

**ISSUE DATE: March 12, 2001**

**DOCKET NO. G-007, 011/CI-01-295**

**NOTICE AND ORDER FOR HEARING**

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayer**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

**In the Matter of an Investigation into  
UtiliCorp United Inc.'s 1998-99 Gas-  
Purchasing Practices**

**ISSUE DATE: March 12, 2001**

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**PROCEDURAL HISTORY**

**On September 1, 1999, Peoples Natural Gas Company and Northern Minnesota Utilities, both divisions of UtiliCorp United Inc., filed their annual automatic adjustment reports for 1998-99, as required under Minn. Rules 7825.2390 through 7825.2920. Under the rules, these reports must provide detailed information about gas purchases, rate adjustments made to reflect month-to-month fluctuations in gas costs, gas procurement policies, and actions taken to minimize gas costs to consumers.**

**On February 25, 2000, the Minnesota Department of Commerce (the Department) filed comments on the companies' reports. The Department recommended disallowing rate recovery of the difference between the two companies' fixed-price gas supplies and their index-priced supplies, a figure the Department put at \$3,379,844. The Department based its recommendation on the following claims:**

- (a) UtiliCorp Gas Supply Services, which purchased gas supplies for both utilities, failed to use due care and prudent judgment when it purchased its fixed-price supplies;**
- (b) UtiliCorp relied on inadequate information and insufficient analysis when it purchased its fixed-price supplies;**
- (c) UtiliCorp failed to adequately document the decision-making process which led to its purchase of fixed-price supplies;**
- (d) UtiliCorp ignored regulators' admonitions that it should evaluate the risks and benefits of fixed-price supplies in a more comprehensive manner before increasing its reliance on fixed-price supplies.**

**The companies filed reply comments challenging the Department's recommendation on the**

following grounds:

- (a) UtiliCorp did use due care and prudent judgment when it purchased its fixed-price supplies;
- (b) the Department underestimates the benefits of fixed-price supplies because it focuses inappropriately on the near term;
- (c) disallowing these costs would have perverse public policy consequences, because changes in the gas market make it imperative to the public interest for utilities to increase their use of fixed-price supplies;
- (d) disallowing these costs would violate the prohibition against retroactive ratemaking, since UtiliCorp's fixed-price gas-purchasing practices had survived regulatory review the preceding year;
- (e) the Department's calculations of NMU's and Peoples' gas costs are incorrect at several critical points.

On the same date that it issued this Notice and Order for Hearing, the Commission issued its Order acting on all gas utilities' 1999 annual automatic adjustment reports.<sup>1</sup> In that Order the Commission opened an investigation into UtiliCorp's 1998-99 gas-purchasing practices and said that it would, by separate Order, refer the case to the Office of Administrative Hearings for contested case proceedings.

### FINDINGS AND CONCLUSIONS

#### I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has general jurisdiction over these two companies under Minn. Stat. § 216B.08, jurisdiction over the companies' rates under Minn. Stat. § 216B.03, and jurisdiction over automatic rate adjustments under Minn. Stat. § 216B.16, subd. 7.

Gas-purchasing decisions turn on complex facts that are not fully knowable, change over time, and interact in ways that are not totally predictable. Making prudent gas-purchasing decisions requires good business judgment, the most accurate information available, and careful analysis.

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<sup>1</sup> In the Matter of the Review of the 1999 Annual Automatic Adjustment of Charges for all Gas and Electric Utilities, Docket No. G,E-999/AA-99-1095, ORDER ACTING ON GAS UTILITIES' 1999 ANNUAL AUTOMATIC ADJUSTMENT REPORTS AND OPENING INVESTIGATION.

The Commission cannot determine, on the basis of the record before it, whether UtiliCorp acted reasonably when it purchased fixed-price gas supplies in 1998-99. That determination turns on facts which are best developed in formal evidentiary hearings. The Commission will therefore refer the case to the Office of Administrative Hearings for contested case proceedings.

## **II. Issues to be Addressed**

The ultimate issue in this case is whether Northern Minnesota Utilities and Peoples Natural Gas Company should be permitted to recover from ratepayers all costs incurred for fixed-price gas supplies in 1998-99, or if recovery of some portion of those costs should be disallowed. That issue will turn on UtiliCorp's reasonableness, prudence, and good faith in making the decisions that led to its fixed-price gas purchases.

The parties shall address these and any other relevant issues in the course of contested case proceedings.

## **III. Procedural Outline**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-7609.

### **B. Hearing Procedure**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; 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 7829.0100 to 7829.3200. 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; (651) 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.

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 Karen Hammel, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1852, or Robert Harding, Utilities Rates Analyst, Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 296-7125.

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

Current parties to this case are Northern Minnesota Utilities and Peoples Natural Gas Company, both Divisions of UtiliCorp United Inc., and the Minnesota Department of Commerce.

Other persons wishing to become formal parties to this case 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 case on Tuesday, March 20, 2001 at 9:30 a.m. in the Small Hearing Room at the offices of the Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147.

All parties and persons intending to intervene should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the scope of the hearing, the locations and dates of hearings, discovery procedures, and similar issues.

#### IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to cases involving ratesetting. 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 Campaign Finance and Public Disclosure Board, telephone number (651) 296-1720, with any questions.

#### V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements

regarding such communications with Commission staff apply to this proceeding. 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. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
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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**service).**

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

In the Matter of an Investigation into  
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Purchasing Practices

MPUC Docket No. G-007, 011/CI-01-295

OAH Docket No.

NOTICE OF APPEARANCE

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

Allan W. Klein, Office of Administrative Hearings, Suite 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401-2138; (612) 349-7609

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: \_\_\_\_\_