and terms of service for large electric customers and explore its authority to implement mechanisms which would provide for increased flexibility while maintaining assurances that the overall public interest is not compromised.

#### 4. **Unbundling**

The Commission is interested in examining appropriate methods of unbundling rates for generation, transmission and distribution. As an initial step, the Commission will ask the Working Group to discuss this issue.

#### 5. **Public Education**

It is important that the public receive a balanced and informative orientation to the issues raised in connection with restructuring the electric industry in Minnesota. The Commission will develop a public information package on restructuring and a program for disseminating information to the public. The Commission will work with interested parties through the Working Group mechanism to ensure a balanced, objective presentation of the issue to the public.

### **ORDER**

1. Within 30 days of this Order, interested parties wishing to do so shall file comments regarding
  - ▶ the 15 draft principles for electric industry restructuring set forth on pages 3-6 of this Order and
  - ▶ the following eight (8) action steps:

#### **Near-term Action Steps**

1. *The Commission should continue to participate in and monitor the FERC rulemaking and other actions relating to open access transmission, and the MAPP efforts to form a regional transmission group. The FERC actions are essential to the creation of a robust wholesale generation market. The decisions made by the FERC in its Open Access and Stranded Cost NOPRs may also alter the lines of authority between the FERC and the state on some matters impacting restructuring. In addition, the formation of a MAPP RTG will present both issues and opportunities for the state as it addresses restructuring issues. The Commission should participate in these forums to the maximum extent possible, both to maintain an awareness of the direction of these proceedings and to impact their outcome.*

2. The Commission should establish a Wholesale Competition Working Group *to examine methods to bring robust wholesale competition to Minnesota*. The working group should include representatives of all stakeholder interests and should discuss the relative merits of various alternatives, for example, the use of a power pool, a mandatory bidding process, or disaggregation of generation or transmission, as a means of developing the wholesale generation market in Minnesota.
3. *The Commission should examine the potential for increasing the flexibility of rate-regulated utilities to negotiate rates and terms of service for large electric customers*. Utilities subject to Commission regulation are currently unable to respond quickly to customer needs for innovative service agreements. The Commission should explore its authority to implement mechanisms which would provide for increased flexibility while maintaining assurances that the overall public interest is not compromised.
4. *The Commission should commence a rulemaking to establish service quality, reliability and safety standards*. The Commission already has authority to do this under Minn. Stat. § 216B.09, subdivisions 1 and 2 (1994). In order for the standards to be useful in assuring service quality in a changing industry, this rulemaking should include a component which examines the current status of service quality and safety and establishes benchmarks for future performance.
5. *The Commission should investigate the appropriate methods of unbundling rates for generation, transmission and distribution*. This could be done under the auspices of the wholesale competition study group, through other work with the parties, or through standard Commission investigation procedures.
6. *The Commission should develop a public information package on restructuring and a program for disseminating information to the public*. The Commission should work with interested parties to ensure a balanced, objective presentation of the issue to the public.

#### **Longer Term Action Steps**

7. *The Commission should examine Chapter 216B and other Minnesota Statutes to determine where current law establishes unequal requirements for various utilities which would undermine the development of a fair competitive market*.

8. *After, or as a part of, the examination of wholesale competition issues, the Commission could examine the establishment of a retail wheeling pilot project, both to stimulate the generation market and to gain experience with retail access.* Ideally, a pilot project would be centered around the installation of small, distributed generating units; preferably utilizing renewable fuels.

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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