

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MIKE MILLER
Special Assistant Attorney General

DATE: July 2, 1976

FROM : LARRY SALUSTRO
Special Assistant Attorney General

SUBJECT: RULES ADOPTED BY THE MINNESOTA PUBLIC SERVICE COMMISSION

Enclosed please find for your review the Rules adopted by the Minnesota Public Service Commission on June 23, 1976 and the following supporting documents:

1) Regulations as Adopted.

2) Regulations as Proposed.

3) Order of Hearing - with authorizing Resolution.

4) Notice of Hearing

5) Secretary of State's List

6) Affidavit of Mailing

7) Statement of Need

8) Transcript of Public Hearing

9) Findings of Fact

10) Order Adopting Rules - with authorizing Resolution

11) Affidavit of Acquisition of Mailing List

12) Certificate of Authorizing Resolution

LS/bs

Enclosure

PROPOSED MINNESOTA RULES AND REGULATIONS
RELATIVE TO THE UNIFORM SYSTEM OF ACCOUNTS
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 350-352

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 350 Definitions Applicable to the Minnesota Uniform System of Accounts

For the purpose of rules 350-352, the following definitions shall apply:

(a) "Appropriate" refers to those accounts which apply to a gas utility if the utility is a gas utility; or to those accounts which apply to an electric utility if the utility is an electric utility.

(b) "FPC Uniform System of Accounts" means the Federal Power Commission Uniform System of Accounts for both gas and electric utilities and all Federal Power Commission orders, pronouncements, rules and regulations changing or amending the FPC Uniform System of Accounts.

(c) "REA" means the Rural Electrification Administration of the United States Department of Agriculture.

(d) "Public Utility" is defined in Section 2, Subd. 4 of the Minnesota Public Utilities Act and shall also include municipally-owned utilities.

PSC 351 Procedure Applicable to the Minnesota Uniform System of Accounts

The following criteria shall apply to the Minnesota Uniform System of Accounts:

(a) All public utilities shall conform to the appropriate FPC Uniform System of Accounts with the following clarifications:

(1) When appearing in the original FPC text the following terms shall be interpreted as stated below for the purpose of regulation under the Minnesota Public Utilities Act:

(aa) Commission or Federal Power Commission shall be interpreted as the Minnesota Public Service Commission.

(bb) Utility shall be interpreted as a Minnesota public utility.

(2) Minnesota Cooperative Electric Associations shall conform to the FPC Uniform System of Accounts as modified by REA Bulletin 181-1.

(3) A Minnesota public utility, for reporting purposes, shall be classified as an A, B, C or D utility based upon gross revenues of Minnesota utility operations.

(4) All FPC orders, pronouncements or changes affecting the FPC Uniform System of Accounts and all REA orders, pronouncements or changes affecting the REA modifications to the FPC Uniform System of Accounts after January 1, 1975 shall be effective for accounting and reporting purposes on the effective date of the orders, pronouncements or changes. However, the Commission reserves the right to suspend such orders, pronouncements or changes for Minnesota reporting purposes.

(b) Public utilities with annual gross operating revenues of less than twenty-five thousand ($25,000) dollars, not required to conform to the FPC Uniform System of Accounts as modified by REA Bulletin 181-1, shall follow the appropriate FPC System of Accounts for Class C and D utilities.

(c) A public utility may petition the Commission for approval of an exception to a provision of the system of accounts. Such exception shall be granted to the public utility for good cause shown.

(d) Public utilities with utility operations not located in Minnesota shall maintain accounting records in such a manner that the account-

ing information for Minnesota utility operations can be separated from the accounting information of utility operations not located in Minnesota. Methods used in such separations of accounting information are subject to approval of the Commission. The method of separation shall be submitted by petition to the Commission for review and approval six (6) months after the effective date of this rule or in the first related proceeding of the public utility, whichever comes first. A utility or the department staff may petition for a change in an approved separation procedure for good cause shown.

(e) Public utilities engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electric service shall maintain separate records in accordance with the appropriate FPC System of Accounts or REA modifications to that system for such operations.

PSC 352 Implementation of the Minnesota Uniform System of Accounts

The following criteria apply to the implementation of the Minnesota Uniform System of Accounts:

(a) Each public utility, not currently in compliance with the appropriate FPC Uniform System of Accounts shall implement the appropriate FPC Uniform System of Accounts by January 1, 1977. If a municipal utility is unable to comply by January 1, 1977 with any of the provisions of PSC 352, the municipal utility shall petition the Commission within three (3) months of the effective date of PSC 352 for an exception. The petition shall include the justification for non-compliance, the length of the desired extension of time, the plan for compliance and any actions taken

to date to implement the appropriate FPC Uniform System of Accounts.

(b) Public utilities using account numbers which differ from the FPC account numbers shall submit to the Department of Public Service by November 1, 1976:

(1) Three (3) copies of such account numbers with the descriptive titles cross-referenced to the appropriate FPC account numbers.

(2) Such copies shall be accompanied by a statement from a responsible utility officer verifying that such accounts can be translated into the appropriate FPC accounts for reporting and auditing purposes.

(3) Subsequent changes to account numbers shall be submitted as they occur.

~~PROPOSED~~ MINNESOTA RULES AND REGULATIONS
RELATIVE TO DEPRECIATION CERTIFICATION
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 360-364

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 360 Definitions: Depreciation Certification

(a) "Accumulated Provision for Depreciation" or "Depreciation Reserve" means the summation of charges for retirements, net salvage, and the annual provision for depreciation accrual(s) recorded by the utility under an approved method of depreciation accounting.

(b) "Annual Provision for Depreciation Accrual" means the annual amount of depreciation charged to expenses and/or clearing accounts.

(c) "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the probable service life of an asset or liability to which it applies, or over a period during which it is anticipated the benefit will be realized.

(d) "Cost of Removal" means the cost of demolishing, dismantling, removing, tearing down or abandoning of physical assets, including the cost of transportation and handling incidental thereto.

(e) "Depletion" means the reduction in available capacity incurred in connection with the exhaustion of natural resources in the course of their conversion into units of service.

(f) "Depreciation," as applied to depreciable utility plant, means the loss in service value not restored by current maintenance, in-

curred in connection with the consumption or prospective retirement of utility plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities, and, in the case of natural gas companies, the exhaustion of natural resources. (For purposes of these rules, references to depreciation will include amortization and depletion, unless otherwise stated.)

(g) "Depreciation Accounting" means a system of accounting which aims to distribute cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation.

(h) "Net Salvage" means salvage of property retired less the cost of removal.

(i) "Original Cost" means the cost of property to the person first devoting it to public service.

(j) "Probable Service Life" of a unit means that period of time extending from the date of its installation to the forecasted date when it will probably be retired from service.

(k) "Public Utility" means any electric or gas utility as defined in the Minnesota Public Utilities Act, Section 2, Subd. 4, and also any municipally-owned utility operating within the State of Minnesota and under the jurisdiction of the Commission.

(l) "Salvage" means the amount received for assets retired, less any expenses incurred in connection with the sale or in preparing the assets for sale; or if retained, the amount at which the materials recoverable is chargeable to materials and supplies, or other appropriate accounts.

(m) "Straight-Line Method" means the plan under which the original cost of an asset adjusted for net salvage is charged to operating expenses and/or to clearing accounts and credited to the accumulated provision for depreciation through equal annual charges over its probable service life.

(n) "Service Value" means the difference between original cost and net salvage value of utility plant.

PSC 361 General Provisions: Depreciation Certification

(a) All electric and gas utilities shall maintain, and have available for inspection by the Commission upon request, adequate accounts and records related to depreciation practices as defined herein.

(b) Each utility has the prime responsibility for proposing the depreciation rates and methods that will be used. The Commission shall certify by order to the utility the depreciation rates and methods which it considers reasonable and proper.

(c) Any allocation or adjustment of the depreciation reserve will require specific justification and certification by the Commission.

(d) Class A and B utilities (as defined by the system of accounts) shall:

(1) Maintain continuing property records.

(2) Record depreciation accruals and reserves by functional group of plant accounts (e.g., distribution plant) or on an optional basis, by primary plant account (e.g., meters) for corporate ledger and balance sheet supporting schedule purposes.

(3) Retain data in sufficient detail to conduct depreciation certification studies for the purpose of determining depreciation accruals and reserves by primary plant account.

(4) Review their depreciation rates annually to determine if they are still generally appropriate. Depreciation certification studies shall be made so that all primary accounts shall have been analyzed at least every five (5) years.

(e) Class C and D utilities shall:

(1) Record a composite depreciation accrual and a composite reserve for the utility plant for corporate ledger and balance sheet purposes.

(2) Retain data in sufficient detail to conduct depreciation certification studies for the purpose of determining depreciation accruals and reserves by functional group of plant accounts.

(3) Review their depreciation rates annually to determine if they are still generally appropriate. Depreciation certification studies shall be made so that all functional groups of plant accounts have been analyzed at least every five (5) years.

(f) Any utility may at its option follow the depreciation rules prescribed herein for a larger class of utilities.

(g) Either the utility may submit or the Commission may request a petition for depreciation certification because of unusual circumstances or unique situations.

PSC 362 Filing Requirements: Depreciation Certification Studies

(a) Initially upon Commission notification, and at least every five (5) years thereafter, each public utility shall file a petition for depreciation certification and the following depreciation schedules (for each year since the last certification) in the form prescribed by the Commission.

(1) Plant in Service (by primary account for Classes A, B, C, and D):

(aa) Beginning and Ending Plant Balances.

(bb) Additions and Retirements.

(cc) Adjustments and Transfers.

(2) Analysis of Depreciation Reserve (based on depreciation studies by primary account for Class A and B; by functional group for Class C and D):

(aa) Beginning and Ending Reserve Balances.

(bb) Depreciation Accruals and Plant Retirements.

(cc) Cost of Removal and Gross Salvage Value.

(dd) Transfers, Adjustments and Other Debits (Credits).

(3) Summary of Annual Depreciation Accruals (based on depreciation studies by primary account for Class A and B; by functional group for Classes C and D):

(aa) Plant Balance.

(bb) Estimated Net Salvage.

(cc) Depreciation Reserve.

(dd) Probable Service Life.

(ee) Depreciation Accrual and Rate.

(b) In addition, all utilities shall provide with the petition for depreciation certification:

(1) A list of accounts upon which the utility has made studies of the estimates of service life and salvage, the dollar effects and the results of these studies, and the utility-recommended depreciation rates for the accounts.

(2) A list of any major future additions or retirements to the plant accounts that the utility believes may have a material effect on the current certification results.

(c) All utilities shall furnish any additional documentation necessary to support findings of the study.

PSC 363 Prescribed Methods: Depreciation Certification Studies

(a) The Commission prescribes the straight-line method for calculating depreciation (excluding depletion) accruals.

(b) Depletion costs should be allocated on the basis of the unit-of-production method.

(c) Any exceptions to these methods will require specific justification and certification by the Commission.

(d) No specific methods are prescribed by the Commission in estimating service lives and salvage values. The methods selected by each utility will be reviewed for appropriateness by the department staff as part of the utility's certification filing.

PSC 364 Petition for Certification Procedure

(a) Utilities shall petition the Commission for certification of depreciation rates and methods as prescribed by the Commission's rules of practice for petitions.

(b) Prior to the initial certification of a utility's depreciation rates and methods, the depreciation rates and methods effective as of January 1, 1975 are to be used.

(c) Depreciation rates and methods, once certified by order, are binding on all future rate proceedings and will remain in effect until the next certification or until the Commission shall determine otherwise.

(d) If a utility is unable to comply by January 1, 1977 with any of the provisions of PSC 360-364, the utility shall petition the Commission within three (3) months of the effective date of these rules for a temporary exception. The petition shall include the justification for non-compliance, the duration of the desired exception, and the plan for compliance.

~~PROPOSED~~ MINNESOTA RULES AND REGULATIONS
RELATIVE TO CAPITAL STRUCTURE AND SECURITY ISSUANCE
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 370-375

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 370 Definitions for Capital Structure Approval

For the purpose of rules 370-375, the following definitions shall apply:

(a) "Capital Structure" means the total capitalization of the public utility as defined in the Minnesota Public Utilities Act and including short-term securities.

(b) "Long-Term" security is any security not meeting the definition of short-term security.

(c) "Public Utility" is as defined in Section 2, Subd. 4, Minnesota Public Utilities Act but not including cooperative electric associations.

(d) "Security" is as defined in Section 49 of the Minnesota Public Utilities Act.

(e) "Short-Term" security means any unsecured security with a date of maturity of no more than one year from the date of issuance; and containing no provisions for automatic renewal or "roll over" at the option of either the obligee or obligor.

PSC 371 General Procedure for Capital Structure Approval

The following shall apply to all petitions for capital structure approval:

(a) Prior to the issuance of any security or securities, a public utility shall petition for and receive from the Commission approval of its capital structure. Such approval shall be by formal written order.

(b) Commission Orders approving capital structure shall be effective for at least one (1) year, unless otherwise stated; or until the petitioner requests modification or revision; or until the Commission deems conditions affecting capital structure have changed sufficiently to warrant further review.

PSC 372 Capital Structure Approval Required for Issuance of Long-Term Securities

The following procedure shall apply to the issuance of long-term securities:

(a) A petition may include multiple issuance of securities, whereupon review, the Commission may approve the change in capital structure caused by such issuance in part or in total.

(b) Petitions for approval of capital structure shall contain the information described in PSC 374 and PSC 375.

PSC 373 Capital Structure Approval Required for Issuance of Short-Term Securities

The following procedure shall apply to issuance of short-term securities:

(a) Public utilities which are required to obtain approval from the Commission for changes in capital structure caused by such issuance shall petition no later than sixty (60) days prior to the proposed first issuance, unless good cause shown.

(b) Such petitions shall contain the following information:

(1) Items (a) through (k) of PSC 374.

(2) A statement of cash flow, by month showing the most recent available twenty-one (21) months actual data and forecasted data to the end of the period encompassed by the petition. Such data shall be filed on forms prescribed by the Commission.

(3) A descriptive summary of the assumptions made in the development of such statement of cash flow.

(c) Upon approval of capital structure, the petitioner may issue short-term securities at its discretion provided such petitioner remains within the limits and restrictions set forth in the Commission's Order.

PSC 374 Filing Requirements for Capital Structure Approval

Petitions for approval of capital structure shall contain one (1) original and three (3) copies of the following data, either in the body of the petition or in exhibits attached thereto:

(a) A descriptive title.

(b) A table of contents.

(c) The exact name of the petitioner and address of its principal business office.

(d) Name, address and telephone number of the person authorized to receive notices and communications with respect to the petition.

(e) A verified statement by a responsible officer of the petitioner attesting to the accuracy and completeness of the enclosed information.

(f) The purpose for which the securities are to be issued.

(g) Copies of resolutions by the directors authorizing the petition for the issue or assumption of liability in respect to which the petition is made; and if approval of stockholders has been obtained, copies of the resolution of the stockholders shall be furnished.

(h) A statement as to whether, at the time of filing of the petition, the petitioner knows of any person who is an "Affiliated Interest" within the meaning of Section 48 of the Minnesota Public Utilities Act, who has received or is entitled to receive a fee for services

in connection with the negotiations or consummation of the issuance of the securities, or for services in securing underwriters, sellers or purchasers of the securities.

(i) A signed copy of the opinion of counsel in respect to the legality of the issue or assumption of liability.

(j) A balance sheet dated no earlier than six (6) months prior to the date of the petition together with an income statement and statement of changes in financial position covering the twelve (12) months then ended. When the petitions include long-term securities, such statements shall show the effects of the issuance on such balance sheet and income statement.

(k) A description of the security or securities to be issued.

(l) An estimate of the interest or dividend cost per one hundred ($100) dollars principal amount (except in the case of common stock), and a description of any anticipated terms or indenture provisions.

(m) If the petitioner is a corporation, a copy of its current articles of incorporation certified by the Secretary of State of incorporation. If the current articles have already been filed, the petitioner need only make specific reference to such filings.

(n) The following information shall be attached as exhibits to the petition:

(1) The amount and kinds of stock authorized by articles of incorporation and amount outstanding.

(2) The terms of preference of preferred stock, whether cumulative or participating, or on dividends or assets, or otherwise.

(3) A brief description of each security agreement, mortgage and deed of trust upon petitioner's property, showing date of execution, debtor and secured party, mortgagor and mortgagee and trustor and beneficiary, amount of indebtedness authorized to be secured thereby, and amount of indebtedness actually secured, together with any sinking fund provision.

(4) The amount of bonds authorized and issued that exceed one (1%) percent of total debt giving the name of the public utility which issued same, describing each class separately, and giving the date of issue, par value, rate of interest, date of maturity and how secured, together with the amount of interest paid thereon during the last fiscal year.

(5) Each note outstanding with a maturity of more than one (1) year and which exceeds one (1%) percent of total debt, giving the date of issue, the amount, the date of maturity, the rate of interest, in whose favor, together with the amount of interest paid thereon during the last fiscal year.

(6) Other indebtedness with a maturity of more than one (1) year, by class, together with the amount of interest paid thereon during the last fiscal year.

(7) The rate and amount of dividends paid during the five (5) previous fiscal years.

(o) A statement of the manner in which such securities will be issued; and if invitations for sealed written proposals (competitive bidding) are not anticipated, an explanation of the decision not to invite such proposals shall be submitted.

(p) A copy of each plan, offer or agreement for the reorganization or readjustment of indebtedness or capitalization or for the retirement or exchange of securities.

(q) If any of the above filing requirements are provided in petitions or applications to other regulatory agencies, then such petitions or applications, properly cross referenced in item (b), may be submitted in lieu of the specific filing requirements.

(r) Such additional information that the staff or Commission may require in a particular case.

(s) If a filing requirement does not apply, it shall be so stated with an explanation why it does not apply.

PSC 375 Additional Information

Two copies of the following information shall be filed when or as available.

(a) A copy of the final registration statement, if any, and financial exhibits made a part thereof, filed with The Securities and Exchange Commission in accordance with The Securities Act of 1933.

(b) If an invitation for sealed written public proposals for the purchase or underwriting of such securities has been made, a summary of the terms of the proposals received, including the name of each bidder or representative of a bidding group, the interest or dividend rate specified (where applicable), the price to be paid the issuer per unit or one hundred ($100) dollars principal amount, the cost of money to the issuer (except in the case of common stock), the name of the successful bidder, and the successful bidder's initial public offering price and the resulting yield to the public (except in the case of common stock).

~~PROPOSED~~ MINNESOTA RULES AND REGULATIONS
RELATIVE TO THE ACQUISITION OF PROPERTY
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 380-382

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 380 Definition for Approval to Acquire Property

For the purpose of rules 380-382, the following definitions shall apply:

(a) "Consolidation" means the combination of the assets and liabilities of a public utility with another public utility.

(b) "Consideration" means anything of value given as an equivalent or a return for the property acquired.

(c) "Merger" means the acquisition of the assets or the assets and liabilities or the equity securities of a public utility by a public utility.

(d) "Party" means all persons, partnerships, corporations, or other business entities or their representatives whose approval is necessary to consummate the transaction.

(e) "Public Utility" is as defined in Section 2, Minnesota Public Utilities Act, but not including cooperative electric associations.

(f) "Transfer of Property" means the sale or acquisition of an operating unit or system for a consideration valued at greater than one hundred thousand ($100,000) dollars; or if a rental or lease, for consideration greater than one hundred thousand ($100,000) dollars over the life of the rental or lease.

(g) "Transaction" means the consummation of a transfer of property, of a merger or of a consolidation.

PSC 381 Procedure for Approval to Acquire Property

(a) A public utility, prior to entering into a transaction, shall petition for and receive from the Commission by formal written order approval for such transaction.

(b) A petition for approval of capital structure (PSC 370-375) shall be filed concurrently with the petition for approval of transfer, merger or consolidation if consideration for such a transaction is a security or securities as defined in PSC 370.

(c) The Commission may require an independent valuation of the property involved in the transaction.

PSC 382 Filing Requirements for Petitions to Acquire Property

Petitions for approval to acquire property shall contain one (1) original and three (3) copies of the following information, either in the petition or as exhibits attached thereto:

(a) Petitions for approval of a merger or of a consolidation shall be accompanied by the following:

(1) The petition signed by all parties.

(2) All information, for each public utility, as required in PSC 374 and 375.

(3) The detailed reasons of the petition and each party for entering into the proposed transaction, and all facts warranting the same.

(4) The full terms and conditions of the proposed merger or consolidation.

(b) Petitions for approval of a transfer of property shall be accompanied by the following:

(1) All information as required in PSC 374, items (a) through (j).

(2) The agreed upon purchase price and the terms for payment and other considerations.

(c) A description of the property involved in the transaction including any franchises, permits or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.

(d) Other pertinent facts or additional information that the Commission may require.

~~PROPOSED~~ MINNESOTA RULES AND REGULATIONS
RELATIVE TO AFFILIATED INTERESTS
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 385-388

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 385 Definitions for Regulation of Affiliated Interests.

For the purpose of Rules 385-388, the following definitions shall apply:

(a) "Affiliated Interest" is as defined in Section 48, Minnesota Public Utilities Act.

(b) "Agreement" means a contract duly executed and legally binding on the public utility and the affiliated interest.

(c) "Contract" or "Arrangement" means a mutual obligation, written or unwritten, between a public utility and an affiliated interest.

(d) "Consideration" means the value of the contract or agreement expressed in dollars.

(e) "Person" means the beneficial owner of any voting securities or any person directly or indirectly in control of such voting securities. A person shall be considered to directly or indirectly in control of such voting securities including, but not limited to, voting securities owned or held by a relative or spouse or relative of the spouse residing in the home of such person; or voting securities owned or held by such person as a trustee, lessee, executor, or through any associate person controlling, controlled by or under common control with such person in which such person owns five (5) percent or more of the voting securities of a public utility.

(f) "Public Utility" is as defined in Section 2, Minnesota Public Utilities

Act, but not including a cooperative electric association.

(g) "Staff" means the staff of the Department of Public Service.

(h) "Voting Security" means any equity security or similar security with the power, presently exercisable, to vote for the election of directors; or any security presently convertible into such a security; or a warrant, option or right, presently exercisable, to obtain such a security.

PSC 386 Procedure for Regulation of Affiliated Interest.

(a) A corporation or person shall be deemed to be an affiliated interest:

(1) If such corporation or person owns or controls or has the right to acquire through the exercise of presently exercisable options, warrants, or rights; or through the conversion of securities or otherwise, five (5) percent or more of the voting securities of the public utility; where;

(2) The securities subject to such options, warrants, rights, or conversion privileges held by such corporation or person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding voting securities owned or controlled by such corporation or person but shall not be deemed to be outstanding for the purpose of computing the percentage owned by any other corporation or person.

(b) A public utility, prior to entering into a contract or agreement, or making any modifications or revisions to existing contracts or agreements with an affiliated interest, where the total consideration for such contract agreement is in excess of $10,000 or five (5) percent of the capital equity of the utility, whichever is less, shall petition for and receive approval from the Commission by formal written

order.

(c) Contracts or agreements requiring Commission approval which are entered into after January 1, 1975, without Commission approval shall be null and void. Upon determining a contract or agreement null and void, the Commission may require any consideration received by the affiliated interest for such contract or agreement to be remitted to the public utility.

(d) Information presented to the Department shall be verified under oath by the president, a vice-president, or secretary of the reporting public utility, and is effective as of the date of verification.

PSC 387 Filing Requirements for Utilities with Affiliated Intereests.

Each public utility shall file with the Commission:

(a) By April 1 of each year:

(1) A list of all corporations and persons which own or hold, directly or indirectly, 5% or more of the voting securities of the reporting public utility. Such list shall show the number of units of each class of voting securities held, the percent which the individual holding of each class is to the total outstanding of that class, and the state or incorporation of each corporation.

(2) A list of all corporations and persons which own or hold, directly or indirectly, 5% or more of the voting securities of any corporation in a chain of successive ownership of 5% or more of the voting securities of the reporting public utility. Such list shall show the number of units of each class of securities held, the percent which the individual holding of each class is to the total outstanding of that class, and the state of incorporation of each corporation.

(3) A list of all corporations 5% or more of whose voting securities are owned by any corporation or person owning 5% or more of the voting securities of the reporting public utility, or by any corporation or person in any chain of successive ownership, of each public utility, as defined in (2) above. Such list should indicate the name of the affiliated corporation or person which owns 5% or more of the voting securities of each corporation listed.

(4) A list identifying:

(aa) All corporations operating a public utility or servicing organization furnishing management, supervisory, construction, engineering, accounting, financial, legal and similar services to the reporting public utility, which have one or more officers or one or more directors in common with the reporting public utility; and,

(bb) Every other organization which has directors in common with the public utility where the number of common directors is more than one-third of the total number of directors of the reporting public utility.

The above list should show for each corporation listed the names of the officers and directors which serve in common with the reporting public utility.

(b) Petitions for approval of affiliated interest contracts or agreements accompanied by the following:

(1) A descriptive title of each contract or agreement;

(2) A copy of the contract or agreement, or modifications or revi-

sions of an existing contract or agreement;

(3) A list and the past history of all contracts or agreements outstanding between the petitioner and affiliated interest, the consideration received by the affiliated interest for such contracts or agreements and a verified summary of the relevant cost records pertaining to the same;

(4) A descriptive summary of the pertinent facts and reasons why such contract or agreement is in the public interest;

(5) Competitive bidding:

(aa) If invitations for sealed written public proposals for the furnishing of the service sought under the contract or agreement have been made, a summary of the terms of the proposals received, including the name of each bidder or representative of a bidding group; and as an exhibit to the petition, a copy of each proposal received;

(bb) If invitations for sealed written proposals have not been made, an explanation of the decisions to that effect will be submitted.

(c) Within thirty (30) days of the effective date of this rule, a list of all contracts and agreements between the reporting public utility and all affiliated interests which were in effect prior to January 1, 1975 and which have continued beyond that date. Such list shall contain:

(1) A descriptive title of each contract or agreement;

(2) A copy of the contract or agreement and all amendments thereto;

(3) The date of the original contract, all amendments thereto, and the termination date;

(4) If the contract or agreement is unwritten, a descriptive summary providing the information in (2) and (3); and,

(5) The original or verified summary of the cost records and the amount of consideration received by the affiliated interest.

PSC 388 Maintenance of Records for the Regulation of Affiliated Interests. Each public utility with contracts or agreements outstanding with affiliated interests, regardless of the amount of the consideration, shall maintain and provide the following records for inspection by the staff:

(a) A copy of all contracts or agreements between the public utility and affiliated interests;

(b) An accounting ledger and appropriate supporting documents for each contract or agreement showing by month:

(1) The consideration received by the affiliated interest;

(2) The relevant costs incurred by the affiliated interest in fulfilling the contract or agreement, and verified as to their accuracy and completeness by such affiliated interest;

(3) And the estimated percent and the amount of the contract or of the agreement completed and the method of determining such estimate.

(c) Such records shall be available to the staff during normal business hours at the principal office of the public utility in this state.

APPROVED AS TO FORM AND LEGALITY
AUG 9 1976 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 9 - 1976 - 1:00 pm
Joan Anderson Growe
Secretary of State

246

Larry Salustro
Special Assistant
Attorney General

August 9, 1976

- Public Service Commission Rules PSC 350-352

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC SERVICE COMMISSION

Karl F. Rolvaag — Chairman
Ronald L. Anderson — Commissioner
Robert W. Carlson — Commissioner

In the Matter of Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.

NOTICE OF HEARING

PSC Docket No. A-8117-11

Notice is hereby given that a public hearing pursuant to Minn. Stat. Sec. 15.0412(4) (1971), will be held in St. Paul, Minnesota, in Courtroom No. 2, Seventh Floor of the Federal Courts Building, 316 No. Robert Street, January 28, 1975, through January 31, 1975, commencing each day at 10:00 a.m. (CST), and continuing until all representatives or interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules above-captioned by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing. In addition, the record of the hearing will remain open for twenty (20) days following adjournment and written comments may also be submitted during this period.

The matters to be resolved at this hearing are:

I. ADOPTION OF PROPOSED GAS AND ELECTRIC UTILITY REGULATIONS REGARDING A UNIFORM SYSTEM OF ACCOUNTS AND REGARDING APPROVAL OF DEPRECIATION RATES AND METHODS.

These proposed regulations apply to private, cooperative and municipal gas and electric utilities.

A. SYSTEM OF ACCOUNTS: Adoption of FPC (Federal Power Commission) System of Accounts, exceptions to specific provisions, separation of Minnesota accounting information from non-Minnesota accounting information, separation of utility accounting information from non-utility accounting information, date system is to be implemented, and statements attesting to implementation.

B. APPROVAL OF DEPRECIATION RATES AND METHODS: Depreciation records, periodic filing of depreciation studies, maintenance of continuous property records, requiring straight-line method of depreciation, Commission approval of depreciation rates.

II ADOPTION OF PROPOSED GAS AND ELECTRIC UTILITY REGULATIONS REGARDING AUTOMATIC ADJUSTMENT CLAUSES.

These proposed regulations apply to private and cooperative gas and electric utilities.

A. AUTOMATIC ADJUSTMENT CLAUSES: Approval of fuel adjustment clauses, costs of fuel, purchased energy, and gross receipt taxes permitted for electric pass-through; costs of propane, other fuel, gross receipt taxes, and city gas rate costs permitted for gas pass-through; refunds of excess charges, storage costs excluded, data to be filed, exceptions to rules, Commission approval of individual clauses, date effective, discontinuance of certain clauses.

III. ADOPTION OF PROPOSED GAS AND ELECTRIC UTILITY REGULATIONS REGARDING CAPITAL STRUCTURE AND SECURITY ISSUANCE APPROVAL, ACQUISITION OF UTILITY PROPERTY, AND AFFILIATED INTERESTS.

These proposed regulations apply to private gas and electric utilities.

A. CAPITAL STRUCTURE AND SECURITY ISSUANCE APPROVAL: Filing requirements for short-term and long-term securities, petitions containing multiple issuances.

B. ACQUISITION OF UTILITY PROPERTY: Filing requirements, filing requirements when securities are consideration.

C. AFFILIATED INTERESTS: Approval of future contracts; filing requirements, filing of existing contracts and data, records to be maintained by utility.

Copies of the above rules and regulations are available at the Department of Public Service and will be available at the door on the date of the hearing.

BY ORDER OF THE COMMISSION
Elizabeth L. Newhouse acting Secretary
/s/ LAWRENCE J. ANDERSON

Lawrence J. Anderson
Secretary

SERVICE DATE: December 19, 1974

(S E A L)

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Larry Salustro, do hereby declare that I have examined the proposed rules Minn. Rules PSC 350-388, and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

L. Salustro

Larry Salustro

Special Assistant
Attorney General

Dated: 3 August 1976

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

AFFIDAVIT

Jane A. Turnquist, being first duly sworn, upon oath deposes and says:

1) That she is an employee of the Minnesota Public Service Commission of the State of Minnesota.

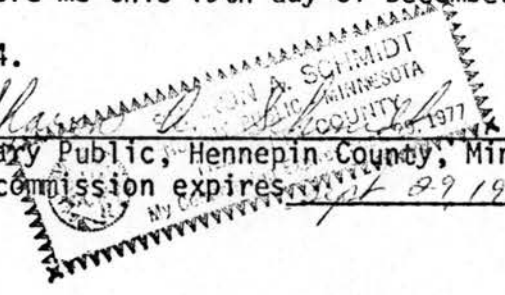
2) That on the 17th day of December, 1974, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 1971, Section 15.0412.

3) That on the 17th day of December, 1974, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Jane A. Turnquist

Subscribed and sworn to
before me this 19th day of December,
1974.



Notary Public, Hennepin County, Minnesota.
My commission expires 8-9-1977

CERTIFICATION OF COMMISSION'S
AUTHORIZING RESOLUTION

I, Lawrence J. Anderson, do hereby certify that I am the duly appointed and acting Secretary of the Minnesota Public Service Commission, an agency authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a motion made and passed at a meeting of the Commission duly and properly called and held on the 16th day of December, 1974; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the Minutes of said meeting and that it has not been rescinded or modified:

Item 1047. It was moved and approved that a public hearing be convened on Tuesday, January 28, 1975, at 10:00 a.m., in Court Room No. 2, 7th Floor of the Federal Courts Building, 316 North Robert Street, St. Paul, Minnesota 55101, for the purpose of hearing the new proposed rules for accounting and financial regulation of gas and electric utilities pursuant to the provisions of M.S.A. Section 15.0412.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the Minnesota Public Service Commission.

Dated this 27th day of December, 1974.

Secretary

(S E A L)

CERTIFICATE OF COMMISSION'S ORDER
ADOPTING RULES

I, Lawrence J. Anderson, do hereby certify that I am the duly appointed qualified and acting Secretary of the Minnesota Public Service Commission, an agency authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a motion made and passed at a meeting of the Commission duly and properly called and held on the 23rd day of June, 1976; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the Minutes of said meeting and that it has not been rescinded or modified:

> RESOLVED that the rules and regulations pertaining to the Minnesota Public Service Commission Gas and Electric Utilities Accounting and Financial Rules, as presented, be and the same hereby are approved and adopted pursuant to authority vested in the Minnesota Public Service Commission under the provisions of M.S.A. Section 15.0412; and that the Secretary of the Commission be and he hereby is authorized and directed to transmit the aforesaid rules to the office of the Attorney General for approval.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the Minnesota Public Service Commission.

Dated this 23rd day of June, 1976.

Lawrence J. Anderson

JUN 29 1976

(S E A L)

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman	Approved of record
Ronald L. Anderson	Commissioner	6-23 1976
Arlen I. Erdahl	Commissioner	
Richard J. Parish	Commissioner	(as)
Katherine E. Sasseville	Commissioner	Secretary

In the Matter of Proposed Rules of Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.

PSC DOCKET NO. A-8117-11

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Public Service Commission of the State of Minnesota in the Federal Court Building (Courtroom No. 2) St. Paul, Minnesota, on January 28, 1975, commencing at 10:00 A.M., after proper notice as required by Minnesota Statutes, Section 15.0412, Subd. 4 (1974) had been served upon all persons registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files, and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules:

NOW, THEREFORE, IT IS ORDERED that the attached Gas and Electric Utilities Accounting and Financial Rules are adopted this 23rd day of June, 1976, pursuant to authority vested in this Commission by Minnesota Statutes, Section 15.0412 (1974).

BY ORDER OF THE COMMISSION

/s/ LAWRENCE J. ANDERSON
Secretary

(S E A L)

STATEMENT OF
COMPLIANCE WITH
MANUAL OF RULE
MAKING PROCEDURES

We have examined the Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Utilities under the Jurisdiction of the Department of Public Service. Based on them and our personal familiarity with the applicable procedure, the Manual of Rule Making Procedures has been followed.

Larry Salustro

Special Assistant
Attorney General

Carl Warren

Special Assistant
Attorney General

Dated: June 29, 1976

APPROVED BY COMM.

Approved of Record
12-16 1974
Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC SERVICE COMMISSION

Karl F. Rolvaag Chairman
Ronald L. Anderson Commissioner
Robert W. Carlson Commissioner

In the Matter of Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.

ORDER FOR HEARING

PSC Docket No. A-8117-11

IT APPEARING that under the provisions of Chapter 429 of Minnesota Laws of 1974, the Commission is required to regulate the gas and electric utility companies in the state of Minnesota and, therefore, must adopt rules and regulations in relation thereto with regard to the Accounting and Financial Procedures of the utilities to be regulated:

IT IS THEREFORE ORDERED:

O R D E R

That a public hearing on rules relating to the above be held in Courtroom No. 2, Seventh Floor of the Federal Courts Building, 316 No. Robert Street, St. Paul, Minnesota 55101, Tuesday, January 28 through Friday, January 31, 1975, commencing at 10:00 a.m. (CST) each day and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard; and

IT IS FURTHER ORDERED that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and to all persons who are presently members of the Minnesota Legislature.

BY ORDER OF THE COMMISSION

Lawrence J. Anderson
Secretary

Dated at Saint Paul, Minnesota,
this 16th day of December, 1974.

(S E A L)

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.

Docket No. A-8117-11

I hereby certify that the attached 393 labels & ~~two~~ sheets constitute the complete list of persons, associations, and other interested groups who as of 3:30 o'clock, P.m. this 17th day of December, 1974, have requested pursuant to M.S. 1971, Section 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Arlen I. Erdahl

ARLEN I. ERDAHL
SECRETARY OF STATE

By Neil Dion

State of Minnesota)
(SS
County of Ramsey)

AFFIDAVIT

OF MAILING

Docket No. A-8117-11

Jane A. Turnquist, being first duly sworn, deposes and says:

That on the 19th day of December, 1974, at the City of St. Paul, County of Ramsey, State of Minnesota, (s)he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons at the addresses shown on the attached mailing list.

Jane A. Turnquist

Subscribed and sworn to before me this 19th day of December, 1974.

Sharon A. Schweitzer

Notary Public Ramsey County, Minn.

My Commission expires Sept. 29, 1977

PROPOSED MINNESOTA RULES AND REGULATIONS
RELATIVE TO THE UNIFORM SYSTEM OF ACCOUNTS
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 350-352

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 350 Definitions Applicable to the Minnesota Uniform System of Accounts.

For the purpose of Rules 350-352, the following definitions shall apply:

(a) "Appropriate" refers to those accounts which apply to a gas utility if the utility is a gas utility; or to those accounts which apply to an electric utility if the utility is an electric utility.

(b) "FPC Uniform System of Accounts" means the Federal Power Commission Uniform System of Accounts for both gas and electric utilities and all current orders, pronouncement, rules and regulations thereof.

(c) "REA" means the Rural Electrification Administration of the U. S. Department of Agriculture and the current orders, pronouncements, rules and regulations thereof.

(d) "Public Utility" is defined in Section 1, Subdivision 4 of the Minnesota Public Utilities Act and shall also include municipally owned utilities.

PSC 351 Procedure Applicable to the Minnesota Uniform System of Accounts.

The following criteria shall apply to the Minnesota Uniform System of Accounts:

(a) All public utilities shall conform to the appropriate FPC uniform system of accounts with the following clarifications:

(1) When appearing in the original FPC text the following terms shall be interpreted as stated below for the purpose of regulation under the Minnesota Public Utilities Act:

(aa) Commission or Federal Power Commission shall be interpreted as the Minnesota Public Service Commission.

(bb) Utility shall be interpreted as a Minnesota public utility.

(2) Minnesota Cooperative Electric Associations shall conform to the FPC uniform system of accounts as modified by REA Bulletin 181-1.

(3) A Minnesota public utility for reporting purposes, shall be classified as a A, B, C or D utility based upon gross revenues of Minnesota utility operations.

(4) All orders, pronouncements or changes affecting the FPC uniform system of accounts or the REA modifications to such system after January 1, 1975 shall be effective for accounting and reporting purposes on such effective date; however, the Commission reserves the right to suspend such orders, pronouncements or changes for Minnesota reporting purposes.

(b) Public utilities with annual gross operating revenues of less than $25,000 shall follow the appropriate FPC system of accounts for class C and D utilities.

(c) A public utility may petiton the Commission for approval of an exception to a provision of the system of accounts. Such exception shall be granted to the public utility for good cause shown.

(d) Public utilities with utility operations not located in Minnesota shall maintain accounting records in such a manner that the accounting information for Minnesota utility operations can be separated from the accounting information of utility operations not located in Minnesota. Methods used in such separations of accounting information are subject to approval of the Commission. The method of separation shall be submitted by petition to the Commission for review and approval six months after the effective date of this rule or in the first related proceeding of the public utility, whichever comes first.

(e) Public utilities engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electric service shall maintain separate records in accordance with the appropriate FPC system of accounts for such utility operations.

PSC 352 Implementation of Appropriate FPC System of Accounts.

The following criteria apply to the implementation of the appropriate FPC system of accounts:

(a) Each public utility, not currently in compliance with the appropriate FPC uniform system of accounts shall implement the appropriate FPC uniform system of accounts by January 1, 1976.

(b) Public utilities using account numbers which differ from the FPC account number shall submit to the Department of Public Service by November 1, 1975:

(1) Three (3) copies of such account numbers with the descriptive title with a cross-reference to the appropriate FPC account numbers.

(2) Such copies shall be accompanied by a statement from a responsible utility officer verifying that such accounts can be translated into the appropriate FPC accounts for reporting and auditing purposes.

(3) Subsequent changes to account numbers shall be submitted as they occur.

PROPOSED MINNESOTA RULES AND REGULATIONS
RELATIVE TO DEPRECIATION CERTIFICATION
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 360-364

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 360 Definitions: Depreciation Certification.

(a) "Accumulated Provision for Depreciation", or, "Depreciation Reserve", means the summation of charges for retirements, net salvage, and the annual provision for depreciation accrual(s) recorded by the utility under an approved method of depreciation accounting.

(b) "Annual Provision for Depreciation Accrual" means the annual amount of depreciation charged to expenses and/or clearing accounts.

(c) "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period of time, or over the probable service life of an asset or liability to which it applies, or over a period during which it is anticipated the benefit will be realized.

(d) "Cost of Removal" means the cost of demolishing, dismantling, removing, tearing down or abandoning of physical assets, including the cost of transportation and handling incidental thereto.

(e) "Depletion" means the reduction in available capacity incurred in connection with the exhaustion of natural resources in the course of their conversion into units of service.

(f) "Depreciation", as applied to depreciable utility plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities, and, in the case of natural gas companies, the exhaustion of natural resources. (For purposes of these rules, references to depreciation will include amortization and depletion, unless otherwise stated.)

(g) "Depreciation Accounting" means a system of accounting which aims to distribute cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation.

(h) "Net Salvage" means salvage of property retired less the cost of removal.

(i) "Original Cost" means the cost of property to the person first devoting it to public service.

(j) "Probable Service Life" of a unit means that period of time extending from the date of its installation to the forecasted date when it will probably be retired from service.

(k) "Public Utility" means any electric or gas utility as defined in the Minnesota Public Utilities Act, Sec. 2, Subd. 4, and also any municipally-owned utility operating within the State of Minnesota and under the juridsiction of the Commission.

(l) "Salvage" means the amount received for assets retired, less any expenses incurred in connection with the sale or in preparing the assets for sale; or if retained, the amount at which the materials recoverable is chargeable to materials and supplies, or other appropriate accounts.

(m) "Straight-Line Method" means the plan under which the original cost of an asset adjusted for net salvage is charged to operating expenses and/or to clearing accounts and credited to the accumulated provision for depreciation through equal annual charges over its probable service life.

PSC 361 General Provisions: Depreciation Certification.

(a) All electric and gas utilities shall maintain, and have available for inspection by the Commission upon request, adequate accounts and records related to depreciation practices as defined herein.

(b) Each utility has the prime responsibility for proposing the depreciation rates and methods that will be used. The Commission shall certify by order to the utility the depreciation rates and methods which it considers reasonable and proper.

(c) Any allocation or adjustment of the depreciation reserve will require specific justification and certification by the Commission.

(d) Class A and B utilities (as defined by the system of accounts) shall:

(1) Maintain continuing property records; and

(2) Record depreciation accruals and reserves by functional group of plant accounts (e.g., distribution plant) and on an optional basis, by primary plant account (e.g., meters) for corporate ledger and balance sheet purposes.

(3) Retain data in sufficient detail to conduct depreciation certification studies for the purpose of determining depreciation accruals and reserves by primary plant account.

(4) Review their depreciation rates annually. Depreciation certification studies shall be made so that all primary accounts shall have been analyzed at least every five years.

(e) Class C and D utilities shall:

(1) Record a composite depreciation accrual and a composite reserve for the utility plant for corporate ledger and balance sheet purposes.

(2) Retain data in sufficient detail to conduct depreciation certification studies for the purpose of determining depreciation accruals and reserves by functional group of plant accounts.

(3) Review their depreciation rates annually. Depreciation certification studies shall be made so that all functional groups of plant accounts have been analyzed at least every five years.

(f) Any utility may at its option follow the depreciation rules prescribed herein for a larger class of utilities.

(g) Either the utility may submit or the Commission may request a petition for depreciation certification because of unusual circumstances or unique situations.

PSC 362 Filing Requirements: Depreciation Certification Studies.

(a) Initially, upon Commission notification, and every five years thereafter, each public utility shall file a petition for depreciation certification and the following depreciation schedules in the form prescribed by the Commission.

(1) Plant in Service (by primary account for Classes A, B, C, and D):

(aa) Beginning and Ending Plant Balances.

(bb) Additions and Retirements.

(cc) Adjustments and Transfers.

(2) Analysis of Depreciation Reserve (by primary account for Class A and B; by functional group for Class C and D):

(aa) Beginning and Ending Reserve Balances.

(bb) Depreciation Accruals and Plant Retirements.

(cc) Cost of Removal and Gross Salvage Value.

(dd) Transfers, Adjustments and Other Debits (Credits).

(3) Summary of Annual Depreciation Accruals (by primary account for Class A and B; by functional group for Classes C and D):

(aa) Plant Balance.

(bb) Estimated Net Salvage.

(cc) Depreciation Reserve.

(dd) Probable Service Life.

(ee) Depreciation Accrual and Rate.

(b) In addition, all utilities shall provide:

(1) A list of accounts upon which the utility has made studies of the estimates of service life and salvage, the dollar effects and the results of these studies, and the utility-recommended depreciation rates for the accounts.

(2) A list of any major future additions or retirements to the plant accounts that the utility believes may have a material effect on the current certification results.

(c) All utilities shall furnish any additional documentation necessary to support findings of the study.

PSC 363 Prescribed Methods: Depreciation Certification Studies.

(a) The Commission prescribes the straight-line method for calculating depreciation (excluding depletion) accruals.

(b) Depletion costs should be allocated on the basis of the unit-of-production method.

(c) Any exceptions to these methods will require specific justification and approval by the Commission.

(d) No specific methods are prescribed by the Commission in estimating service lives and salvage values. The methods selected by each utility will be reviewed for appropriateness by the department staff as part of the utility's certification filing.

PSC 364 Petition for Certification Procedure.

(a) Utilities shall petition the Commission for certification of depreciation rates and methods as prescribed by the Commission's rules of practice for petitions.

(b) Prior to the initial certification of a utility's depreciation rates and methods, the depreciation rates and methods effective as of January 1, 1975 are to be used.

(c) Depreciation rates and methods, once certified by order, are binding on all future rate proceedings and will remain in effect until the next certification or until the Commission shall determine otherwise.

PROPOSED MINNESOTA RULES AND REGULATIONS
RELATIVE TO CAPITAL STRUCTURE AND SECURITY ISSUANCE
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 370-375

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 370 Definitions For Capital Structure Approval.

For the purpose of rules 370-375, the following definitions shall apply:

(a) "Capital Structure" means the total capitalization of the public utility as defined in the Minnesota Public Utilities Act and including short-term securities.

(b) "Long-Term" security is any security not meeting the definition of short-term security.

(c) "Public Utility" is as defined in Section 4, Minnesota Public Utilities Act but not including cooperative electric associations.

(d) "Security" is as defined in Section 49 of the Minnesota Public Utilities Act.

(e) "Short-Term" security means any unsecured security with a date of maturity of no more than one year from the date of issuance; and, contains no provisions for, automatic renewal or "roll over" at the option of either the obligee or obligor.

PSC 371 General Procedure for Capital Structure Approval.

The following shall apply to all petitions for capital structure approval:

(a) Prior to the issuance of any security or securities, a public utility shall petition for and receive from the Commission approval of its capital structure. Such approval shall be by formal written order.

(b) Commission Orders approving capital structure shall be effective for at least one (1) year, unless otherwise stated; or until the petitioner requests modification or revision; or until the Commission deems conditions affecting capital structure have changed sufficiently to warrant further review.

PSC 372 Capital Structure Approval Required for Issuance of Long-Term Securities.

The following procedure shall apply to the issuance of long-term securities:

(a) A petition may contain multiple issuance of securities, whereupon review, the Commission shall approve the change in capital structure caused by such issuance in part or in total.

(b) Petitions for approval of capital structure shall contain the information described in PSC 374 and PSC 375.

PSC 373 Capital Structure Approval Required for Issuance of Short-Term Securities.

The following procedure shall apply to issuance of short-term securities:

(a) Public utilities which are required to obtain approval from the Commission for changes in capital structure caused by such issuance shall petition no later than sixty (60) days prior to the proposed first issuance, unless good cause shown.

(b) Such petitions shall contain the following information:

(1) Items (a) through (l), of PSC 374.

(2) A statement of cash flow, by month showing the most recent available 21 months actual data and forcasted data to the end of the period encompassed by the petition. Such data shall be filed on forms prescribed by the Commission.

(3) A descriptive summary of the assumptions made in the development of such statement of cash flow.

(c) Upon approval of capital structure, the petitioner may issue short-term securities at its discretion provided such petitioner remains within the limits and restrictions set forth in the Commission's Order.

PSC 374 Filing Requirements for Capital Structure Approval.

Petitions for approval of capital structure shall contain one (1) original and three (3) copies of the following data, either in the body of the petition or in exhibits attached thereto:

(a) A descriptive title.

(b) A table of contents.

(c) The exact name of the petitioner and address of its principal business office.

(d) Name, address and telephone number of the person authorized to receive notices and communications with respect to the petition.

(e) A verified statement by a responsible officer of the Petitioner attesting to the accuracy and completeness of the enclosed information.

(f) The purpose for which the securities are to be issued.

(g) Copies of resolutions by the directors authorizing the petition for the issue or assumption of liability in respect to which the petition is made; and if approval of stockholders has been obtained, copies of the resolution of the stockholders shall be furnished.

(h) A statement as to whether, at the time of filing of the petition, the petitioner knows of any person who is an "Affiliated Interest" within the meaning of Section 48 of the Minnesota Public Utilities Act, who has received or is entitled to receive a fee for services in connection with the negotiations or consummation of the issuance of the securities, or for services in securing underwriters, sellers or purchasers of the securities.

(i) A signed copy of the opinion of counsel in respect to the legality of the issue or assumption of liability.

(j) A balance sheet dated no later than six (6) months prior to the date of the petition together with an income statement and statement of changes in financial position covering the twelve months ended. Such statements shall show the effects of the issuance on such balance sheet and income statement.

(k) A description of the security or securities to be issued.

(l) An estimate of the interest or dividend cost per $100 principal amount (except in the case of common stock), and a description of any anticipated terms or indenture provisions.

(m) If the petitioner is a corporation, a copy of its current articles of incorporation certified by the Secretary of the State of incorporation. If the current articles have already been filed, the petitioner need only make specific reference to such filings.

(n) The following information shall be attached as exhibits to the petition:

(1) The amount and kinds of stock authorized by articles of incorporation and amount outstanding.

(2) The terms of preference of preferred stock, whether cumulative or participating, or on dividends or assets, or otherwise.

(3) A brief description of each security agreement, mortgage and deed of trust upon petitioner's property, showing date of execution, debtor and secured party, mortgagor and mortgagee and trustor and beneficiary, amount of indebtedness authorized to be secured thereby, and amount of indebtedness actually secured, together with any sinking fund provision.

(4) The amount of bonds authorized and issued that exceed one (1%) percent of total debt giving the name of the public utility which issued same, describing each class separately, and giving the date of issue, par value, rate of interest, date of maturity and how secured, together with the amount of interest paid thereon during the last fiscal year.

(5) Each note outstanding with a maturity of more than one (1) year and which exceeds one (1%) percent of total debt, giving the date of issue, the amount, the date of maturity, the rate of interest, in whose favor, together with the amount of interest paid thereon during the last fiscal year.

(6) Other indebtedness with a maturity of more than one year, by class, together with the amount of interest paid thereon during the last fiscal year.

(7) The rate and amount of dividends paid during the five previous fiscal years.

(o) A statement of the manner in which such securities will be issued; and if invitations for sealed written proposals (competitive bidding) are not anticipated, an explanation of the decision not to invite such proposals shall be submitted.

(p) A copy of each plan, offer or agreement for the reorganization or readjustment of indebtedness or capitalization or for the retirement or exchange of securities.

(q) If any of the above filing requirements are provided in petitions or applications to other regulatory agencies, then such petitions or applications, properly cross referenced in item (b), may be submitted in lieu of the specific filing requirements.

(r) The Commission or staff may require additional information in a particular case.

PSC 375 Additional Information.

Two copies of the following information shall be filed when or as available:

(a) A copy of the registration statement proper, if any, and financial exhibits made a part thereof, filed with The Securities and Exchange Commission in accordance with The Securities Act of 1933.

(b) If an invitation for sealed written public proposals for the purchase or underwriting of such securities has been made, a summary of the terms of the proposals received, including the name of each bidder or representative of a bidding group, the interest or dividend rate specified (where applicable), the price to be paid the issuer per unit of per $100.00 principal amount, the cost of money to the issuer (except in the case of common stock), the name of the successful bidder, and the successful bidder's initial public offering price and the resulting yield to the public (except in the case of common stock).

PROPOSED MINNESOTA RULES AND REGULATIONS
RELATIVE TO THE ACQUISITION OF PROPERTY
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 380-382

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 380 Definition for Approval to Acquire Property

For the purpose of rules 380 - 382, the following definitions shall apply:

(a) "Consolidation" means the combination of the assets and liabilities of a public utility with another public utility.

(b) "Consideration" means anything of value given as an equivalent or a return for the property acquired.

(c) "Merger" means the acquisition of the assets or the assets and liabilities or the equity securities of a public utility by a public utility.

(d) "Party" means all persons, partnerships, corporations, or other business entities or their representatives whose approval is necessary to consummate the transaction.

(e) "Public Utility" is as defined in Section 4, Minnesota Public Utilities Act, but not including cooperative electric associations.

(f) "Transfer of Property" means the sale or acquisition of an operating unit or system for a consideration valued at greater than $100,000; or if a rental or lease, for consideration greater than $100,000 over the life of the rental or lease.

(g) "Transaction" means the consummation of a transfer of property, of a merger or of a consolidation.

PSC 381 Procedure for Approval to Acquire Property

(a) A public utility, prior to entering into a transaction, shall petition for and receive from the Commission by formal written order approval for such transaction.

(b) A petition for approval of capital structure (PSC 370 - 375) shall be filed consurrently with the petition for approval of transfer, merger or consolidation if consideration for such a transaction is a security or securities as defined in PSC 370.

(c) The Commission may require an independent evaluation of the property involved in the transaction.

PSC 332 Filing Requirements for Petitions to Acquire Property

Petitions for approval to acquire property shall contain one (1) original and three (3) copies of the following information, either in the petition or as exhibits attached thereto:

(a) Petitions for approval of a merger or of a consolidation shall be accompanied by the following:

(1) The petition signed by all parties.

(2) All information, for each public utility, as required in PSC 374 and 375.

(3) The detailed reasons of the petitioner and each party for entering into the proposed transaction, and all facts warranting the same.

(4) The full terms and conditions of the proposed merger or consolidation.

(b) Petitions for approval of a transfer of property shall be accompanied by the following:

(1) All information as required in PSC 374, items (a) through (j).

(2) The agreed upon purchase price and the terms for payment and other considerations.

(c) A description of the property involved in the transaction including any franchises, permits or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.

(d) Other pertinent facts or additional information that the Commission may require.

PROPOSED MINNESOTA RULES AND REGULATIONS
RELATIVE TO AFFILIATED INTERESTS
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 385-388

MINNESOTA PUBLIC SERVICE COMMISSION

DEPARTMENT OF PUBLIC SERVICE

PSC 385 Definitions for Regulation of Affiliated Interests.

For the purpose of Rules 385-388, the following definitions shall apply:

(a) "Affiliated Interest" is as defined in Section 48, Minnesota Public Utilities Act.

(b) "Agreement" means a contract duly executed and legally binding on the public utility and the affiliated interest.

(c) "Contract" or "Arrangement" means a mutual obligation, written or unwritten, between a public utility and an affiliated interest as defined in the Minnesota Public Utilities Act.

(d) "Consideration" means the value of the contract or agreement expressed in dollars.

(e) "Person" means the beneficial owner of any voting securities with power to vote for the election of directors; or any person directly or indirectly in control of such voting securities including, but not limited to, voting securities owned or held by a relative or spouse or relative of the spouse residing in the home of such person; or voting securities owned or held by such person as a trustee, lessee, executor, or through any associate person controlling, controlled by or under common control with such person in which such person owns five (5) per cent or more of the voting securities of a public utility.

(f) "Public Utility" is as defined in Section 4, Minnesota Public Utilities Act, but not including a cooperative electric association.

(g) "Staff" means the staff of the Department of Public Service.

(h) "Voting Security" means any equity security or similar security with the power, presently exercisable, to vote for the election of directors; or any security presently convertible, with or without consideration, into such a security; or a warrant, option or right, presently exercisable, to obtain such a security.

PSC 386 Procedure for Regulation of Affiliated Interest.

The following procedure shall apply to relations with affiliated interests:

(3) A list of all corporations 5% or more of whose voting securities are owned by any corporation or person owning 5% or more of the voting securities of the reporting public utility, or by any corporation or person in any chain of successive ownership of each public utility, as defined in (2) above. Such list should indicate the name of the affiliated corporation or person which owns 5% or more of the voting securities of each corporation listed.

(4) A list identifying:

(aa) All corporations operating a public utility or servicing organization furnishing management, supervisory, construction, engineering, accounting, financial, legal and similar services to the reporting public utility, which have one or more officers or one or more directors in common with the reporting public utility; and,

(bb) Every other organization which has directors in common with the public utility where the number of common directors is more than one-third of the total number of directors of the reporting public utility. This list should show for each corporation listed the names of the officers and directors which serve in common with the reporting public utility.

(b) Petitions for approval of affiliated interest contracts or agreements accompanied by the following:

(1) A descriptive title of each contract or agreement;

(2) A copy of the contract or agreement, or modifications or revisions of an existing contract or agreement;

(3) A list and the past history of all contracts or agreements outstanding between the petitioner and affiliated interest, the consideration received by the affiliated interest for such contracts or agreements and a verified summary of the relevant cost records pertaining to the same;

(4) A descriptive summary of the pertinent facts and reasons why such contract or agreement is in the public interest;

(5) Competitive bidding:

(aa) If invitations for sealed written public proposals for the furnishing of the service sought under the contract or agreement have been made, a summary of the terms of the proposals received, including the name of each bidder or representative of a bidding group; and as an exhibit to the petition, a copy of each proposal received;

(bb) If invitations for sealed written proposals have not been made, an explanation of the decision to that effect will be submitted.

(c) Within thirty (30) days of the effective date of this rule, a list of all contracts and agreements between the reporting public utility and all affiliated interests which were in effect prior to January 1, 1975 and which have continued beyond that date. Such list shall contain:

(1) A descriptive title of each contract or agreement;

(2) A copy of the contract or agreement and all amendments thereto;

(3) The date of the original contract, all amendments thereto, and the termination date;

(4) If the contract or agreement is unwritten, a descriptive summary providing the information in (2) and (3); and,

(5) The original or verified summary of the cost records and the amount of consideration received by the affiliated interest.

PSC 388 Maintenance of Records for the Regulation of Affiliated Interests.

Each public utility with contracts or agreements outstanding with affiliated interests, regardless of the amount of the consideration, shall maintain and provide the following records for inspection by the staff:

(a) A copy of all contracts or agreements between the public utility and affiliated interests;

(b) An accounting ledger and appropriate supporting documents for each contract or agreement showing by month:

(1) The consideration received by the affiliated interest;

(2) The relevant costs incurred by the affiliated interest in fulfilling the contract or agreement, and verified as to their accuracy and completeness by such affiliated interest;

(3) And the estimated per cent and the amount of the contract or of the agreement completed and the method of determining such estimate.

(c) Such records shall be available to the staff during normal business hours at the principal office of the public utility in this state.

PROPOSED MINNESOTA RULES AND REGULATIONS
RELATIVE TO AUTOMATIC ADJUSTMENT OF CHARGES FOR PUBLIC UTILITY SERVICE
FOR GAS AND ELECTRIC REGULATION

CHAPTER ELEVEN - PSC 390-395

MINNESOTA PUBLIC SERVICE COMMISSION
DEPARTMENT OF PUBLIC SERVICE

PSC 390 Definitions: Automatic Adjustment of Charges for Public Utility Service.

(a) "Annual Sales Volume" is the sum of the Mcf or Ccf of gas delivered during the 12 months preceding a change in the city gate rate or the end of the heating season.

(b) "Annual Demand Sales Volume" is the annual sales volume adjusted by an average percentage change in sales computed over the preceding 3 year period, normalized for weather.

(c) "Base Cost" is the cost of fuel consumed in the manufacture of gas or generation of electricity and purchased gas or purchased power in the base period expressed as cost per kilowatt-hours or cost per Mcf or Ccf.

(d) "Base Period" is the year when the automatic adjustment to charges was set at zero.

(e) "City Gate Rate" is the demand or commodity rate charged a distribution gas utility by its supplier. It refers to the cost of gas at the point at which the distribution utility takes title to the gas.

(f) "Cost of Energy Purchased" is the cost of purchased power and net interchange defined by the Minnesota Uniform System of Accounts - Class A and B electric utilities, Account 555 and purchased under federally regulated wholesale rates for energy delivered through interstate facilities. All public utilities shall use this definition regardless of class.

(g) "Cost of Fuel Consumed in the Generation of Electricity" is the cost of fossil and nuclear fuel.

(h) "Cost of Fossil Fuel" is the current period withdrawals from account 151 as defined by the Minnesota Uniform System of Accounts - Class A and B utilities. All public utilities shall use this definition regardless of class.

(i) "Cost of Nuclear Fuel" is the current period charges to Account 518, of the Minnesota Uniform System of Accounts - Class A and B electric utilities excluding any expenses for the cost of fossil fuel. All public utilities shall use this definition regardless of class.

(j) "Cost of Fuel Consumed in the Manufacture of Gas" is the withdrawals, during the heating season, from Account 151 as defined by the Minnesota Uniform System of Accounts - Class A and B gas utilities. All public utilities shall use this definition regardless of class.

(k) "Cost of Purchased Gas" is the cost of gas as defined by the Minnesota Uniform System of Accounts - Class A and B gas utilities, Account 804 and purchased under federally regulated wholesale rates for energy delivered through interstate facilities. All public utilities shall use this definition regardless of class.

(l) "Current Period" is a two month moving average during which an automatic adjustment to charges for electric utilities is computed.

(m) "Heating Seaton" is the period from November 1 to March 31.

(n) "Kilowatt-hour Sales" is the kilowatt-hours delivered during the current period less interchange sales.

(o) "Public Utilities" is as defined by Section 1, Subdivision 4 of the Minnesota Public Utilities Act.

PSC 391 Applicability and Types of Automatic Adjustment of Charges.

(a) The Commission shall permit the filing of rate schedules containing provisions for the automatic adjustment of charges provided such regulations conform to PSC 392-395.

(b) PSC 390-395 shall be applicable to all classes of public utilities.

(c) Provisions for automatic adjustment of charges shall encompass:

(1) Changes in cost resulting from changes in the federally regulated wholesale rate for energy purchased and changes in the cost of fuel consumed in the generation of electicity. This provision is entitled electric energy adjustment.

(2) Changes in cost resulting from changes in the federally regulated wholesale rate for purchased gas and changes in the cost of fuel consumed in the manufacture of gas. This provision is entitled purchase gas adjustment.

PSC 392 Electric Energy Adjustment.

The computations of this automatic adjustment to charges shall conform to the procedures set forth below:

(a) The amount of the billing period adjustment to charges shall be determined by extending Kwh of sales in the billing period by an adjustment per Kwh.

(b) The adjustment per Kwh shall be the sum of the current period cost of energy purchased and cost of fuel consumed per Kwh less the base cost per Kwh.

(c) The adjustment per Kwh developed according to PSC 392 (b) may be further modified to reflect the associated change in gross receipt taxes, franchise taxes, or other similar assessments by local government units which are based on gross receipts or gross revenue.

(d) The adjustment to charges shall be made in the next complete billing period succeeding the determination of the adjustment per Kwh provided the adjustment has been filed as defined by PSC 394(b). The adjustment factor shall be calculated monthly.

PSC 393 Purchase Gas Adjustment Provision.

The computation of the automatic adjustment to charges shall conform to the procedures set forth below:

(a) The amount of the billing period adjustment to charges shall be determined by extending Mcf or Ccf sales in the billing period by an adjustment per Mcf or Ccf.

(b) The adjustment per Mcf or Ccf is the sum of the commodity adjustment, demand adjustment and manufactured gas adjustment as computed below:

(1) The commodity adjustment is the difference between the commodity cost which results from a change in the city gate rate and the commodity base cost. The adjustment shall be applied to billings after the effective date of the commodity rate change provided the adjustment has been filed as defined by PSC 394(b).

(2) The demand adjustment is the difference between the annual demand cost which results from a change in the city gate rate and the demand base cost. In the event the demand city gate rate does not change the demand adjustment shall be recalculated for each 12 month period from the date of the last change. The adjustment shall be computed on the basis of annual demand sales volume and applied to billings after the effective date of the demand rate change provided the adjustment has been filed as defined by PSC 394(b).

(3) The manufactured gas adjustment is the difference between the cost of propane and other fuel consumed in the manufacture of gas during the heating season and the manufactured gas base cost. The manufactured gas adjustment shall be computed annually for the heating season ending March 31 of each year on the basis of annual sales volume. The adjustment shall be applied to billings during the next 12 month period commencing on May 1 of each year provided the adjustment has been filed as defined by PSC 394(b).

(c) Refunds and interest thereon received from the suppliers of purchased gas which are attributable to the cost of gas previously sold shall be refunded by credits to bills or check within a period not to exceed 60 days.

(d) The adjustment per Mcf or Ccf developed according to PSC 393(b) may be further modified to reflect the associated change in gross receipts taxes, franchise taxes and other similar assessments by local governmental units which are based on gross receipts or gross revenue.

PSC 394 Filing Requirements and Approvals Electric Energy and Purchase Gas Adjustments.

(a) All public utilities shall file annually on October 31 of each year the procurement policies for selecting sources of fuel and energy purchased and dispatching policies, if applicable, and a summary of actions taken to minimize cost.

(b) Whenever a public utility changes its automatic adjustment of charges, the utility shall prior to the effective date, file the following:

(1) A summary of the computation of the adjustment.

(2) An explanation of significant changes between the base cost and current cost. Changes for electric utilities shall be quantified as to price, mix, thermal efficiency and distribution loss. Gas utilities shall be quantified as to price and mix changes.

(3) A computation of standard cost for the current reporting period, if available. The standard cost for this computation may be either the planned or budgeted cost of fuel or simulation of the cost of fuel under normal operating and purchasing limits for the adjustment period or current period.

(c) Automatic adjustment of charges shall be provisionally approved and may be placed into effect without Commission action, but subject to the conditions specified in PSC 394(d) and (e).

(d) Errors made in computing adjustments or adjustments made which deviate from the procedures described in PSC 390 through 395 may be refunded to the consumer in an amount not to exceed the amount of the error upon the order of the Commission provided that:

(1) Such order is served within 90 days after the receipt of the filing defined in rule PSC 394(b).

(2) The amount of the error is greater than 5% of the corrected adjustment charge.

(e) The Commission may upon complaint or upon its own motion, after appropriate investigation, notice and hearing, issue an order to fix at current levels, discontinue or modify an automatic adjustment provision for an individual utility.

PSC 395 Implementation.

(a) Existing automatic adjustments in effect as of December 31, 1974 which will not result in adjustment amounts materially greater than those determined by PSC 390 to 395 shall continue in effect until the Commission upon its own motion or upon complaint, after appropriate notice and hearing, shall order otherwise.

(b) Existing automatic adjustments in effect as of December 31, 1974 which will result in adjustment amounts materially greater than those determined by rules PSC 390 to 395 shall be fixed by the utility at the level of charges in effect at the effective date of rules PSC 390 to 395. The existing level of any such automatic adjustments shall, on the effective date of PSC 390 to 395, be submitted to the Department of Public Service within 30 days.

(c) Newly proposed or revisions to or discontinuance of electric energy or purchased gas adjustments shall be deemed to be a change in rates and Rules of Practice PSC 500 through 517 shall apply to such changes.

(d) If existing automatic adjustments of charges are continued under the provision of PSC 395(a) then the filing as defined by PSC 394(b) shall apply.

(a) A corporation or person shall be deemed to be an affiliated interest:

(1) If such person owns or controls, or has the right to acquire through the exercise of presently exercisable options, warrants, or rights; or through the conversion of securities or otherwise, five (5) per cent or more of the voting securities of the public utility; where;

(2) The securities subject to such options, warrants, rights, or conversion privileges held by such corporation or person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding voting securities owned or controlled by such corporation or person but shall not be deemed to be outstanding for the purpose of computing the percentage owned by any other corporation or person.

(b) A public utility, prior to entering into a contract or agreement, or making any modifications or revisions to existing contracts or agreements with an affiliated interest, where the total annual consideration for such contract or agreement is at least $10,000 or 5% of the capital equity of the utility, whichever is less, shall petition for and receive approval from the Commission by formal written order.

(c) Contracts or agreements requiring Commission approval which are entered into after January 1, 1975, without Commission approval shall be null and void. Upon determining a contract or agreement null and void, the Commission may require any consideration received by the affiliated interest for such contract or agreement to be remitted to the public utility.

(d) Information presented to the Department shall be verified under oath by the president, a vice-president, or secretary of the reporting public utility, and is effective as of the date of verification.

PSC 387 Filing Requirements for Utilities with Affiliated Interests.

Each public utility shall file with the Commission:

(a) By April 1 of each year:

(1) A list of all corporations and persons which own or hold, directly or indirectly, 5% or more of the voting securities of the reporting public utility. Such list shall show the number of units of each class of voting securities held, the per cent which the individual holding of each class is to the total outstanding of that class, and the state of incorporation of each corporation.

(2) A list of all corporations and persons which own or hold, directly or indirectly, 5% or more of the voting securities of any corporation in a chain of successive ownership of 5% or more of the voting securities of the reporting public utility. Such list shall show the number of units of each class of securities held, the percent which the individual holding of each class is to the total outstanding of that class, and the state of incorporation of each corporation.

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard J. Parish	Commissioner

In the Matter of the Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.	PSC DOCKET NO. A-8117-11 PSC 385-388

FINDINGS OF FACT

Affiliated Interests

The above-captioned matter as it relates to the Minnesota rules and regulations relative to affiliated interests for gas and electric regulation came for hearing before the Commission, Ronald L. Anderson, Robert W. Carlson, Arlen I. Erdahl, and Richard W. Session presiding on the 28th day of January, 1975, at 10:00 a.m. in the Federal Courts Building (Courtroom No. 2) St. Paul, Minnesota, after proper notice as required by Minnesota Statutes § 15.0412 (1974) had been served upon all persons registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, the Commission finds the following facts in support of the Rules and Regulations relating to Affiliated Interests of gas and electric public utilities.

INTRODUCTION

The Minnesota Public Utilities Act, Minn. Stat. § 216B.48, Subd. 3 (1974) provides:

> No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right or thing, other than those above enumerated, made or entered into after January 1, 1975 between a public utility and any affiliated interest as defined in Laws 1974, Chapter 429, shall be valid or effective unless and until the contract or arrangement has received the written approval of the Commission. It shall be the duty of every public utility to file with the Commission a verified copy of the contract or arrangement, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements, whether written or unwritten, entered into prior to January 1, 1975 and in force and effect at that time. The Commission shall approve the contract or arrangement made or entered into after that date only if it shall clearly appear and be established upon

investigation that it is reasonable and consistent with the public interest. No contract or arrangement shall receive the Commission's approval unless satisfactory proof is submitted to the Commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to each public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original or verified copies of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract or summary as the Commission may deem adequate, properly identified and duly authenticated, provided, however, that the Commission may, where reasonable, approve or disapprove the contracts or arrangements without the submission of cost records or accounts. The burden of proof to establish the reasonableness of the contract or arrangement shall be on the public utility.

The Commission finds that some key reasons for the regulation of affiliated interests contracts are:

1. That control of a public utility by an affiliated interest may or may not be used in a manner consistent with the public interest;
2. That improper use of authority by the affiliated interest may cost the consumers more than what would be deemed reasonable under competitive circumstances; and
3. That the improper use of authority by an affiliated interest may jeopardize the ability of the utility to provide adequate service.

In general, the Commission finds these reasons for the regulation of affiliated interests support the overall legislative intent of the Act, which is ". . . to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities . . ." (Minn. Stat. § 216B.01 (1974)).

Based upon the overall need for regulation of affiliated interests, the Utilities Division of the Department of Public Service (hereinafter "staff") proposed rules PSC 385 to 388 for consideration in hearing.

These rules are intended to apply to investor-owned utilities as provided in Minn. § 216B.02, Subd. 4 and § 216B.48, Subd. 7 (1974). These affected utilities would be required to:

1. File annually with the Commission a list of all affiliated interests;
2. File information with the Commission for contracts or agreements that were entered into prior to January 1, 1975 and continuing beyond that date;
3. Receive approval from the Commission prior to entering a new contract or agreement or amending an existing contract or agreement with an affiliated interest; and
4. Maintain certain records for review by the staff and the Commission.

The Commission finds that these rules for the regulation of affiliated interest contracts were developed to assist the Commission in meeting the following regulatory objectives:

1. To identify those who are affiliated interests;
2. To provide a method for requesting approval of affiliated interest contracts;
3. To provide the staff and Commission with the necessary information to analyze and determine if such contracts are consistent with the public interest; and
4. To provide the Commission with a means of continual supervision over such contracts as specified by law.

In order to meet these regulatory objectives, the staff conducted an investigation of the regulatory approach of the Wisconsin Public Service Commission. The staff concentrated on the Wisconsin Public Service Commission because Minn. Stat. § 216B.48 (1974) is almost identical to Section 196.52 of the Wisconsin statute. In addition, the Wisconsin Public Service Commission has promulgated rules, Chapter PSC 100, to regulate affiliated interests.

Upon review and analysis of the facts revealed in the staff's investigation, the following rules were developed to satisfy the regulatory objectives stated above.

DISCUSSION OF RULES AND RELEVANT FACTS RELATING TO EACH

PSC 385 Definitions for Regulation of Affiliated Interests

PSC 385 was proposed in order to clarify terms that are used throughout the affiliated interests rules. The Commission finds that PSC 385 clarifies affiliated interests terminology and avoids semantical problems.

No comments were received from interested persons either during or subsequent to the hearing regarding PSC 385(a) through (d).

As proposed PSC 385(e) reads as follows:

> "Person" means the beneficial owner of any voting securities with power to vote for the election of directors; or any person directly or indirectly in control of such voting securities including, but not limited to, voting securities owned or held by a relative or spouse or relative of the spouse residing in the home of such person; or voting securities owned or held by such person as a trustee, lessee, executor, or through any associate person controlling, controlled by or under common control with such person in which such person owns five (5) percent or more of the voting securities of a public utility.

A spokesman for Otter Tail Power Company suggested, by written comment received February 19, 1976, that PSC 385(e) be amended to read as follows:

> "Person" means the beneficial owner of securities or any person directly or indirectly in control of such voting securities. A person shall be considered to directly or indirectly control voting securities owned or held by a relative or spouse or relative of the spouse residing in the home of such person; or voting securities owned or held by such person as a trustee, lessee, executor, or through any associate person controlling, controlled by or under common control with such person in which such person owns five (5) percent or more of the voting securities of a public utility.

In support of its amendment, the company contended that the proposed change did not alter the substantive meaning of PSC 385(e), but did, in fact, clarify the meaning of "Person" as used in these rules. The company further noted that the phrase "with power to vote for the election of directors" should be deleted since that phrase is redundant with the phrase "voting securities" as defined in PSC 385(h).

The Commission finds that the company is correct in its observation that the phrase "with power to vote for the election of directors" is redundant with the phrase "voting securities" as defined in PSC 385(h). However, the Commission does not agree with the major thrust of the company's proposed amendment. The Commission finds that the company's major concern is the elimination of the phrase "but not limited to" from PSC 385(e). The Commission finds that the phrase "but not limited to" is necessary so that the Commission can review all relevant transactions and, thus, fulfill its statutory obligation as set forth in Minn. Stat. § 216B.48 (1974). The Commission finds that PSC 385(e) attempts to identify the more common ways a person can acquire, directly or indirectly, control of voting securities. PSC 385(e) is not intended to be all inclusive and does not preclude a person from being deemed an affiliated interest by some other association not identified in PSC 385(e).

In light of the above discussion the Commission finds that PSC 385(e) should be amended to read as follows:

> "Person" means the beneficial owner of any voting securities or any person directly or indirectly in control of such voting securities. A person shall be considered to directly or indirectly in control of such voting securities including, but not limited to, voting securities owned or held by a relative or spouse or relative of the spouse residing in the home of such person; or voting securities owned or held by such person as a trustee, lessee, executor, or through any associate person controlling, controlled by or under common control with such person in which such person owns five (5) percent or more of the voting securities of a public utility.

PSC 385(f) defines "Public Utility" by stating that is is as defined in Section 4, Minnesota Public Utilities Act, but not including a cooperative electric association. A spokesman for Peoples Natural Gas Company stated by written comment

received February 19, 1975, that the reference to "Section 4 in PSC 385(f) was incorrect and that the correct reference was "Section 2, Subdivision 4." The Commission finds that the company is correct in its observation and finds that PSC 385(f) should be amended to reflect the proper citation.

PSC 385(g) states that "staff" means the staff of the Department of Public Service.

PSC 385(h) states that "Voting Security" means any equity security or similar security with the power, presently exercisable, to vote for the election of directors; or any security presently convertible into such a security; or a warrant, option or right, presently exercisable, to obtain such a security.

No comments were received from interested persons either during or subsequent to the hearing regarding PSC 385(g) and (h).

PSC 386 Procedure for Regulation of Affiliated Interest

PSC 386 identifies how percentage of ownership is to be determined, what contracts require Commission approval, what action Commission may take concerning an unauthorized contract, and who has the authority to verify reports filed with the Commission.

PSC 386(a) requires that all securities that are or have the ability to be voting securities must be included when determining the percentage of voting securities owned or controlled by a person or corporation. The Commission recognizes that this method assumes that the options, warrants or rights owned or controlled and currently exercisable are, in fact, exercised. The Commission finds that it is appropriate to include currently exercisable warrants, rights, or options since the ownership or control of such warrants, rights, or options is one method of indirectly owning voting securities and since such warrants, rights or options can be converted into voting securities at any time.

PSC 386(b) identifies those contracts that require Commission approval and also identifies the procedure used by the utility in seeking Commission approval. The petition procedure is outlined in the Rules of Practice, Minn. Reg. PSC 500 to 521. The Commission finds that the petition process, established in the Commission's Rules of Practice, is an appropriate means for the implementation of its statutory obligation as set forth in Minn. Stat. § 216B.48, Subd. 3 (1974).

A spokesman for Otter Tail Power Company suggested, by written comment received February 19, 1976, that PSC 386(b) be amended to read ". . . in excess of $10,000 or five percent. . . ." In support of its amendment, the company stated that

Minn. Stat. § 216B.48, Subd. 4 (1974) exempts from the Act transactions with affiliated interests where the amount of consideration involved is not in excess of $10,000 or five percent of capital equity, whichever is smaller. The Commission finds that the company is correct in analysis and amends PSC 386(b) to read ". . . in excess of $10,000 or five percent . . ."

PSC 386(c) gives the Commission the authority to require an affiliated interest to remit to the public utility any or all considerations received for a contract entered into between the utility and the affiliated interest without the approval of the Commission. Pursuant to Minn. Stat. § 216B.48, Subd. 3 (1974) a contract or an arrangement between a public utility and an affiliated interest is neither valid nor effective unless the Commission approves the contract or arrangement. The Commission finds that if the contract or arrangement is not valid or effective, the affiliated interest has no right to receive or retain any consideration that this Commission finds unreasonable and not consistent with the public interest. Therefore, the Commission concludes that it has the authority to require that an affiliated interest remit to the utility any consideration found to be unreasonable and not consistent with the public interest.

PSC 386(d) requires that the filing with the Commission be verified under oath by a responsible officer of the utility. The Commission finds that this requirement is derived directly from Wisconsin Rule PSC 100.04. The Commission finds that this requirement places the responsibility for insuring completeness and accuracy with the utility since the officers of the utility are in a better position to insure accuracy than the Commission.

PSC 387 Filing Requirements for Utilities with Affiliated Interests

PSC 387 identifies the filing requirements for utilities with affiliated interests.

PSC 387(a) requires the utility to file with the Commission by April 1 of each year a list of all corporations and persons which own or hold, directly or indirectly, 5% or more of the voting securities of the reporting public utility. The rule further delinates different types of affiliated relationships which must be filed with the Commission. The Commission finds that PSC 387(a) was developed directly from Wisconsin PSC 100.03 with minor word changes to clarify which officers and directors were to be included in the annual filing.

A spokesman for North Central Public Service Company suggested, by written comment, that the information that PSC 387(a) requires each public utility to file with the Commission be filed by "June 30" instead of "April 1." The Company stated in support of its proposal, that the period between January 1 through April 1 is a very busy period because of the multiplicity of federal, state and local filing requirements. The company felt that if there is a compelling reason for April 1 then the affiliated interest report should be incorporated in the annual report to the Commission.

The Commission finds that the intent of PSC 387(a) is to discover all securities by class and units when those securities are held by a person or corporation, who has five percent or more of the voting stock. The Commission finds that the information required under PSC 387(a) will be included in the annual report. However, the Commission finds that since the annual report rules are still in the development stage that the April 1 filing date should remain in effect until the annual report rules are finalized.

A spokesman for Otter Tail Power Company suggested, by written comment received February 19, 1976, that the word "financial" be deleted from PSC 387(a)(4)(aa). In support of its proposal, the company stated that the word "financial" is not found in Minn. Stat. § 216B.48, Subd. 1(e) (1974). The company argued that the word "financial" in PSC 387(a)(4)(aa) expanded the statutory definition of affiliated interests.

The Commission finds that the word "financial" is implied in the phrase "and similar services" as that phrase is used in Minn. Stat. § 216B.48, Subd. 1(e) (1974). The Commission notes that the definitions set forth in PSC 385 are so inclusive that they encompass any person that has any tangible influence over the utility. The Commission finds that while the deletion of the word "financial" will not alter the intent of the rule, the inclusion of the word "financial" will resolve a possible misunderstanding. Therefore, the Commission rejects the company's proposed change.

A representative of Otter Tail Power Company suggested, by written comment received February 19, 1976, that the format of PSC 387(a)(4)(bb) be changed. The Commission finds that the company's suggestion will clarify the intent of the rule and, therefore, the Commission amends PSC 387(a)(4)(aa) and PSC 387(a)(4)(bb) to read:

(4) A list identifying:

(aa) All corporations operating a public utility or servicing organization furnishing management, supervisory, construction, engineering, accounting, financial, legal and similar services to the reporting public utility, which have one or more officers or one or more directors in common with the reporting public utility; and,

(bb) Every other organization which has directors in common with the public utility where the number of common directors is more than one-third of the total number of directors of the reporting public utility.

The above list should show for each corporation listed the names of the officers and directors which serve in common with the reporting public utility.

PSC 387(b) identifies the information that the staff's investigation found necessary in order to analyze the petition and to make a proper recommendation to the Commission. The Commission finds that PSC 387(b)(3), historical information, is necessary in order for the Commission to determine the appropriateness of petitions for new contracts. The Commission also finds that the information concerning competitive bidding, required by PSC 387(b)(5), is necessary in order for the Commission to determine the appropriateness of the contract with an affiliated interest.

A spokesman for Otter Tail Power Company, by written comment received February 19, 1976, suggested that the words "shall be" be inserted after the word "agreements" in PSC 387(b). The company stated that the change was needed for greater clarity.

The Commission does not agree with the company. The Commission notes that PSC 387(b) is a subdivision of PSC 387. PSC 387 states:

Each public utility shall file with the Commission:

Therefore, the Commission rejects the company's proposal.

PSC 387(c) requires the filing of certain information concerning contracts with affiliated interests that were in effect prior to, and continuing beyond, January 1, 1975. The Commission finds that it is necessary that utilities with such contracts file this information so that the Commission can identify all the contracts that require its supervision and satisfy the statutory requirements of Minn. Stat. § 216B.48, Subd. 3 (1974).

PSC 388 Maintenance of Records for the Regulation of Affiliated Interests

PSC 388 requires a utility which has contracts with an affiliated interest to maintain certain minimal accounting records. The Commission finds that it is that these records be maintained not only for contracts requiring the Commission's approval but also for those that are exempt. These records provide the Commission with the information necessary to satisfy their statutory responsibility for maintaining continuous supervision over such contracts.

No comments were received from interested persons either during or subsequent to the hearing on the above mentioned rule.

BY ORDER OF THE COMMISSION

LAWRENCE J. ANDERSON
SECRETARY

SERVICE DATE: JUN 29 1976

(S E A L)

JS/sr

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard J. Parish	Commissioner

In the Matter of the Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.

PSC DOCKET NO. A-8117-11
PSC 380-382

FINDINGS OF FACT
ACQUISITION OF PROPERTY

The above-captioned matter as it relates to the Minnesota rules and regulations relative to acquisition of property for gas and electric regulation came for hearing before the Commission, Ronald L. Anderson, Robert W. Carlson, Arlen I. Erdahl, and Richard W. Session presiding on the 28th day of January, 1975, at 10:00 a.m. in the Federal Courts Building (Courtroom No. 2), St. Paul, Minnesota, after proper notice as required by Minnesota Statutes, § 15.0412 (1971) had been served upon all persons registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, the Commission finds the following facts in support of the Rules and Regulations relating to the Acquisition of Property by gas and electric public utilities.

INTRODUCTION

The Minnesota Public Utilities Act, Minn. Stat. § 216B.50, Subd. 1 (1974) provides:

> No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000, or merge or consolidate with another public utility operating in this state, without first being authorized so to do by the Commission. Upon the filing of an application for the approval and consent of the Commission thereto the Commission shall investigate, with or without public hearing, and in case of a public hearing, upon such notice as the Commission may require, and if it shall find that the proposed action is consistent with the public interest it shall give its consent and approval by order in writing. In reaching its determination the Commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated. The provisions of this section shall not be construed as applicable to the purchase of units of property for replacement or to the addition to the plant of the public utility by construction.

The Commission finds that some key reasons for the regulation of the acquisition of property are:

1. Property devoted to public use is included in the rate base for rate making purposes and as such effects utility service costs and rates;
2. Major transactions of this nature may have a significant impact on the financial stability of the utility.

In general, the Commission finds these reasons for the regulation of the acquisition of property support the overall legislative intent of the Act, which is ". . .to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities . . ." (Minn. Stat. § 216B.01 (1974)).

Based upon the overall need for regulation of acquisition of property, the staff proposed PSC 380 to 382 for consideration of hearing.

In accord with Minn. Stat. § 216B.02, Subd. 4 and Minn. Stat. § 216B.50, Subd. 2 (1974) the proposed rules apply to privately-owned utilities. These affected utilities would be required to:

1. Seek, by petition from the Commission, approval for the acquisition of property.
2. File certain information as described in PSC 374 and PSC 375 regarding filing requirements for capital structure approval; and
3. File additional information concerning the original cost of the property in question.

The Commission finds that these rules for regulation of the acquisition of property were developed to assist this Commission in meeting the following regulatory objectives:

1. To satisfy the statutory objectives of the Act,
2. To provide the utilities with a method of obtaining the Commission's approval for such acquisitions,
3. To provide the necessary information for the staff analysis and recommendations, and for the Commission to make an appropriate decision, and
4. To insure that if the acquisition is approved, such acquisition is properly presented in the financial statements of the utility.

In order to meet these regulatory objectives, the staff conducted an investigation of the regulatory approaches of the Federal Power Commission (FPC) and the Public Service Commissions of Wisconsin, Michigan and California.

The staff investigation found that the major concerns of those regulatory bodies in the matter of property acquisitions are:

1. The continuance of adequate service to the utility's customers at reasonable rates,
2. The financial stability of the utility, and
3. The proper accounting treatment of the transaction.

These regulatory bodies require the utility or utilities involved to provide information proving that the acquisition is in the public interest. Such information is needed in order to insure that the utility can continue to provide adequate service to its customers. In addition, all these regulatory bodies require the utility to provide financial information quite similar to what is provided for the approval of security issuance. Further, each regulatory body requires that the original cost of the property be identified in order that the proper accounting treatment of the acquisition can be reviewed by the Commission.

Upon review and analysis of the facts revealed in the staff's investigation the following rules were developed to satisfy the regulatory objectives stated above.

DISCUSSION OF RULES AND RELEVANT FACTS RELATING TO EACH

PSC 380 Definition for Approval to Acquire Property

PSC 380 was proposed in order to eliminate excessive wording in the rule. The Commission finds that PSC 380 clarifies the terminology used in the proposed rules. However, the Commission finds that two definitions, namely PSC 380(d) and PSC 380 (f), need further discussion.

"Party" as term is defined in PSC 380(d) means those persons or business entities directly involved in the transaction. The Commission finds that in the case of corporations, stockholders are not a "party" to the transaction when authority to negotiate the acquisition of property is delegated either by the articles of incorporation or by proxy to an agent. The Commission finds that normally the Board of Directors and the President are designated as agents for the shareholders.

"Transfer of Property" as the term is defined in PSC 380(f) identifies those property acquisitions that are not, strictly speaking, classified as a sale, merger or consolidation, but will nevertheless require Commission approval. Approval of the rental or lease of an operating unit or system will be required only when the annual payments over the life of the rental or lease agreement exceed $100,000.00. The Commission finds that this clarification is necessary in order to specifically identify what is meant by "total consideration" as provided in Minn. Stat. § 216B.50, Subd. 1 (1974).

A spokesman for Peoples Natural Gas Company stated, by written comment received February 19, 1975, that the reference to "Section 4" in PSC 380(e) was incorrect and that the correct reference was "Section 2, Subdivision 4." The Commission finds that the company is correct in its observation and amends PSC 380(e) to reflect the proper citation.

A spokesman for Otter Tail Power Company suggested, by written comment received February 18, 1975, that PSC 380(f) be amended to read as follows:

> "Transfer of Property" means the sale or acquisition of <u>any plant as</u> an operating unit . . .

In support of its amendment, the company argued that the proposed amendment is required in order to conform the definition of "Transfer of Property" to Section 50 of the Act (Minn. Stat. § 216B.50, Subd. 1 (1974)).

The Commission finds that the company's amendment does not clarify the intent of PSC 380(f). The Commission also finds that an operating unit or system definition is provided for under the Minnesota Uniform System of Accounts Rules (PSC 350-352) whereby this Commission adopted the FPC Uniform System of Accounts as the appropriate system for Minnesota. The Commission concludes that the company's amendment does not add any clarification to that definition.

The Commission notes that PSC 380 to PSC 382 do not apply to the replacement or to the construction of utility plant. The Commission notes that these rules do not apply to the merger or consolidation of a public utility with a person, partnership, or corporation or other business entity that is not a public utility as defined in Minn. Stat. § 216B.02, Subd. 4 (1974). The Commission finds that those transactions are regulated by the Minnesota Commerce Commission.

<u>PSC 381 Procedure for Approval to Acquire Property</u>

PSC 381, Procedures, identifies the procedure that a utility seeking approval to acquire property shall follow.

PSC 381(a) identifies the petition as the mechanism to be used for obtaining Commission approval for the acquisition of property. The rule further provides that approval shall be by formal written order. The petition process is described in the rules of practice, Minn. Reg. PSC 500-521. The Commission finds that the petition process, established in the Commission's Rule of Practice, is an appropriate menas for the implementation of its statutory duty as set forth in Minn. Stat. § 216B.50, Subd. 1 (1974).

PSC 381(b) requires that if capital structure approval is necessary, then petition for such approval will be required at the same time as the petition for approval of transfer, merger or consolidation. The Commission anticipates that such transactions, especially mergers and consolidations, will require the issuance of a security or securities and, as such, will require approval of capital structure. The Commission finds where approval of capital structure is required, it is appropriate to treat both the capital structure and the acquisition at the same time. The Commission finds that concurrent filing will eliminate duplication of effort by both the utility, the staff and the Commission.

PSC 381(c) permits the Commission to require an independent evaluation of property where the value of such property cannot be determined satisfactorily by other means. The Commission anticipates that the situation may arise where records are insufficient to determine the value of property when first devoted to public use. The Commission finds that it is necessary for it to have the authority to order an independent evaluation of property because the value of property is a major determinant of the consideration received for the property and because the utility is allowed to earn a return on the value of property when first devoted to public use.

No comments were received from interested persons either during or subsequent to the hearing on the above mentioned rule.

PSC 382 Filing Requirements for Petitions to Acquire Property

PSC 382. Filing Requirements, requires the petitioner to file certain information as part of the petition. The Commission finds that the information required in this proposed rule has been developed from the requirements of the California Public Utilities Commission (Rules 17, 35 and 36) and the Federal Power Commission (18 C.F.R. § 33, 34 (1974)). The Commission finds that certain modifications have been made to both the California rules and FPC rules in order to provide consistency within Minnesota rules and to eliminate needless wordings.

No comments were received from interested persons either during or subsequent to the hearing on the above mentioned rule.

A spokesman for Otter Tail Power Company suggested, by written comment received February 19, 1975, that the title headings of PSC 380, 381 and 382 be amended to read as follows:

PSC 380 Definitions for Approval to Transfer Property or to Merge or Consolidate

PSC 381 Procedure for Approval to Transfer Property or to Merge or Consolidate

PSC 382 Filing Requirements for Petitions to Transfer Property or to Merge or Consolidate

Otter Tail Power Company's rationale was that the rules and regulations pertain to sale, acquisition, merger or consolidation, not merely to acquisition of property.

The Commission does not agree with the company's contention. The Commission finds that the term "acquisition of property" incorporates the concepts of sale, merger and consolidation.

BY ORDER OF THE COMMISSION

LAWRENCE J. ANDERSON
SECRETARY

SERVICE DATE: JUN 2 9 1976

JS/sr

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard J. Parish	Commissioner

In the Matter of the Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.	PSC DOCKET NO. A-8117-11 PSC 370-375

FINDINGS OF FACT

CAPITAL STRUCTURE AND SECURITY ISSUANCE

The above captioned matter as it relates to the Minnesota Rules and Regulations relative to Capital Structure and Security Issuance for gas and electric regulations came for hearing before the Commission, Ronald L. Anderson. Robert W. Carlson, Arlen I. Erdahl, and Richard W. Session presiding on the 28th day of January, 1975, at 10:00 a.m. in the Federal Courts Building (Courtroom No. 2) St. Paul, Minnesota, after proper notice as required by Minnesota Statutes, § 15.0412 (1971) had been served upon all persons registered with the secretary of state for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, the Commission finds the following facts in support of the rules and regulations relating to the capital structure and security issuance of gas and electric public utilities.

INTRODUCTION

The Minnesota Public Utilities Act, Minn. Stat. § 216B.49, Subd. 3 (1974) provides:

> It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in the state to an encumbrance for the purpose of securing the payment of any indebtedness unless the capital strucutre of the public utility shall first be approved by the Commission. Approval by the Commission shall be by formal written order.

The Commission finds that some key reasons for the regulation of capital structure are as follows:

1. That capital structure is related to the ability of public utility to provide adequate service to its customers at reasonable rates. This

capital structure has an identifiable cost and this cost affects the customer rates.

2. That the financial stability and viability of the utility must be maintained so that adequate service can be provided to the public when requested. It is important then that this Commission assure itself that public utilities do not develop an uneconomic capital structure that restricts or inhibits the growth of the utility in the future.

In general, the Commission finds these reasons for the regulation of capital structure support the overall legislative intent of the Act, which is ". . . to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities . . ." (Minn. Stat. § 216B.01 (1974).

Based upon the overall need for regulation of capital structure, the staff proposed rules PSC 370 to 375 for consideration in hearing.

In accord with Minn. Stat. § 216B.49, Subd. 6 (1974), the proposed rules apply to investor-owned public utilities in two distinct situations. These situations are (1) investor-owned utilities organized under the laws of Minnesota, and (2) investor-owned utilities organized under the laws of other states or foreign countries.

If an investor-owned utility is organized under the laws of Minnesota, such a utility will be required to seek and obtain approval of its capital structure prior to the issuance of any security. If a utility is organized under the laws of Minnesota, then PSC 370 to PSC 375 apply in total.

If an investor-owned public utility is organized under the laws of another state or foreign country, such utility will be required to seek approval of its capital structure prior to issuance of securities only is such securities encumber Minnesota property. In this situation, only PSC 370,371,372,374 and 375 apply.

In the event that there exists a parent-subsidiary relationship and where there are two distinct capital structures, the capital structure requiring approval of the Commission is the capital structure of the issuing utility.

These affected utilities would be required to:

1. Seek, by petition, approval of capital structure from the Commission prior to the issuance of securities,
2. File certain information upon which the Commission would base its decision, and
3. File supplemental information in order to complete the Commission record when such information becomes available.

The Commission finds that these rules for the regulation of capital structure were developed to assist the Commission in meeting the following regulatory objectives:

1. To identify the procedure that utilities would follow when seeking capital structure approval,
2. To provide a method for gathering the information necessary to analyze the utility's request for capital structure approval in order to provide the Commission with a basis for its decision,
3. To provide a procedure for the treatment of short-term security issuance which does not necessiate capital structure approval for each short-term security issuance, and
4. To clarify and emphasize those portions of Minn. Stat. § 216B.49 (1974) that need clarification or emphasis.

In order to meet these regulatory objectives, the staff conducted an investigation of the regulatory approaches of the States of California, Michigan and Wisconsin; and of the Federal Power Commission (FPC) and the Securities and Exchange Commission (SEC). In addition, the staff reviewed current financial, economic and accounting theory publications.

Overall, the staff investigation of the above regulatory Commissions and the Minnesota Public Utilities Act revealed that:

1. These regulatory bodies approved the issuance of a security, not the capital structure;
2. Short-term securities are treated differently by different regulatory bodies;
3. Any securities to be exempt from regulation are identified by statute;
4. The only securities exempt from regulation in these jurisdictions are promissory notes with a maturity date of less than 12 months (short-term securities);
5. Minnesota statute by definition includes unsecured securities with a date of maturity of no more than one year from the date of issuance; and
6. Minnesota statutes require that the capital structure be approved, not security itself.

Upon review and analysis of the facts revealed in the staff's investigation, the following rules were developed to satisfy the regulatory objectives stated above.

DISCUSSION OF RULES AND RELEVANT FACTS RELATING TO EACH

PSC 370 Definitions for Capital Structure Approval

PSC 370, Definitions, is proposed to clarify terminology, to eliminate needless wording and to identify those securities that will be affected by PSC 371 to PSC 375. The Commission finds that PSC 370 identifies explicitly who is regulated under these rules, what is included in the capital structure and how securities are segregated into two distinct categories.

PSC 370 (a) states that "Capital Structure" means the total capitalization of the public utility as defined in the Minnesota Public Utilities Act and includes short-term securities. As proposed, PSC 370(a) defines "capital structure" to clearly state that short-term securities are included in the capital structure regulated by this Commission.

A spokesman for Otter Tail Power Company suggested, by written comment required February 19, 1975, that short-term securities be deleted from the definition of "Capital Structure" in PSC 370(a).

In support of its position, the company stated that the Act grants the Commission authority to regulate securities which, by Minn. Stat. § 216B.49, Subd. 1 (1974), would include short-term securities. Further, the company stated that Minn. Stat. § 216B.49, Subd. 2 (1974) specifically divides the utility's capital structure between long-term debt and equity and into various forms of stock or bonds within those categories: neither short-term debt nor securities is mentioned as a part of the capital structure. The company contended that the language "but not limited to" found in Minn. Stat. § 216B.49, Subd. 2 (1974), under strict rules of construction, would not admit the inclusion of short-term securities in PSC 370(a).

The company also contended that traditionally short-term securities are classified as a current liability and are classified as such by the FPC. Therefore, the company argued that short-term securities should not be included in the Commission's definition of capital structure.

The Commission agrees with the company's statement that Minn. Stat. § 216B.49, Subd. 1 (1974) includes short-term securities in the definition of the securities to be considered for regulation. However, the Commission does not agree with the company's contention that short-term securities should be excluded from total capitalization.

By Considering capital structure in light of the reasons for regulation, the Commission finds that it is apparent that short-term securities do belong in the total capital structure. The Commission's responsibility is to test the reasonableness of management decisions that may affect cost and enhance the customer's rates. One of the ongoing and important decisions the management of a utility must make is the decision to choose one alternative method of financing assets over another alternative method. Since the only material difference between a short-term security and a long-term security is the time to maturity, this Commission must consider the "reasonableness" of short-term financing along with other alternative methods of financing.

Current financial theory states that the permanent components of current assets and the permanent capital assets should be financed with long-term obligations. J.C. VanHome, Financial Management and Policy, 386-390 (2d. ed. 1971). It is common for public utilities to temporarily finance permanent assets with short-term securities until short-term securities approach an excessive level or market conditions favor long-term financing. At this point the utility will refinance these assets with long-term securities and retire outstanding short-term securities. By maintaining excessive amounts of short-term securities in the capital structure for extended periods of time the utility may seriously jeopardize its lequidity. Therefore, the Commission finds that it is imperative that it consider short-term securities together with long-term debt and equity in approving the capital structure of the utility.

The Commission does not agree with the company's statement that short-term securities are classified as a current liability and are classified as such by the FPC. The Commission finds that the company's statement is contrary to current practice promulgated by the Securities and Exchange Commission (SEC) and the American Institute of Certified Public Accountants (AICPA). In essence, SEC and AICPA require that short-term obligations be presented separately from other current liabilities for financial statement when the company intends to refinance such short-term obligations. AICPA, Accounting Research Bulletin, ARB No. 43, Ch. 3, "Section A - Current assets and current liabilities" (1968). SEC, Securities Act of 1933, Release No. 5436, November 13, 1973. Thus, it appears that current theory indicates that short-term securities be treated separately from current liabilities.

The Company contended that the FPC classifies short-term securities as a current liability. The company, however, failed to support its contention. In addition, the Commission has been unable to find any basis for the company's contention. Therefore, based on the above discussion, the Commission finds that

the definition of capital structure in PSC 370(a) does not contradict current SEC and accounting theory but rather clearly identifies total capital structure for Minnesota regulatory purposes and for meaningful financial analysis.

A spokesman for Interstate Power Company indicated by oral and written comments that, in respect to the issuance of its securities, the company (a Delaware corporation) is already subject to regulation by the SEC, by the FPC and the Illinois Commerce Commission. The company indicated that because of such multiplicity of regulation, the company would make its filings with this Commission subject to written reservations as to its constitutional rights to challenge Minn. Stat. § 216B.49, Subd. 3 (1974) and any regulations promgulated thereunder (T.P. 165-175 and March 11, 1975).

Notwithstanding its constitutional reservations, the company indicated that it intended to apply for approval of its capital structure even though no encumbrance of Minnesota property is contemplated. The company contended that while there is nothing in Minn. Stat. § 216B.49, Subd. 3 (1974) which requires a foreign corporation to file for approval of its capital structure, except where a lien on Minnesota property is to be created, there is likewise nothing which prohibits a foreign corporation from filing for approval of its capital structure. The company also contended that Minn. Stat. § 216B.49, Subd. 4 (1974) makes no distinction between a foreign and domestic public utilities. The company concluded that the statute granted a foreign corporation the option to petition for approval of its capital structure and that the Commission must act on a foreign corporation's petition for approval, regardless whether Minnesota property is encumbered.

The Commission finds that the company's major concerns are that (1) its capital structure may not be satisfactory when, at some future date, the company wishes to encumber Minnesota property; and (2) the company will be hampered in future securities offerings because it will have to disclose in its prospectures that its capital structure may be subject to approval by the Commission in the future.

Minn. Stat. § 216B.49, Subd. 3 (1974) provides as follows:

> "It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness unless the capital structure of the public utility shall first be approved by the Commission. Approval by the Commission shall be by formal written order."

Pursuant to the above quoted provision, the Commission finds that it has subject matter jurisdiction to approve a foreign corporation's capital structure only when the company intends for its securities to encumber Minnesota property. The Commission finds that its jurisdiction is limited to property interests within its territory. Accordingly if no such property interest is created, this Commission has no jurisdiction.

While the Commission may review a petition by a foreign corporation for approval of its capital structure even though there is no encumbrance of Minnesota property, any such review would be in the nature of an advisory opinion and would not in any way bind the Commission. Whether or not this Commission will give advisory opinions is not the issue at hand. It is sufficient that the Commission recognizes that it may give advisory opinions regarding a foreign corporation's capital structure even though no encumbrance of Minnesota property is involved.

The Commission does not object to the company making its filing with this Commission subject to written reservations as to its constitutional rights to challenge the statute and any regulations promgulated thereunder. The Commission recognizes that due to the multiplicity of regulation there might develop a material conflict between the requirements of regulatory Commissions which would make it impossible or financially burdensome for the company to engage in interstate commerce.

PSC 370(b), (d), and (e) define the word "security". These proposed rules also segregate securities into two distinct classes: short-term and long-term securities. The Commission finds it is necessary to segregate securities into these two classes in order to provide a specific procedure that permits the utilities to function in the money market without the undue restrictions of an approval relating to each issuance and yet provide the staff with adequate and timely information for analysis.

PSC 370(c) defines "Public Utility" as defined in Section 2, Subdivision 4, Minnesota Public Utilities Act. However, the definition does not include cooperative electric associations. The Commission finds that cooperative electric associations are excluded from the proposed rules because cooperatives are financed by the federal government through the Rural Electrification Administration (REA).

A spokesman for the Otter Tail Power Company suggested a change in PSC 370(e). Where the rules read ". . . issuance; and, contains no provision for, automatic renewal . . ." it was suggested that the rule should read ". . . issuance, and containing no provisions for automatic renewal . . ." The Company's suggested change revises the punctuation and wording to clarify the sentence. The Commission agrees with the company and adopts the rule as revised.

PSC 371 General Procedure for Capital Structure Approval

PSC 371, General Procedure, identifies procedures that are common to both short and long-term securities and requests for capital structure approval.

PSC 371(a) identifies the petition as the mechanism to be used for obtaining capital structure approval. The rule further provides that approval shall be by formal written order. The petition process is described in the Rules of Practice, Minn. Reg. PSC 500-521. The Commission finds that the petition process, established in the Commission's Rules of Practice, is an appropriate means for the implementation of its statutory duty as set forth in Minn. Stat. § 216B.49, Subd. 3(1974).

PSC 371(b) provides that Commission orders approving capital structure shall be effective for at least one (1) year, unless otherwise stated; or until the petitioner requests modification or revision; or until the Commission deems conditions affecting capital structure have changed sufficiently to warrant further review. The Commission finds that it is necessary to identify the time that capital approval orders remain in effect for several reasons:

1. Since a utility must have its capital structure approved prior to the issuance of short-term security, an appropriate time period for the order to remain in effect is necessary. Otherwise, the utility would be required to petition the Commission on a continual basis.
2. The Commission anticipates that petitions for capital structure approval for both short-term and long-term securities will be filed well in advance of the date of issuance. If this is the case, the order must be effective for a sufficient period of time in order for the utility to execute its financing plans.
3. Finally, market or other economic conditions may make a capital structure inappropriate at some point in the future. Thus, it is desirable to limit the time a capital structure approval order is effective.

PSC 372 Capital Structure Approval Required for Issuance of Long-Term Securities

PSC 372 specifies additional requirements for petitions for capital structure approval for long-term securities.

PSC 372(a) provides that a petition may include multiple issuance of securities, whereupon review, the Commission may approve the change in capital structure. The Commission finds that is is necessary that petitions are able to include multiple issuances in order to minimize the number of petitions filed for capital structure approval. Further, the Commission finds that it is necessary for the Commission to be able to approve only part of the petition if the petition includes multiple issuance. By approving acceptable capital structure changes rather than reflecting all changes. The Commission will be consistent with the above stated policy of minimizing the number of petitions the utility must file.

PSC 372 (b) identifies the information that the utility's petition shall contain. These information requirements are discussed in detail in PSC 374 and PSC 375.

PSC 373 Capital Structure Approval Required for Issuance of Short-Term Securities

PSC 373 identifies additional requirements for utilities petitioning the Commission for capital structure approval required for the issuance of short-term securities. PSC 373 (a) requires that such petitions be filed sixty (60) days prior to the first proposed issuance. The Commission finds that this sixty day requirement is necessary so that the staff has sufficient time prior to the proposed date of issuance to analyze the petition, resolve any differences with the petitioner, prepare its findings, and recommendations, and present these findings and recommendations to the Commission along with the findings and recommendations of the petitioner for the Commission to make its decision.

PSC 373 (b) requires that the petition include certain information identified in PSC 374 and a cash-flow statement showing 21 months of actual information and 15 months forecast information. In total, the cash-flow statement covers 36 months and provides the staff with a sufficient amount of historical information and forecast information to determine the ability of the utility to maintain a maximum level of short-term securities without jeopardizing the utility's financial stability.

The Commission finds that in considering the appropriate capital structure, it is extremely important to analyze the cashflow ability of the utility to service fixed charges. Before assuming additional fixed charged, the utility should analyze its expected future cash-flows, for fixed charges must be met with cash.

The Commission further finds that it is necessary to have forecasted cash-flow since the approval of capital structure is prior to the issuance of

the securities. Further, since the securities will be issued in the future, the analysis must be consider the future. The Commission finds that the most appropriate way of considering the future in this case is the analysis of forecasted cash-flow.

In addition, the Commission finds that a forecasted cash-flow statement is not complete unless the underlying assumptions are known. Because a forecast predicts events in the future and such predictions are based on assumptions (e.g., the rate of inflation will slow to 5 percent next year), it is necessary to identify these assumptions in order to evaluate the appropriateness of the forecast. The Commission finds that current SEC regulations do not prohibit a company from providing such information to other regulatory bodies.

PSC 373 (c) permits the utility to interact with the money market at its discretion once the Commission has approved its capital structure for such issuance. The rule reads in full: "Upon approval of capital structure, the petitioner may issue short-term securities at its discretion provided such petitioner remains within the limits and restrictions set forth in the Commission's Order."

A spokesman for Interstate Power Company suggested that there be added to PSC 373 (c) the following paragraph: "Public Utilities organized under the laws of any other state than Minnesota, or foreign country, may, at their option, petition for approval of their capital structure in the same manner as Minnesota corporation, prior to the issuance of any securities, whether or not any such securities subject Minnesota property to any encumbrance" (written comment received March 11, 1975). The company contended that the suggested change was necessary in order to eliminate any possibility that this Commission would refuse to evaluate a foreign utility's capital structure when no Minnesota property is encumbered.

The Commission finds that the company's real concern is for Minnesota approval during periods between issuance of securities encumbering Minnesota property. Minn. Stat. § 216B.49, Subd. 3 (1974) requires the Commission to approve capital structure of foreign utilities if Minnesota property is encumbered. There is no statutory authority to approve any other type of issuance. There is no statutory authority to approve capital structure of foreign utilities when Minnesota property is not encumbered. No rule can be developed in this area where no statutory exists. The Commission may provide this service if it desires without a formal rule; but such ruling would have no impact on later rulings, and would strictly be in the nature of an advisory opinion.

PSC 374 Filing Requirements for Capital Structure Approval

PSC 374, Filing Requirements, identifies the information that must accompany the petition for capital structure approval. These information requirements were developed directly from the California Public Utilities Commission (Rule of Practice and Procedure, Rule 17, 33 and 34), the regulation under the Federal Power Act (18 CFR § 34.2 -.3 (1974)), and the staff. The Commission finds that certain modifications have been made in order to reduce duplication of work by the utility and the staff and to eliminate needless wording and requirements.

PSC 374 (a) through (k) did not cause any controversy at the hearing. No comments were received from interested persons either during or subsequent to the hearing on the above mentioned subdivisions of this rule.

PSC 374 (l) states that petitions shall contain an estimate of the interest or dividend cost per $100 principal amount (except in the case of common stock), and a description of any anticipated terms or indenture provisions.

A spokesman for Otter Tail Power Company suggested by written comments, received February 19, 1975, that PSC 374 (l) be deleted. In support of its contention the company argued that a utility should not be placed in the position of estimating the cost of money or expected terms of financing prior to negotiating a proposed financing. The company further argued that the disclosure of the cost of money or expected financing terms prematurely may jeopardize or weaken the utility's bargaining position with investment bankers. The company was of the opinion that it was entirely possible that the investment banker, upon examination of the utility's application as filed with the Commission pursuant to these rules, may begin megotiations at the point as estimated by the utility rather than from the terms available in the market place.

The Commission does not agree with the company's contention. The Commission finds that the United States capital markets are among the most extensive in the world. The Commission finds that the market place determines the cost of capital. A utility's petition for capital structure approval does not determine the cost of capital. The Commission finds that an estimate of interest or dividend cost is necessary in order for the Commission to fulfill its regulatory objectives previously stated in the introductory portion of this writing.

PSC 374 (m) states that if the petitioner is a corporation, a copy of its current articles of incorporation certified by the Secretary of the State of incorporation must be contained in the petition. If the current articles have already been filed, the petitioner need only make specific reference to such filings.

A spokesman for Otter Tail Power Company suggested by written comments, received February 12, 1976, two changes to PSC 374 (m). First, the company suggested that there be inserted after the word "incorporation" the phrase " and all amendments thereto." The company's rationale for the proposed change was that the change would provide for greater clarity. The Commission finds that the company's suggested would add redundancy to the rule since the proposed rule clearly states "current articles of incorporation." The Commission finds that the term "current articles of incorporation" includes all amendments to said articles.

The Company also suggested that the PSC 374 (m) be amended so that the "Secretary or Assistant Secretary of the petitioner" could certify the articles of incorporation. The Company stated in support of the change that some utilities have available composite articles of incorporation, including all amendments thereto, which can be certified by the Secretary of the utility as being a true and correct composite of the articles and all amendments on file with the Secretary of State of Minnesota. The company argued that by permitting composite articles to be certified by the Secretary or Assistant Secretary of the utility, the Commission would spare the utility from the additional costs involved in obtaining the articles from the Secretary of State. In addition, the company argued that the composite articles would make it easier for the Commission and the staff to review the utility's articles.

The Commission finds that since the articles only need to be filed once, the projected cost saving attributed to the company's proposed change is insignificant. In addition, the Commission finds that while it is easier to work with composite articles, a copy of the utility's current articles of incorporation certified by the Secretary of State of incorporation offers the best evidence of the utility's articles and safeguards the utility from any charge of misrepresentation. For the above stated reasons, the Commission rejects the company's proposed change to PSC 374 (m).

PSC 374 (m), (o), (p), (r) and (s) states the information to be attached as exhibits to the petition. No comments were received from interested persons either during or subsequent to the hearing on the above mentioned subdivisions of this rule.

PSC 374 (q) provides that if any of the above filing requirements are provided in petitions or applications to other regulatory agencies, then such petitions or applications, properly cross referenced in item (b), may be submitted in lieu of the specific filing requirements.

A spokesman for Northern States Power suggested a change to PSC 374 (q) by the addition of a provision which would provide for the incorporation by cross-reference of any document on file with this Commission. The Company reasoned that such incorporation would substantially reduce the filing burden on the utilities (T.P. 150-151).

At the hearing it was noted that the rule in question states that if the filing requirements are provided in petitions on file with other agencies, then petitions from the other agencies can be filed with this agency rather than a document specifically in the form provided in the rules, together with a cross-reference to the provisions in these rules (t.p. 151). Subsequently, Northern States Power has withdrawn its suggested change and has, in fact, supported the above reading of PSC 374 (m) (T.P. 152). The Commission finds that the above stated policy is the proper implementation of PSC 374 (m).

PSC 375 Additional Information

PSC 375 requires the filing of additional information that would not be available at the time the petition was filed and may not be available until after the capital structure has been approved. The Commission finds that this information is necessary to:

1. Test the petitioner compliance with the Commission order;
2. Provide the Commission and staff with the exact cost of the securities issued; and
3. To complete the petition record.

A spokesman for Otter Tail Power Company suggested by written comment, received February 12, 1976, that PSC 375 be amended by inserting the following parenthetical phrase after the word "available":

> (which may be after the issuance of the Order of the Commission approving the capital structure)

The company stated that the information called for by PSC 375 will not be available until after the approving order of the Commission has been entered, and that it is desirable to recognize this fact at this point in time.

The Commission finds that the proposed change is not necessary since the rule clearly states that the required information need not be supplied until it is available.

PSC 375 (a) requires the filing of a copy of the registration statement proper. A spokesman for Northern States Power suggested that the word "proper" be stricken and that the word "final" be inserted in front of "registration statement" (T.P. 153). In support of its contention, the company stated that since PSC 375 (a) is designed to in effect complete the record of the financing transaction that the

final registration statement would be more appropriate for this purpose.

The Commission agrees with the company and finds that the intent of PSC 375 (a) is to complete the record of the financing transaction. Therefore, the Commission amends PSC 375 (a) to read as follows:

A copy of the final registration statement . . .

A spokesman for Otter Tail Power Company pointed out a typographical error in PSC 375 (b). The Commission finds that the error has been corrected in the final draft of the rule.

BY ORDER OF THE COMMISSION

LAWRENCE J. ANDERSON
SECRETARY

JUN 2 9 1976

JS/sr

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard J. Parish	Commissioner

In the Matter of the Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.	PSC DOCKET NO. A-8117-11 PSC 370-375

FINDINGS OF FACT

CAPITAL STRUCTURE AND SECURITY ISSUANCE

The above captioned matter as it relates to the Minnesota Rules and Regulations relative to Capital Structure and Security Issuance for gas and electric regulations came for hearing before the Commission, Ronald L. Anderson. Robert W. Carlson, Arlen I. Erdahl, and Richard W. Session presiding on the 28th day of January, 1975, at 10:00 a.m. in the Federal Courts Building (Courtroom No. 2) St. Paul, Minnesota, after proper notice as required by Minnesota Statutes, § 15.0412 (1971) had been served upon all persons registered with the secretary of state for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, the Commission finds the following facts in support of the rules and regulations relating to the capital structure and security issuance of gas and electric public utilities.

INTRODUCTION

The Minnesota Public Utilities Act, Minn. Stat. § 216B.49, Subd. 3 (1974) provides:

> It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in the state to an encumbrance for the purpose of securing the payment of any indebtedness unless the capital strucutre of the public utility shall first be approved by the Commission. Approval by the Commission shall be by formal written order.

The Commission finds that some key reasons for the regulation of capital structure are as follows:

1. That capital structure is related to the ability of public utility to provide adequate service to its customers at reasonable rates. This

capital structure has an identifiable cost and this cost affects the customer rates.

2. That the financial stability and viability of the utility must be maintained so that adequate service can be provided to the public when requested. It is important then that this Commission assure itself that public utilities do not develop an uneconomic capital structure that restricts or inhibits the growth of the utility in the future.

In general, the Commission finds these reasons for the regulation of capital structure support the overall legislative intent of the Act, which is ". . . to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities . . ." (Minn. Stat. § 216B.01 (1974).

Based upon the overall need for regulation of capital structure, the staff proposed rules PSC 370 to 375 for consideration in hearing.

In accord with Minn. Stat. § 216B.49, Subd. 6 (1974), the proposed rules apply to investor-owned public utilities in two distinct situations. These situations are (1) investor-owned utilities organized under the laws of Minnesota, and (2) investor-owned utilities organized under the laws of other states or foreign countries.

If an investor-owned utility is organized under the laws of Minnesota, such a utility will be required to seek and obtain approval of its capital structure prior to the issuance of any security. If a utility is organized under the laws of Minnesota, then PSC 370 to PSC 375 apply in total.

If an investor-owned public utility is organized under the laws of another state or foreign country, such utility will be required to seek approval of its capital structure prior to issuance of securities only is such securities encumber Minnesota property. In this situation, only PSC 370,371,372,374 and 375 apply.

In the event that there exists a parent-subsidiary relationship and where there are two distinct capital structures, the capital structure requiring approval of the Commission is the capital structure of the issuing utility.

These affected utilities would be required to:

1. Seek, by petition, approval of capital structure from the Commission prior to the issuance of securities,
2. File certain information upon which the Commission would base its decision, and
3. File supplemental information in order to complete the Commission record when such information becomes available.

The Commission finds that these rules for the regulation of capital structure were developed to assist the Commission in meeting the following regulatory objectives:

1. To identify the procedure that utilities would follow when seeking capital structure approval,
2. To provide a method for gathering the information necessary to analyze the utility's request for capital structure approval in order to provide the Commission with a basis for its decision,
3. To provide a procedure for the treatment of short-term security issuance which does not necessiate capital structure approval for each short-term security issuance, and
4. To clarify and emphasize those portions of Minn. Stat. § 216B.49 (1974) that need clarification or emphasis.

In order to meet these regulatory objectives, the staff conducted an investigation of the regulatory approaches of the States of California, Michigan and Wisconsin; and of the Federal Power Commission (FPC) and the Securities and Exchange Commission (SEC). In addition, the staff reviewed current financial, economic and accounting theory publications.

Overall, the staff investigation of the above regulatory Commissions and the Minnesota Public Utilities Act revealed that:

1. These regulatory bodies approved the issuance of a security, not the capital structure;
2. Short-term securities are treated differently by different regulatory bodies;
3. Any securities to be exempt from regulation are identified by statute;
4. The only securities exempt from regulation in these jurisdictions are promissory notes with a maturity date of less than 12 months (short-term securities);
5. Minnesota statute by definition includes unsecured securities with a date of maturity of no more than one year from the date of issuance; and
6. Minnesota statutes require that the capital structure be approved, not security itself.

Upon review and analysis of the facts revealed in the staff's investigation, the following rules were developed to satisfy the regulatory objectives stated above.

DISCUSSION OF RULES AND RELEVANT FACTS RELATING TO EACH

PSC 370 Definitions for Capital Structure Approval

PSC 370, Definitions, is proposed to clarify terminology, to eliminate needless wording and to identify those securities that will be affected by PSC 371 to PSC 375. The Commission finds that PSC 370 identifies explicitly who is regulated under these rules, what is included in the capital structure and how securities are segregated into two distinct categories.

PSC 370 (a) states that "Capital Structure" means the total capitalization of the public utility as defined in the Minnesota Public Utilities Act and includes short-term securities. As proposed, PSC 370(a) defines "capital structure" to clearly state that short-term securities are included in the capital structure regulated by this Commission.

A spokesman for Otter Tail Power Company suggested, by written comment required February 19, 1975, that short-term securities be deleted from the definition of "Capital Structure" in PSC 370(a).

In support of its position, the company stated that the Act grants the Commission authority to regulate securities which, by Minn. Stat. § 216B.49, Subd. 1 (1974), would include short-term securities. Further, the company stated that Minn. Stat. § 216B.49, Subd. 2 (1974) specifically divides the utility's capital structure between long-term debt and equity and into various forms of stock or bonds within those categories: neither short-term debt nor securities is mentioned as a part of the capital structure. The company contended that the language "but not limited to" found in Minn. Stat. § 216B.49, Subd. 2 (1974), under strict rules of construction, would not admit the inclusion of short-term securities in PSC 370(a).

The company also contended that traditionally short-term securities are classified as a current liability and are classified as such by the FPC. Therefore, the company argued that short-term securities should not be included in the Commission's definition of capital structure.

The Commission agrees with the company's statement that Minn. Stat. § 216B.49, Subd. 1 (1974) includes short-term securities in the definition of the securities to be considered for regulation. However, the Commission does not agree with the company's contention that short-term securities should be excluded from total capitalization.

By Considering capital structure in light of the reasons for regulation, the Commission finds that it is apparent that short-term securities do belong in the total capital structure. The Commission's responsibility is to test the reasonableness of management decisions that may affect cost and enhance the customer's rates. One of the ongoing and important decisions the management of a utility must make is the decision to choose one alternative method of financing assets over another alternative method. Since the only material difference between a short-term security and a long-term security is the time to maturity, this Commission must consider the "reasonableness" of short-term financing along with other alternative methods of financing.

Current financial theory states that the permanent components of current assets and the permanent capital assets should be financed with long-term obligations. J.C. VanHome, Financial Management and Policy, 386-390 (2d. ed. 1971). It is common for public utilities to temporarily finance permanent assets with short-term securities until short-term securities approach an excessive level or market conditions favor long-term financing. At this point the utility will refinance these assets with long-term securities and retire outstanding short-term securities. By maintaining excessive amounts of short-term securities in the capital structure for extended periods of time the utility may seriously jeopardize its lequidity. Therefore, the Commission finds that it is imperative that it consider short-term securities together with long-term debt and equity in approving the capital structure of the utility.

The Commission does not agree with the company's statement that short-term securities are classified as a current liability and are classified as such by the FPC. The Commission finds that the company's statement is contrary to current practice promulgated by the Securities and Exchange Commission (SEC) and the American Institute of Certified Public Accountants (AICPA). In essence, SEC and AICPA require that short-term obligations be presented separately from other current liabilities for financial statement when the company intends to refinance such short-term obligations. AICPA, Accounting Research Bulletin, ARB No. 43, Ch. 3, "Section A - Current assets and current liabilities" (1968). SEC, Securities Act of 1933, Release No. 5436, November 13, 1973. Thus, it appears that current theory indicates that short-term securities be treated separately from current liabilities.

The Company contended that the FPC classifies short-term securities as a current liability. The company, however, failed to support its contention. In addition, the Commission has been unable to find any basis for the company's contention. Therefore, based on the above discussion, the Commission finds that

the definition of capital structure in PSC 370(a) does not contradict current SEC and accounting theory but rather clearly identifies total capital structure for Minnesota regulatory purposes and for meaningful financial analysis.

A spokesman for Interstate Power Company indicated by oral and written comments that, in respect to the issuance of its securities, the company (a Delaware corporation) is already subject to regulation by the SEC, by the FPC and the Illinois Commerce Commission. The company indicated that because of such multiplicity of regulation, the company would make its filings with this Commission subject to written reservations as to its constitutional rights to challenge Minn. Stat. § 216B.49, Subd. 3 (1974) and any regulations promgulated thereunder (T.P. 165-175 and March 11, 1975).

Notwithstanding its constitutional reservations, the company indicated that it intended to apply for approval of its capital structure even though no encumbrance of Minnesota property is contemplated. The company contended that while there is nothing in Minn. Stat. § 216B.49, Subd. 3 (1974) which requires a foreign corporation to file for approval of its capital structure, except where a lien on Minnesota property is to be created, there is likewise nothing which prohibits a foreign corporation from filing for approval of its capital structure. The company also contended that Minn. Stat. § 216B.49, Subd. 4 (1974) makes no distinction between a foreign and domestic public utilities. The company concluded that the statute granted a foreign corporation the option to petition for approval of its capital structure and that the Commission must act on a foreign corporation's petition for approval, regardless whether Minnesota property is encumbered.

The Commission finds that the company's major concerns are that (1) its capital structure may not be satisfactory when, at some future date, the company wishes to encumber Minnesota property; and (2) the company will be hampered in future securities offerings because it will have to disclose in its prospectures that its capital structure may be subject to approval by the Commission in the future.

Minn. Stat. § 216B.49, Subd. 3 (1974) provides as follows:

> "It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness unless the capital structure of the public utility shall first be approved by the Commission. Approval by the Commission shall be by formal written order."

Pursuant to the above quoted provision, the Commission finds that it has subject matter jurisdiction to approve a foreign corporation's capital structure only when the company intends for its securities to encumber Minnesota property. The Commission finds that its jurisdiction is limited to property interests within its territory. Accordingly if no such property interest is created, this Commission has no jurisdiction.

While the Commission may review a petition by a foreign corporation for approval of its capital structure even though there is no encumbrance of Minnesota property, any such review would be in the nature of an advisory opinion and would not in any way bind the Commission. Whether or not this Commission will give advisory opinions is not the issue at hand. It is sufficient that the Commission recognizes that it may give advisory opinions regarding a foreign corporation's capital structure even though no encumbrance of Minnesota property is involved.

The Commission does not object to the company making its filing with this Commission subject to written reservations as to its constitutional rights to challenge the statute and any regulations promgulated thereunder. The Commission recognizes that due to the multiplicity of regulation there might develop a material conflict between the requirements of regulatory Commissions which would make it impossible or financially burdensome for the company to engage in interstate commerce.

PSC 370(b), (d), and (e) define the word "security". These proposed rules also segregate securities into two distinct classes: short-term and long-term securities. The Commission finds it is necessary to segregate securities into these two classes in order to provide a specific procedure that permits the utilities to function in the money market without the undue restrictions of an approval relating to each issuance and yet provide the staff with adequate and timely information for analysis.

PSC 370(c) defines "Public Utility" as defined in Section 2, Subdivision 4, Minnesota Public Utilities Act. However, the definition does not include cooperative electric associations. The Commission finds that cooperative electric associations are excluded from the proposed rules because cooperatives are financed by the federal government through the Rural Electrification Administration (REA).

A spokesman for the Otter Tail Power Company suggested a change in PSC 370(e). Where the rules read ". . . issuance; and, contains no provision for, automatic renewal . . ." it was suggested that the rule should read ". . . issuance, and containing no provisions for automatic renewal . . ." The Company's suggested change revises the punctuation and wording to clarify the sentence. The Commission agrees with the company and adopts the rule as revised.

PSC 371 General Procedure for Capital Structure Approval

PSC 371, General Procedure, identifies procedures that are common to both short and long-term securities and requests for capital structure approval.

PSC 371(a) identifies the petition as the mechanism to be used for obtaining capital structure approval. The rule further provides that approval shall be by formal written order. The petition process is described in the Rules of Practice, Minn. Reg. PSC 500-521. The Commission finds that the petition process, established in the Commission's Rules of Practice, is an appropriate means for the implementation of its statutory duty as set forth in Minn. Stat. § 216B.49, Subd. 3(1974).

PSC 371(b) provides that Commission orders approving capital structure shall be effective for at least one (1) year, unless otherwise stated; or until the petitioner requests modification or revision; or until the Commission deems conditions affecting capital structure have changed sufficiently to warrant further review. The Commission finds that it is necessary to identify the time that capital approval orders remain in effect for several reasons:

1. Since a utility must have its capital structure approved prior to the issuance of short-term security, an appropriate time period for the order to remain in effect is necessary. Otherwise, the utility would be required to petition the Commission on a continual basis.
2. The Commission anticipates that petitions for capital structure approval for both short-term and long-term securities will be filed well in advance of the date of issuance. If this is the case, the order must be effective for a sufficient period of time in order for the utility to execute its financing plans.
3. Finally, market or other economic conditions may make a capital structure inappropriate at some point in the future. Thus, it is desirable to limit the time a capital structure approval order is effective.

PSC 372 Capital Structure Approval Required for Issuance of Long-Term Securities

PSC 372 specifies additional requirements for petitions for capital structure approval for long-term securities.

PSC 372(a) provides that a petition may include multiple issuance of securities, whereupon review, the Commission may approve the change in capital structure. The Commission finds that is is necessary that petitions are able to include multiple issuances in order to minimize the number of petitions filed for capital structure approval. Further, the Commission finds that it is necessary for the Commission to be able to approve only part of the petition if the petition includes multiple issuance. By approving acceptable capital structure changes rather than reflecting all changes. The Commission will be consistent with the above stated policy of minimizing the number of petitions the utility must file.

PSC 372 (b) identifies the information that the utility's petition shall contain. These information requirements are discussed in detail in PSC 374 and PSC 375.

PSC 373 Capital Structure Approval Required for Issuance of Short-Term Securities

PSC 373 identifies additional requirements for utilities petitioning the Commission for capital structure approval required for the issuance of short-term securities. PSC 373 (a) requires that such petitions be filed sixty (60) days prior to the first proposed issuance. The Commission finds that this sixty day requirement is necessary so that the staff has sufficient time prior to the proposed date of issuance to analyze the petition, resolve any differences with the petitioner, prepare its findings, and recommendations, and present these findings and recommendations to the Commission along with the findings and recommendations of the petitioner for the Commission to make its decision.

PSC 373 (b) requires that the petition include certain information identified in PSC 374 and a cash-flow statement showing 21 months of actual information and 15 months forecast information. In total, the cash-flow statement covers 36 months and provides the staff with a sufficient amount of historical information and forecast information to determine the ability of the utility to maintain a maximum level of short-term securities without jeopardizing the utility's financial stability.

The Commission finds that in considering the appropriate capital structure, it is extremely important to analyze the cashflow ability of the utility to service fixed charges. Before assuming additional fixed charged, the utility should analyze its expected future cash-flows, for fixed charges must be met with cash.

The Commission further finds that it is necessary to have forecasted cash-flow since the approval of capital structure is prior to the issuance of

the securities. Further, since the securities will be issued in the future, the analysis must be consider the future. The Commission finds that the most appropriate way of considering the future in this case is the analysis of forecasted cash-flow.

In addition, the Commission finds that a forecasted cash-flow statement is not complete unless the underlying assumptions are known. Because a forecast predicts events in the future and such predictions are based on assumptions (e.g., the rate of inflation will slow to 5 percent next year), it is necessary to identify these assumptions in order to evaluate the appropriateness of the forecast. The Commission finds that current SEC regulations do not prohibit a company from providing such information to other regulatory bodies.

PSC 373 (c) permits the utility to interact with the money market at its discretion once the Commission has approved its capital structure for such issuance. The rule reads in full: "Upon approval of capital structure, the petitioner may issue short-term securities at its discretion provided such petitioner remains within the limits and restrictions set forth in the Commission's Order."

A spokesman for Interstate Power Company suggested that there be added to PSC 373 (c) the following paragraph: "Public Utilities organized under the laws of any other state than Minnesota, or foreign country, may, at their option, petition for approval of their capital structure in the same manner as Minnesota corporation, prior to the issuance of any securities, whether or not any such securities subject Minnesota property to any encumbrance" (written comment received March 11, 1975). The company contended that the suggested change was necessary in order to eliminate any possibility that this Commission would refuse to evaluate a foreign utility's capital structure when no Minnesota property is encumbered.

The Commission finds that the company's real concern is for Minnesota approval during periods between issuance of securities encumbering Minnesota property. Minn. Stat. § 216B.49, Subd. 3 (1974) requires the Commission to approve capital structure of foreign utilities if Minnesota property is encumbered. There is no statutory authority to approve any other type of issuance. There is no statutory authority to approve capital structure of foreign utilities when Minnesota property is not encumbered. No rule can be developed in this area where no statutory exists. The Commission may provide this service if it desires without a formal rule; but such ruling would have no impact on later rulings, and would strictly be in the nature of an advisory opinion.

PSC 374 Filing Requirements for Capital Structure Approval

PSC 374, Filing Requirements, identifies the information that must accompany the petition for capital structure approval. These information requirements were developed directly from the California Public Utilities Commission (Rule of Practice and Procedure, Rule 17, 33 and 34), the regulation under the Federal Power Act (18 CFR § 34.2 -.3 (1974)), and the staff. The Commission finds that certain modifications have been made in order to reduce duplication of work by the utility and the staff and to eliminate needless wording and requirements.

PSC 374 (a) through (k) did not cause any controversy at the hearing. No comments were received from interested persons either during or subsequent to the hearing on the above mentioned subdivisions of this rule.

PSC 374 (l) states that petitions shall contain an estimate of the interest or dividend cost per $100 principal amount (except in the case of common stock), and a description of any anticipated terms or indenture provisions.

A spokesman for Otter Tail Power Company suggested by written comments, received February 19, 1975, that PSC 374 (l) be deleted. In support of its contention the company argued that a utility should not be placed in the position of estimating the cost of money or expected terms of financing prior to negotiating a proposed financing. The company further argued that the disclosure of the cost of money or expected financing terms prematurely may jeopardize or weaken the utility's bargaining position with investment bankers. The company was of the opinion that it was entirely possible that the investment banker, upon examination of the utility's application as filed with the Commission pursuant to these rules, may begin megotiations at the point as estimated by the utility rather than from the terms available in the market place.

The Commission does not agree with the company's contention. The Commission finds that the United States capital markets are among the most extensive in the world. The Commission finds that the market place determines the cost of capital. A utility's petition for capital structure approval does not determine the cost of capital. The Commission finds that an estimate of interest or dividend cost is necessary in order for the Commission to fulfill its regulatory objectives previously stated in the introductory portion of this writing.

PSC 374 (m) states that if the petitioner is a corporation, a copy of its current articles of incorporation certified by the Secretary of the State of incorporation must be contained in the petition. If the current articles have already been filed, the petitioner need only make specific reference to such filings.

A spokesman for Otter Tail Power Company suggested by written comments, received February 12, 1976, two changes to PSC 374 (m). First, the company suggested that there be inserted after the word "incorporation" the phrase " and all amendments thereto." The company's rationale for the proposed change was that the change would provide for greater clarity. The Commission finds that the company's suggested would add redundancy to the rule since the proposed rule clearly states "current articles of incorporation." The Commission finds that the term "current articles of incorporation" includes all amendments to said articles.

The Company also suggested that the PSC 374 (m) be amended so that the "Secretary or Assistant Secretary of the petitioner" could certify the articles of incorporation. The Company stated in support of the change that some utilities have available composite articles of incorporation, including all amendments thereto, which can be certified by the Secretary of the utility as being a true and correct composite of the articles and all amendments on file with the Secretary of State of Minnesota. The company argued that by permitting composite articles to be certified by the Secretary or Assistant Secretary of the utility, the Commission would spare the utility from the additional costs involved in obtaining the articles from the Secretary of State. In addition, the company argued that the composite articles would make it easier for the Commission and the staff to review the utility's articles.

The Commission finds that since the articles only need to be filed once, the projected cost saving attributed to the company's proposed change is insignificant. In addition, the Commission finds that while it is easier to work with composite articles, a copy of the utility's current articles of incorporation certified by the Secretary of State of incorporation offers the best evidence of the utility's articles and safeguards the utility from any charge of misrepresentation. For the above stated reasons, the Commission rejects the company's proposed change to PSC 374 (m).

PSC 374 (m), (o), (p), (r) and (s) states the information to be attached as exhibits to the petition. No comments were received from interested persons either during or subsequent to the hearing on the above mentioned subdivisions of this rule.

PSC 374 (q) provides that if any of the above filing requirements are provided in petitions or applications to other regulatory agencies, then such petitions or applications, properly cross referenced in item (b), may be submitted in lieu of the specific filing requirements.

A spokesman for Northern States Power suggested a change to PSC 374 (q) by the addition of a provision which would provide for the incorporation by cross-reference of any document on file with this Commission. The Company reasoned that such incorporation would substantially reduce the filing burden on the utilities (T.P. 150-151).

At the hearing it was noted that the rule in question states that if the filing requirements are provided in petitions on file with other agencies, then petitions from the other agencies can be filed with this agency rather than a document specifically in the form provided in the rules, together with a cross-reference to the provisions in these rules (t.p. 151). Subsequently, Northern States Power has withdrawn its suggested change and has, in fact, supported the above reading of PSC 374 (m) (T.P. 152). The Commission finds that the above stated policy is the proper implementation of PSC 374 (m).

PSC 375 Additional Information

PSC 375 requires the filing of additional information that would not be available at the time the petition was filed and may not be available until after the capital structure has been approved. The Commission finds that this information is necessary to:

1. Test the petitioner compliance with the Commission order;
2. Provide the Commission and staff with the exact cost of the securities issued; and
3. To complete the petition record.

A spokesman for Otter Tail Power Company suggested by written comment, received February 12, 1976, that PSC 375 be amended by inserting the following parenthetical phrase after the word "available":

> (which may be after the issuance of the Order of the Commission approving the capital structure)

The company stated that the information called for by PSC 375 will not be available until after the approving order of the Commission has been entered, and that it is desirable to recognize this fact at this point in time.

The Commission finds that the proposed change is not necessary since the rule clearly states that the required information need not be supplied until it is available.

PSC 375 (a) requires the filing of a copy of the registration statement proper. A spokesman for Northern States Power suggested that the word "proper" be stricken and that the word "final" be inserted in front of "registration statement" (T.P. 153). In support of its contention, the company stated that since PSC 375 (a) is designed to in effect complete the record of the financing transaction that the

final registration statement would be more appropriate for this purpose.

The Commission agrees with the company and finds that the intent of PSC 375 (a) is to complete the record of the financing transaction. Therefore, the Commission amends PSC 375 (a) to read as follows:

A copy of the final registration statement . . .

A spokesman for Otter Tail Power Company pointed out a typographical error in PSC 375 (b). The Commission finds that the error has been corrected in the final draft of the rule.

BY ORDER OF THE COMMISSION

LAWRENCE J. ANDERSON
SECRETARY

JUN 2 9 1976

JS/sr

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard J. Parish	Commissioner

In the Matter of Proposed Rules of the Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.	PSC Docket No. A-8117-11 PSC 360 - 364

FINDINGS OF FACT

DEPRECIATION CERTIFICATION

The above-captioned matter as it relates to the Minnesota Rules and Regulations relative to Depreciation Certification for Gas and Electric Regulation came for hearing before the Commission, Ronald L. Anderson, Robert W. Carlson, Arlen I. Erdahl, and Richard W. Session presiding on the 28th day of January, 1975, at 10:00 A.M. in the Federal Courts Building (Courtroom No. 2) St. Paul, Minnesota, after proper notice as required by Minnesota Statutes, Sect. 15.0412 (1974) had been served upon all persons registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, the Commission finds the following facts in support of the Rules and Regulations relating to the Depreciation Certification of gas and electric public utilities.

INTRODUCTION

The Minnesota public utilities act, Minn. Stat. Sec. 216B.11 (1974) provides:

> The Commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion in respect of utility property, including utility property owned by a municipally owned gas or electric utility, and every public and every municipally owned gas and electric utility shall conform its depreciation, amortization or depletion accounts to the rates and methods fixed by the Commission.

The Commission finds that some key reasons for the regulation of depreciation practices are:

1. Depreciation expenses are a significant proportion of operating expenses and have a large impact on cost of service to rate payers.
2. Depreciation reserve is an element to be deducted from the original cost of plant as a consideration in determining rate base which affects allowable earnings.
3. Annual depreciation charge should be apportioned over the useful life of the property so that the company will recover its investment when the property is no longer useful.

In general, the Commission finds their reasons for the regulation of depreciation practices support the overall legislature intent of the Act, which is ". . . to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities . . . ." Minn. Stat. Sec. 216B.01. Based upon the overall need for the regulation of depreciation practices, the staff proposed rules PSC 360 to PSC 364 for consideration in hearing.

The Commission finds that the rules for the regulation of depreciation were developed to assist the Commission in meeting the following regulatory objectives:

1. To provide the means for determining appropriateness of depreciation rates and methods,
2. To conduct frequent reviews of depreciation rates to avoid under or over-accruals,
3. To fix the proper level of depreciation accruals so that present rate payers pay only for the current costs of utility service.
4. To insure that utilities conduct periodic studies of service lines and salvage values in order to justify the utility-recommended depreciation rates.
5. To insure that the Commission has the means to order the depreciation rates and methods it considers reasonable and proper,
6. To fix depreciation rates and methods in a procedure separate from a hearing on a general change in rates,
7. To allow flexibility in utility-proposed procedures within the straight-line method of calculating depreciation accruals, and
8. To level the department staff workload.

In order to meet these regulatory objectives, the staff conducted an investigation of the regulatory approaches of the:

1. Federal Power Commission.
2. Rural Electrification Administration.
3. Wisconsin Public Service Commission.
4. Iowa State Commerce Commission.
5. Arizona Corporation Commission.
6. California Public Service Commission.

In addition the staff considered reference works in the area of public utility depreciation practices.

Upon review and analysis of the data revealed in the staff's investigation, the following rules were developed to satisfy the regulatory objectives stated above.

DISCUSSION OF RULES AND RELEVANT FACTS RELATING TO EACH

PSC 360 Definitions: Depreciation Certification

PSC 360 was proposed in order to eliminate excessive wording in the rules. The Commission finds that PSC 360 clarifies depreciation terminology and avoids semantical problems. The Commission further finds that most of the definitions were adopted as is or with modifications from publications of the Federal Power Commission (FPC), National Association of Regulatory Utility Commissioners (NARUC), or standard reference works in the field. The following outline briefly sets forth the source of each definition.

1. PSC 360(a),(b),(n) from: Arizona Corporation Commission, Rules Applicable to the Authorization of Depreciation Practices, General Order 54, Phoenix: Arizona Corporation Commission, April 8, 1974, p. 4, 5.
2. PSC 360(c),(d),(e),(f),(h),(i),(m), from: 18 C.F.R. 201 (1974) (Definitions).
3. PSC 360(g) from: National Association of Regulatory Utility Commissioners, Public Utility Depreciation Practices, Washington: National Association of Regulatory Utility Commissioners, 1968, p. 19.

No comments were received from interested persons either during or subsequent to the hearing on this rule.

PSC 361 General Provisions: Depreciation Certification

The Commission finds that the purpose of PSC 361 is to define the respective roles and responsibilities of the utilities and the Commission so that they may comply with the Act.

PSC 361(a) states the Commission has the right to inspect any utility records regarding its depreciation practices. The Commission finds that this provision is in accordance with the inspection rights of the Commission as stated in Minn. Stat. Sec. 216B.13(1974) regarding production of records, and with the independent verification of accounts as stated in Minn. Stat. Sec. 216B.10, Subd. 5 (1974). The Commission feels that depreciation rates can be set only when it is sure that the utility can substantiate with adequate data the information supplied to the Commission. The Commission finds that inspection is provided for since it is not always practical to send such records to the Commission.

PSC 361(b) states that the utility is to propose and the Commission is to certify by order the depreciation rates and methods to be employed by the utility. Before adopting this rule various alternative approaches were considered by the Commission. The following outline briefly states the various alternatives:

1. That the Commission establish a schedule of rates that would apply to gas and electric utilities;
2. That each utility set its own depreciation rates without any reviewing action by the Commission; and
3. That each utility is to propose to the Commission depreciation rates and methods and that the Commission is to certify by order the rates and methods which it considers reasonable and proper.

The Commission did not choose the first alternative since that alternative presumes that all utilities have similar mortality experiences with respect to plant property. The second alternative was rejected since it did not comply with the Act's directive to fix rates and methods. In addition, the Commission finds that the second alternative does not provide a mechanism for determining the relationship between depreciation costs and rates.

The Commission adopts the third alternative as it is reflected in PSC 361 (b). The Commission finds that since the utility has available to it the necessary records, data, and specific familiarity with its own plant, the utility is in the

best position to prepare proposed rates and justification for those rates. Further, the Commission finds that the method proposed by PSC 361(b) is common practice presently used by 50 of 56 commissions having authority to prescribe specific depreciation rates for various classes of property for rate making purposes. FPC, Federal and State Jurisdiction and Regulation-Electric, Gas, and Telephone Utilities, Washington: U.S. Government Printing Office, 1973, pp. 46.

PSC 361(c) states that any allocation or adjustment of the depreciation reserve will require specific justification and certification by the Commission. In support of this rule, the Commission notes that the subject of adjusting depreciation reserves was discussed by NARUC.

> Ordinarily where a continuing enterprise has consistently followed the straight-line method of depreciation accounting, or when a utility with substantial property in each class follows the straight-line method of depreciation accounting, no adjustment of depreciation reserves is necessary when the annual rates of depreciation are changed in order to conform to the current estimates of services lives and salvage. In such situations the appropriate procedure would be to charge the proper depreciation expense annually but not to change the depreciation reserve in order to conform to the theoretical reserve indicated by the revised estimates of annual depreciation expense. Exceptions to this policy may be encountered where the change in the view concerning the life of property is so drastic as to indicate a serious difference between the theoretical reserve and the book reserve. (Emphasis added)

NARUC, Public Utility Depreciation Practices, Washington: NARUC, 1968, pp. 48-49. Thus, the Commission finds that the adjustment of depreciation reserves is an unusual occurrence since the depreciation reserve represents what the utility has already recovered on its investment in plant.

The Commission recognizes that there are situations when adjustment would be required. The Commission feels that any adjustment should be approached with caution.

> In principle any necessary correction of depreciation reserves should be made through surplus or a special section of the income account. However, the adjustment of inadequate depreciation reserves, while sound in theory, presents many practical difficulties. Where such deficiencies are serious, it is desirable to make every effort to adjust them as soon as possible, although it is recognized that the application of a uniform rule without regard to what is equitable and feasible under the circumstances of individual cases might cause injury to security holders out of proportion to the long-range benefit. Therefore, it is concluded that the objective of correcting inadequate reserves should be approached with appropriate consideration of the practical effects of alternative courses of action. Ibid., pp. 48-49.

Because of the potential significance to the utilities of an adjustment to the depreciation reserve, the Commission finds that any adjustment is an appropriate item for specific Commission approval.

In addition, the Commission finds that an allocation of the reserves is significant enough to require similar Commission approval. The Commission finds

that an allocation of a composite reserve to a more detailed set of subaccounts or a reallocation of reserves among accounts may be necessary for various reasons. An allocation of composite reserve to primary accounts (class A and B) or to functional groups of plant accounts (class C and D) will be necessary in order to comply with PSC 361(d)(3) or PSC 361(e)(2). Another reason for allocating reserves is shown in the following example.

> A municipal seeks to purchase the facilities of a utility serving an annexed area. In the event that the municipality and the utility are unable to agree as to the terms of the payment, the Commission may be requested to determine the fair value of the property considering such factors (among others) as original cost and depreciation reserve. The reserve would have to be allocated for the property in question from the composite reserve of the utility serving the annexed area. The allocation would have to consider age, depreciation rates, etc. of the property in question and of the total utility property.

Because of the potential financial impact for utilities in allocating the reserve, the Commission finds that any allocation of a depreciation reserve is a matter of public interest requiring Commission approval.

PSC 361(d)(1) states that Class A and B utilities shall maintain continuing property records. The Commission finds that adequate property records and a detailed work order system are prerequisite to the maintenance of complete and up-to-date property and plant accounts. These records are primary sources of information necessary in recording both additions to and retirements from plant-in-service accounts and support the ledger accounts by providing the necessary details. The Commission finds **that the basic objectives of continuing property records are:**

1. An inventory of property-record units, which may be readily spot checked for proof of physical existence;
2. The association of costs with such property-record units to assure accurate accounting for retirement; and
3. The determination of dates of installation and removal of plant retired to provide data for use in connection with depreciation studies.

Suelflow, J.E. Public Utility Accounting: Theory and Practice, East Lansing: Institute of Public Utilities, Michigan State University, 1973.

The Commission finds that the maintenance of continuous property records is a common requirement in other jurisdictions. A work order system and continuous

property records are required for all class A and B utilities (see applicable electric and gas plant instructions in 18 C.F.R. 101 (1974) and 18 C.F.R. 201 (1974). Furthermore, 35 of 54 Commissions require the maintenance of continuing property records (FPC, Federal and State Commission Jurisdiction and Regulation . . . , p. 65) The REA requires continuing property records for all of its borrowers (REA, Uniform System of Accounts Prescribed for Electric Borrowers of Rural Electrification Administration. REA Bulletin 181-1 Washington: U.S. Government Printing Office, 1972. p. 101-14).

Finally, the Commission finds that continuing property records are necessary because they provide data on asset lives, which is invaluable for use in depreciation studies and rate setting.

PSC 361(d)(2) states that for corporate ledger and balance sheets purposes, class A and B utilities shall record depreciation accruals and reserves by functional groups of plant accounts and, on an optional basis, by primary plant account.

The Commission finds that PSC 361(d)(2) corresponds with the FPC and REA system of accounts. The FPC and REA system of accounts state that the reserve account shall be treated as a single composite provision for depreciation for general ledger and balance sheet purposes. (18 C.F.R. 101, Sec. 108 C (1974), 18 C.F.R. 201, Sec. 108C (1974) and R.E.A. Bull. 18-1, Sec. 108C (1972)).

However, the FPC and the REA further state that for purposes of analysis, each utility is to maintain subsidiary records by functional group accounts (supra). The FPC and REA work order and property systems for class A and B utilities require that a work order system be maintained so that costs of additions and retirements be charged or credited to the appropriate primary plant accounts (supra). In light of the above, the Commission finds that it is both feasible and practical to record depreciation reserves on a primary account level and certainly by functional group of plant accounts.

Further, the Commission finds that as a result of the depreciation certification procedure prescribed in PSC 362, each utility will have approved rates by primary plant account. It will thus be a straight-forward procedure to record accruals by primary plant account and certainly by functional group of plant accounts.

While PSC 362(d)(2) does not require a utility to record depreciation accurals and reserves by primary plant accounts, the Commission feels it is desirable for a utility to do so and believes it is in the utility's best interest to comply with this on an optional basis. (See discussion regarding PSC 361(d)(3)).

A spokesman for North Central Public Service Company, in a written comment received February 18, 1975, suggested that PSC 362(d)(2) be deleted an there by substituted the following:

> For general ledger and balance sheet purposes, the accumulated provisions for depreciation of utility plant in service shall be regarded and treated as a single composite provision for depreciation. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to functional classifications (e.g., distribution plant) and on an optional basis, by primary plant account(e.g., meters).

The Company's rationale was that a requirement to record depreciation accruals and reserves by either functional or primary accounts for corporate ledger and balance sheet purposes would serve no visible useful purpose, would clutter up the utilities' financial statements and would cause unnecessary expense. The Company also noted that PSC 351 requires that all public utilities shall conform to the appropriate FPC Uniform System of Accounts and that paragraph C of Account 108, Accumulated provisions for depreciation of gas plant-in-service, of the FPC "Uniform System of Accounts Prescribed for Natural Gas Companies" has been paraphrased to provide the wording of the proposed substitution.

The Commission does not agree with the proposed change in its entirety. The Commission notes that the corporate ledger includes the subsidiary ledger and that the subsidiary ledger supports the general or control ledger. The subsidiary ledger must be maintained on a functional basis at a minimum to comply with the provisions of the Uniform System of Accounts. The Commission agrees that no useful purpose is served by requiring depreciation reserves and accruals by either functional or primary plant account for balance sheet purposes, except for support schedules to the balance sheet. Accordingly, the Commission amends PSC 361(d)(2) to read as follows:

> Record depreciation accruals and reserves by functional group of plant accounts (e.g., distribution plant) or on an optional basis, by primary plant account (e.g., meters) for corporate ledger and balance sheet supporting scheduled purposes.

Oral and written comments made by spokesmen for Otter Tail Power Company and Peoples Natural Gas Company regarding proposed changes to PSC 362(a)(2), PSC 362 (a)(3), PSC 361(s)(3) and PSC 361(d)(4) also relate to this section. However, neither company suggested any changes to this section.

PSC 361(d)(3) states that class A and B utilities shall retain data in sufficient detail to conduct depreciation certification studies for the purpose of determining depreciation accruals and reserves by primary plant account.

Depreciation studies are concerned with estimating service lines and salvage values to determine depreciation accruals so that the costs of the assets may be properly distributed over their estimated useful lives in a systematic and rational manner. The Commission finds that these estimates of service lives and salvage values can better be determined on the basis of a study of similar assets (primary plant account) rather than dissimilar assets (functional group of plant accounts or by the composite plant).

A spokesman for Peoples Natural Gas Company expressed its desire to have PSC 361(d)(3) amended to provide that depreciation records and studies be by primary account only on an optional basis (T.p. 60-61). The company indicated that it maintains all of its accounts on a functionalgroup basis. The company felt it would present a rash of problems to convert over to a primary account basis (T.p. 61). The company further argued that if the intent of PSC 361(d)(2) is truly to give the option of recording depreciation accruals and reserved by functional group of plant accounts, that option is lost by the requirement of utilizing the primary plant accounting system prescribed in PSC 361(d)(3) (T.p. 61).

A spokesman for Peoples Natural Gas Company, in a written comment received February 18, 1975, suggested that in PSC 361(d)(3) after the words "primary plant account" there be inserted "or, at the option of the utility, functional group of plant accounts." The company's reasoning was that the functional grouping reflects the general recognized tendency of plant and equipment to depreciate as a total system or plant. Also, the company is deprived of any option provided under PSC 361(d)(2) to record depreciation accruals and reserves by functional group of plant accounts or by primary plant account. The company would incur substantial expense to change depreciation records to provide sufficient detail to comply with this section.

The Commission does not agree with the company's suggested change. As noted above, the Commission finds that the basic rationale for depreciation studies by primary account is that the estimates of service lives and salvage values can better be determined on the basis of a study of similar assets rather than dissimilar assets; in other words, the typical service lives of plant within the same functional group of plant accounts are substantially different.

Further, the Commission does not agree with the company's contention that the option given in PSC 361 (d)(2) is negated by PSC 361 (d)(3). The Commission finds the PSC 361 (d)(2) requires the <u>maintenance of accounts</u> by functional group of plant accounts or, on an optional basis, by primary plant accounts. On the other hand, PSC 361(d)(3) requires the retention of data in sufficient detail to conduct depreciation certification studies by primary plant account. These certification studies

are required only once every five (5) years (PSC 362(a)). Thus, there is no conflict between the rules since first rule speaks to the maintenance of accounts while the latter rule speaks to depreciation studies. The Commission's overall conclusion is that it is both reasonable and appropriate to require that reserves and accruals be available by primary plant account for depreciation studies.

PSC 361(d)(4) states that Class A and B utilities shall review their depreciation rates annually. These utilities shall conduct depreciation certification studies so that all primary accounts shall have been analyzed at least every five years. The Commission finds that inasmuch as depreciation accruals are based on estimates, periodic review of rates to consider the current effect of the many causes of depreciation are necessary to keep them in line with current conditions. Although a specific period for studies is somewhat arbitrary, the Commission feels that it is important that one be established to insure regular and uniform treatment of all utilities. Five years is adopted as the review frequency for Minnesota because a longer period may result in depreciation rates not reflecting current operating conditions while more frequently required studies would unnecessarily increase the costs for both utilities and this Commission with little added benefits.

By oral and written comments, a spokesman for Peoples Natural Gas Company suggested a change to PSC 361(d)(4). The company proposed that after the word "primary" there be inserted the words "or functional." The company's rationale was similar to its support for its proposed change to PSC 361(d)(3). In light of the Commission's discussion of PSC 361(d)(3), the Commission rejects the proposed change.

PSC 361(e)(1) states that Class C and D utilities shall record a composite depreciation accrual and reserve for corporate ledger and balance sheet purposes. Class C and D utilities are not required to maintain continuing property records as are Class A and B utilities. The Commission finds that small utilities can maintain a reasonably adequate level of financial control with a less complex system of account record keeping. Further, the Commission finds that these small utilities generally do not have the changes in major plant accounts and subsequent volume of accounting activity and property records that would be the case for a larger utility. The Commission also notes that the FPC requires that C and D utilities record accruals and reserves on a composite plant level for corporate ledger and balance sheet purpose.

18 C.F.R. 104, Sec. 110C (1974) and 18 C.F.R. 204, Sec. 110C (1974).

PSC 361(e)(2) states that Class C and D utilities shall retain data in sufficient detail to conduct depreciation certification studies for the purpose of determining depreciation accruals and reserve by functional group of plant accounts. The Commission feels that depreciation accruals and reserves need to be maintained on more detailed basis for purposes of depreciation studies than for corporate ledger and balance sheet purposes. The Commission bases this finding on its rationale stated in its discussion regarding PSC 361(d)(3).

PSC 361(e)(3) states that Class C and D utilities shall review their depreciation rates annually. Further, the rule states that depreciation certification studies shall be made so that all functional groups of plant accounts have been analyzed at least every five years. In light of the Commission's discussion of PSC 361(d)(4), the Commission finds that PSC 361(e)(3) is a proper reflection of that discussion.

PSC 361(f) states that any utility may at its option follow the depreciation rules prescribed herein for a larger class of utilities. The Commission finds that this provision is similar in nature to the provision in the FPC system of accounts regarding a small utility's option to adopt a system of accounts prescribed for a larger utility if it is in the utility's interest to do so. The Commission finds that PSC 361(f) is a further extension of the FPC's optional accounting rule.

PSC 361(g) states that either the utility may submit or the Commission may request a petition for depreciation certification becaue of unusual circumstances or unique situations. The Commission finds that PSC 361(g) is necessary and appropriate since it is impossible to foresee all events that may occur during the depreciation certification period.

PSC 362 Filing Requirements: Depreciation Certification Studies

This rule states the utility filing requirements of the petition for depreciation certification as follows:

1. depreciation schedules,
2. results of studies,
3. necessary documentation, and
4. recommended rates.

PSC 362(a) states that initially upon Commission notification, and at least every five years thereafter, each public utility shall file a petition for depreciation certification along with depreciation schedules (for each year since the last certification) in the form prescribed by the Commission. The Commission finds that by staggering these notification letters over the initial five year period, the Commission can distribute the department staff workload so that the annual staff time for depreciation certification is relatively uniform.

A representative of Peoples Natural Gas Company, in an oral comment (T.p. 61), proposed that PSC 362(a) be modified to allow as an alternative or option the preparation of depreciation certification studies by primary account. The company's rationale was that this would be less burdensome than rigid requirement of depreciation certification studies only by primary plant account. The Commission does not agree with the company's contention. The Commission finds that the information required by the rule is necessary in analyzing the depreciation certification studies. (See PSC 362(a)(2) for discussion concerning depreciation studies by primary accounts.)

PSC 362(a)(1) states the information to be provided by primary account. The Commission finds that such information is necessary in analyzing the depreciation studies and will save both the utility and the staff time used in preparing these schedules.

PSC 362(a)(2) states that the schedule, "Analysis of Depreciation Reserve," is to be reported by primary plant account for class A and B utilities and by functional group of plant accounts for class C and D utilities. The Commission finds that the information presented in the schedule represents summary data derived as a result of the depreciation certification studies required by PSC 361(d)(3) and PSC 361(e)(2).

A spokesman for Otter Tail Power Company, in oral comment (T.p. 48-49) and in written comment received February 19, 1975, suggested that where PSC 362(a)(2) reads ". . . primary account" there be inserted "to the extent available or by functional group". The company's rationale was that their depreciation information was not available by primary account. At that time their depreciation accruals and reserves were maintained by functional group. Further the company contended that PSC 361(d)(2) appears to provide an option in handling depreciation accruals and reserves while PSC 362(a)(2) and 362(a)(3) effectively eliminate whatever option was intended by PSC 361(d)(2).

The company indicated that there did not appear to be any great need for detail by primary account and that maintaining such information would be costly. In support of their contentions the company cited similar FPC rules which prescribe primary account only "to the extent available."

The Commission does not agree with the company's contention. PSC 361(d)(2) pertains to the maintenance of depreciation accruals and reserves which is required to be done by functional group of accounts with an option to do so by primary account. PSC 362(a) pertains to depreciation certification studies which are to be done at least every five years on a primary account basis. PSC 361(d)(3) requires the retention of data in sufficient detail to conduct these studies. The basic rationale for studies by primary account is that the estimates of service lives and salvage values can be better determined on the basis of a study of similar assets (primary plant account) rather than dissimilar assets (functional group of plant accounts or by the composite plant): in other words, the typical service lives of plant within the same functional group of plant accounts are substantially different.

Otter Tail also indicated that it had not intended to maintain the data required to perform depreciation studies by primary account and that additional time would be needed to comply with the rule. The Commission finds that PSC 364(d) states the procedure a utility should follow in requesting an extension of time for compliance.

A spokesman for Peoples Natural Gas Company, in a written comment received February 18, 1975, suggested that after "primary account" in PSC 362(a)(2), there be inserted "or, at the option of the utility, by functional group." This was to be consistent with the changes usggested for PSC 361(d)(3) and 361(d)(4). The Commission does not agree with the change for reasons expressed in its comments concerning PSC 361(d)(3) and 361(d)(4).

PSC 362(a)(3) states that the schedule, "Summary of Annual Depreciation Accruals," is to be reported by primary plant account for class A and B utilities and by functional group of plant accounts for class C and D utilities. The Commission finds that the information as presented in the schedule represents data derived as a result of the depreciation certification studies required by PSC 361(d)(3) and PSC 361(e)(2).

A representative of Otter Tail Power Company, by both oral and written comments (T.p. 49 and February 19, 1975, respectively), suggested that PSC 362(a)(3)

be amended to read"To the extent available a . . ." The company's rationale was the same as under PSC 362(a)(2) above.

A spokesman for Peoples Natural Gas Company, in a written comment February 18, 1975, wanted PSC 362(a)(3) changed to allow as an alternative or option the preparation fo depreciation certification studies by primary account. The company's rationale was that its proposed method would be less burdensome than a rigid requiremetn of studies only by primary account.

In light of the Commission's discussion concerning PSC 362(a)(2), the Commission rejects the suggested changes by Otter Tail Power Company and Peoples Natural Gas Company.

PSC 362(b)(1) states that all utilities shall provide a list of accounts upon which the utility has made studies of the estimates of service life and salvage, the dollar effect and the results of these studies, and the utility recommended depreciation rates for accounts.

PSC 362(b)(2) states that the utility shall provide a list of any future additions or retirements to the plant accounts that the utility believes may have a material effect on the current certification studies.

The Commission finds that these provisions outline the general requirements for the justification of the utility-recommended depreciation rates. The Commission feels that the utility is in the best position to provide the rationale for its recommended rates based on the results of its study. In order for the recommended rates to properly reflect depreciation, the utility's study should use historical data as well as professional judgment as to probably future conditions in estimating service lines and salvage values.

A spokesman for Northern States Power Company, in an oral comment, asked at what interval the information requested in PSC 362(b)(1) and 362(b)(2) was required to be submitted (T.p. 55). The staff left this to the discretion of the utility as long as a petition for depreciation certification is made at least every 5 years after the initial notification by the Commission. The Commission agrees with the staff regarding what interval the requested information is required to be submitted. For purpose of classification in this matter, the Commission amends PSC 362(b) to read as follows:

> In addition, all utilities shall provide with the petition for depreciation certification: . . .

A spokesman for Peoples Natural Gas Company, in a written comment received February 18, 1975, suggested that there be inserted after "of" in line 1 of PSC 362(b)(1) the words "functional or primary." The company suggested this change to be consistent with changes suggested for PSC 361(d)(3), PSC 361(d)(4), PSC 362(a)(2) and PSC 362(a)(3). The Commission rejects the suggested change for reasons expressed earlier under PSC 361(d)(3), PSC 361(d)(4), PSC 362(a)(2) and PSC 362(a)(3) above.

PSC 362(c) states that all utilities shall furnish any additional documentation necessary to support the findings of the study. The Commission finds that in some situations additional data may be required to complete its evaluation of the utility's depreciation study. PSC 362(c) was specifically drafted to cover the above described situation.

PSC 363 Prescribed Methods: Depreciation Certification Studies

This rule statesthe Commission policies regarding prescribed depreciation methods.

PSC 363(a) states that the Commission prescribes the straight-line method for calculating depreciation (excluding depletion) accruals.

Pursuant to Minn. Stat. Sec. 216B.16, Subd. 6 (1974), an original cost approach is to be used as a basis for depreciation expense rather than a current or future value approach. The original cost approach aims at distributing the cost of assets used up in the conduct of the business in a manner properly related to the useful life of the plant.

In prescribing a method of depreciation, the Commission finds that only age life methods of depreciation calculation were considered for the following reasons:

1. Given the objective of recovering cost during a service life, either average service life or remaining life will be a depreciation factor; and
2. Given the objective of charging a measure of consumption to each accounting period, age becomes a part of the computation.

Further, the Commission finds that an age life method of depreciation calculation is consistent with the definition of depreciation accounting in PSC 360(g).

All age life methods have two factors in common. Those factors are:

1. An estimate of service life and salvage value: and
2. An apportionment of expense to each year or accounting period so that the total cost will be recovered over the life of the asset.

A brief discussion of the four basic age life methods is appropriate at this time.

The straight-line method is based on charging a like amount proportionately for each accounting period over the probable service life of a plant item or plant group. This method recognizes that utility property in service is used relative to time rather than units of use. This method distributes the depreciation expense over the probable service life of the depreciable property in a systematic and rational manner primarily related to the use of the property. Thus, this method complies with the objectives of a depreciation system as defined in "depreciation accounting" in PSC 360(g).

The declining balance method is based on charging greater depreciation in early years of service life and gradually reducing the expense with advancing years of plant age. The method achieves this result by using a rate higher than the straight-line rate and applying it to net balance. Prior years accruals are deducted each year to yield the declining balance. The amount charged for expense each year for a single unit of plant follows a declining exponential curve with age. The declining balance method generates more internal funds from depreciation as long as overall gross plant dollars continue to grow; it also features high early depreciation, implying a greater proportional usage benefit in the early years. However, declining balance produces inexact final recovery of cost and with group properties may produce unwanted fluctuations in annual accruals.

Like the declining balance method, the sum of the years-digit method charges greater depreciation in the early years of service life and gradually reduces the expense with advancing years of plant age. It overcomes one of the objections to the declining balance methods by exactly recovering service value at end life. However, it suffers the same drawback of not representing a true consumption of plant over time.

The sinking fund method takes into account interest on the reserve; if the interest rate used is the same as the rate of rate of return, the method produces the same total charge for depreciation and return in each accounting period. The depreciation rate is that annuity rate which applied annually over the service life will (when coupled with interest credits to the reserve at the selected interest rate) recover the cost of plant. As compared with the straight line method, the sinking

fund method produces lower early accruals and higher accruals in the latter part of the service life. This difference increases the higher the interest rate issued. The heavy accruals due to greater interest during end life can produce wide differences between the accumulated accruals and the cost being recovered if retirements occur only a year different from the estimated time; thus the sinking fund method requires closer accuracy in service life and salvage value estimates.

Of all the age-life methods, the Commission finds that the straight-line method is the most widely accepted in the utility field.

In a FPC study of 56 Commissions, 47 prescribed the straight-line method for calculating depreciation for rate making purposes (FPC, Federal and State Jurisdiction and Regulation p. 46). The NARUC Public Utility Depreciation Practices (p. 219) states:

> For most properties, this (the straight line method) is a practical and valid method of determining depreciation for utility property, related to time. It is relatively simple in application and adaptable to the plant data general available today in the utility industry.

The straight-line method is adopted by the Commission because:

1. This method meets the depreciation accounting objectives;
2. This method is applicable to the utility industry;
3. This method is a valid method of depreciation related to time; and
4. This method is the most widely accepted method in the utility.

There are two procedures that are most prevalent in using the straight-line method. Those procedures are average service life and remaining life. Although no procedure is prescribed in Minnesota, the Commission assumes that most utilities will employ the average service life procedure.

A spokesman for Peoples Natural Gas Company suggested that at the beginning of PSC 363(a) there be added the words "For book or rate making purposes only . . ." (T.p. 62). The company's rationale was that the straight line method of depreciation should be required only for book or rate making purposes and not on all cases: tax being one area of concern.

The Peoples Natural Gas Company's spokesman further suggested that as an alternative that the staff delete PSC 363(a) as proposed and substitute the words "No specific methods are prescribed . . ." (T.p. 62). The company's rationale was that the methods of depreciation could be based on the same standard as to reasonableness and appropriateness (as in PSC 363(d)), subject to the review of the staff or the Commission.

Peoples Natural Gas Company, in a written comment received February 18, 1975, suggested that at the end of PSC 363(a) there be added the words"for developing depreciation rates to be used for rate making purposes." The Company's rationale was that this change should be made if that is the intent of the rule.

It appears that Peoples Natural Gas Company's comments are based on the premise that the straight-line method of depreciation should be used only in rate making areas. The Commission does not agree with the company's assumption. The Commission finds that the depreciation rules apply to all matters brought before this Commission. The statutory provisions, conferring upon this Commission the authority to regulate depreciation rates and practices, does not limit that authority to rate making purposes. The Commission notes that its authority does not extend to proceedings before other agencies. The method of depreciation used by the company for income taxes is regulated by the Internal Revenue Service.

Therefore, the Commission finds that the straight-line method of depreciation is appropriate for the gas and electric utilities. Further, the Commission feels that a specific method will provide uniformity among the utilities and will provide a meaningful basis for Commission review.

PSC 363(b) states that depletion costs should be determined on the basis of the unit-of-production method.

The Commission finds that depletion is essentially a kind of depreciation but restricted to property subject to extractive consumption. The service capacity or service life of the property is consumed in the operation of the enterprise. The best measure of consumption is the proportionate amount of extraction which measures the physical depletion of the enterprise. This consumption measures the physical depletion of the resources. In other words, depletion for regulatory accounting purposes is a method of depreciation applied to extractive resources on a unit of output basis. NARUC, p. 81.

Further, the Commission finds that cost depletion for an accounting period is usually determined by the unit of production method for each leasehold, field, or other property aggregate. A unit rate is determined that is applied to the total number of units produced during the accounting period to arrive at a cost for the period. NARUC, p. 83.

Therefore, based on the above findings, the Commission adopts PSC 363(b) as proposed.

PSC 363(c) states that any exception to these will require specific justification and certification by the Commission. The Commission finds that because of the varied nature of the utility industry, the prescribed methods may not be proper and adequate in every case. This procedure provides the authority for these exceptions to be considered by the Commission on an individual basis.

PSC 363(d) states that no specific methods are prescribed by the Commission in estimating service lives and salvage values. The methods selected by each utility will be reviewed for appropriateness by the department staff as part of the utility's certification filing.

The Commission finds that a utility's method of estimating service lives and salvage values are to a great extent subject to:

1. the nature of the data available; and
2. the level of skills and resources available to the utility for conducting studies of service lives and salvage values.

Thus, a specific method that might be prescribed statewide for utilities would not necessarily be appropriate for each utility. It is for these reasons that each utility should select their own methods as their situation warrants and have them approved by the department staff.

PSC 364 Petition for Certification Procedure

The purpose of PSC 364 is to outline the procedures for petition of certification.

PSC 364(a) states that the utilities shall petition the Commission for certification of depreciation rates and methods as prescribed by the Commission's rules of practice for petitions. The Commission finds that the rules of practices (PSC 500 - 521) are adequate for depreciation certification proceedings and that separate procedural rules are unnecessary at this time.

PSC 364(b) states that prior to the initial certification of a utility's depreciation rates and methods, the depreciation rates and methods effective as of January 1, 1975, are to be used. The Commission finds that the January 1, 1975, date is appropriate since that date is the effective date of the Minnesota public utility act.

PSC 364(c) states that depreciation rates and methods, once certified by order, are binding on all future rate proceedings and will remain in effect until the next certification or until the Commission shal determine otherwise.

The Commission finds that depreciation rates and methods are normally quite stable and are not subject to large fluctuations from year to year. The intent of depreciation certification is to determine and to fix depreciation rates and method through a procedure separate from a rate hearing. Thus, depreciation would not necessarily be an issue in a rate hearing unless the Commission shall determine that circumstances warrant otherwise.

PSC 364(d) states that if a utility is unable to comply by January 1, 1976, with any of the provisions of PSC 360 - 364, the utility shall petition the Commission by June 30, 1975, for a temporary exception. The petition shall include the justification for noncompliance, the duration of the desired exception, and the plan for compliance.

The Commission recognizes that a utility does not operate in a static environment. The Commission also recognizes that there might be various problems, unique to a particular utility, in complying with the rules. The Commission finds that PSC 364(d) is the appropriate method for dealing with compliance problems.

The staff proposed a change in this last subparagraph to allow the utility companies sufficient time to review the situation and determine if a petition for exception is necessary. The staff proposed that " . . . by June 30, 1975 . . ." be amended to read ". . . within 3 months of the effective date of these rules . . ."

The Commission agrees with the proposed change for the reasons stated by the staff. The Commission also finds that since the proposed compliance date has passed, the compliance date should be changed from January 1, 1976 to January 1, 1977.

If a utility is unable to comply by January 1, 1977, with any of the provisions of PSC 360 - 364, the utility shall petition the Commission with three (3) months of the effective date of these rules for a temporary exception. The petition shall include the justification for non-compliance, the duration of the desired exception, and the plan for compliance.

BY ORDER OF THE COMMISSION

/s/ LAWRENCE J. ANDERSON
Secretary

SERVICE DATE: JUN 29 1976

(S E A L)

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard J. Parish	Commissioner

In the Matter of Proposed Rules of Minnesota Public Service Commission relating to Accounting and Financial Regulation of Gas and Electric Public Utilities under the Jurisdiction of the Department of Public Service.

PSC DOCKET NO. A-8117-11
350-352

FINDINGS OF FACT
UNIFORM SYSTEM OF ACCOUNTS

The above-captioned matter as it relates to the Minnesota Rules and Regulations relative to Uniform System of Accounts for Gas and Electric Regulation came for hearing before the Commission, Ronald L. Anderson, Robert W. Carlson, Arlen I. Erdahl, and Richard W. Session presiding on the 28th day of January, 1975, at 10:00 A.M. in the Federal Courts Building (Courtroom No. 2) St. Paul, Minnesota, after proper notice as required by Minnesota Statutes, Section 15.0412 (1974) had been served upon all persons registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein the Commission finds the following facts in support of the rules and regulations relating to uniform system of the accounts for gas and electric public utilities.

INTRODUCTION

The Minnesota Public Utilities Act, Minn. Stat. Sec. 216B.10, Subd. 1 (1974) provides:

> The Commission shall establish a system of accounts to be kept by public utilities subject to its jurisdiction. A public utility which maintains its accounts in accordance with the system of accounts prescribed by a federal agency or authority shall be deemed to be in compliance with the system of accounts prescribed by the Commission. Where optional accounting is prescribed by a federal agency or authority, the Commission may prescribe which option is to be followed.

The Commission finds that some key reasons for the regulations of accounting procedures are as follows:

1. That the financial condition of the utility cannot be determined unless it can be expressed in a consistent and meaningful manner.

2. That a uniform system of accounts provides a medium for the Commission to convey consistent standards of reasonableness and appropriateness in the regulation of utilities; and
3. To provide consistency, comparability and uniformity of financial information and accounting issues.

In general, the Commission finds these reasons for the regulation of accounting systems support the overall legislative intent of the Act, which is ". . . to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities . . ." (Minn. Stat. Sec. 216B.01 (1974)).

Based upon the overall need for regulation of accounting procedures, the staff proposed rules PSC 350 to 352 for consideration in hearing.

These rules are intended to apply to all Minnesota public utilities (co-operatives, investor-owned and municipals) as provided for in the Minnesota Public Utilities Act ,Minn. Stat. Sec. 216B.02, Subd. 4 and Minn. Stat. Sec. 216B.10, Subd. 6. These affected utilities would be required to:

1. Conform to the FPC Uniform System of Accounts as adopted by this Commission (PSC 351(a) and PSC 351 (b));
2. Obtain permission to deviate from the adopted system (PSC 351(c));
3. Maintain records in such a manner that Minnesota utility operations can be separated from non-utility operations and separated from non-Minnesota utility operations (PSC 351(d) and PSC 351 (e)); and
4. File verified lists of account numbering systems that are different that the adopted numbering system (PSC 352(b)).

The Commission finds that these rules for the regulation of accounting procedures were developed to assist the Commission in meeting the following regulatory objectives:

1. To provide one uniform system of accounts for all Minnesota utilities;
2. To provide a means of handling exceptions to the system of accounts;
3. To provide a mechanism for establishing the separations of multijurisdictional financial information; and
4. To provide a mechanism for establishing separate records for multi-business utilities.

In order to meet these regulatory objectives the staff conducted an investigation of the accounting systems of the Federal Power Commission (FPC), the Rural Electrification Administration (REA), the National Association of Regulatory Utility Commissioners (NARUC), the Iowa State Commerce Commission, and the Wisconsin Public Service Commission.

In addition, the Minnesota Municipal Utility Association assisted the staff in developing and distributing a survey to the municipally-owned utilities.

Upon review and analysis of the facts revealed in the staff's investigation, the following rules were developed to satisfy the regulatory objectives stated above.

DISCUSSION OF RULES AND RELEVANT FACTS RELATING TO EACH

PSC 350 Definitions Applicable to the Minnesota Uniform System Accounts.

PSC 350 was proposed in order to eliminate excessive wording in PSC 351 and PSC 352 and to clarify such rules. The Commission finds that PSC 350 sets forth the meaning of various terms which are used repeatedly throughout the uniform system of accounts for gas and electric regulation and are key to an understanding of the rules in which they are used.

During the course of the hearing on the proposed rules, the staff proposed a change in PSC 350(b) which before amendment read:

> PSC 350(b) "FPC Uniform System of Accounts" means the Federal Power Commission Uniform System of Accounts for both gas and electric utilities and all current orders, pronouncement, rules and regulations thereof.

The staff proposed a change to clarify that only orders, pronouncements, rules, and regulations pertaining to the FPC Uniform System of Accounts are included in the definition.

The Commission finds that PSC 350(b) should be amended to clarify that orders, pronouncements, rules and regulations pertaining only to FPC Uniform Systems of Accounts are included in these definitions. The Commission further finds that the word "current" should be deleted from PSC 350(b) since that term is ambiguous and its deletion does not alter the intent of PSC 350(b).

The Commission amends PSC 350(b) to read as follows:

> "FPC Uniform System of Accounts" means the Federal Power Commission Uniform System of Accounts for both gas and electric utilities and all Federal Power Commission orders, pronouncements, rules and regulations changing or amending the FPC Uniform System of Accounts.

Regarding PSC 350(c), the staff proposed that part of the definition be deleted as it is not necessary to the definition of "REA".

The Commission finds that the staff is correct in its analysis of PSC 350(c). The Commission amends PSC 350(c) to read as follows:

> "REA" means the Rural Electrification Administration of the United States Department of Agriculture.

A spokesman for Peoples Natural Gas Co. noted that there was a typographical error in PSC 350(d). (T.P. 30) It was pointed out that where it reads ". . . is defined in Section 1," it should properly have read ". . . is defined in Section 2,". The Commission concurs with the spokesman for Peoples Natural Gas Co. and where the rule had read "Section 1" it is now amended to read "Section 2."

PSC 351 Procedure Applicable to the Minnesota Uniform System of Accounts.

This rule identifies the Federal Power Commission Uniform System of Accounts as the system of accounts prescribed by the Minnesota Public Service Commission for all Minnesota public utilities.

Prior to the selection of the FPC Uniform System of Accounts as adopted system of accounts, the Commission and the staff considered three other alternatives:

1. Not prescribing a system of accounts for Minnesota utilities;
2. Developing and adopting its own system of accounts; and
3. Adopting the NARUC system of accounts.

The first alternative, of not prescribing a system of accounts, was rejected because:

1. Consistency, comparability and uniformity of financial information cannot be achieved if utilities are permitted to use various systems of accounts;
2. It would be impossible for the Commission to apply consistent standards of reasonableness and appropriateness if there is no common medium for conveying such standards; and
3. There is insufficient staff planned for the Department of Public Service to be thoroughly knowledgeable in each accounting system in use by the various Minnesota utilities.

The second alternative, of developing an accounting system different from the currently used systems of accounts, was rejected because:

1. This option would permit at least two systems of accounts to be used by Minnesota utilities (those using the FPC and those using the adopted system), and multiple accounting systems would cause serious problems in record keeping and analysis by the staff, and maintaining the systems on a current basis;
2. The time required to develop such a system of accounts would make this alternative prohibitive;

3. There would be potential problems with consistency of reported data with multiple systems of accounts; and

4. The NARUC and FPC systems of accounts have been in existence for sometime and have been thoroughly tested and modified whereas a new system would require many years to provide consistency, uniformity and comparability.

The other alternative open to the Commission was the adoption of the NARUC system of accounts. This alternative was rejected because:

1. The current revision of NARUC system of accounts is almost identical to the FPC system of accounts; and

2. The NARUC system of accounts is not a federally prescribed system of accounts and as such at least two systems would exist for Minnesota utilities.

The Commission finds that the FPC system of accounts eliminates the disadvantage of the other alternatives because the FPC system of accounts provides:

1. This Commission with one uniform system of accounts for all Minnesota utilities, including small utilities of less than $25,000 revenue;

2. The least disruption for utilities in the process of conversion since the FPC system of accounts is used by more utilities than any other single system; and

3. For reduced staff workload since only one system of accounts needs to be maintained.

Therefore, the Commission adopts the FPC uniform system of accounts as the system of accounts prescribed by this Commission for all Minnesota public utilities.

PSC 351(a)(1), (2), and (3) produced no controversy at the hearings. PSC 351 (a)(4), however, did give rise to some discussion. PSC 351(a)(4) provides that:

> All orders, pronouncements or changes affecting the FPC uniform system of accounts or the REA modifications to such system after January 1, 1975 shall be effective for accounting and reporting purposes on such effective date; however, the Commission reserves the right to suspend such orders, pronouncements or changes for Minnesota reporting purposes.

A spokesman for Northern States Power Company suggested at the hearing that the part of the rule that gives the Commission the right to reserve orders, pronouncements or changes be deleted (T.P. 19). In a subsequent written comment received February 18, 1975, the company withdrew the suggestions. The company's action was based on the fact that at the hearing the staff made it clear that any suspension would relate only to reporting in Minnesota (emphasis added) (T.P. 21).

The Commission finds that no change regarding suspension for Minnesota reporting purposes is warranted. While it is generally desirable to adopt all changes as referred to in PSC 351(a)(4), the Commission finds some of the changes may not be necessary for reporting in Minnesota or could adversely affect existing reporting requirements of this Commission. Further, the Commission finds that PSC 351(a)(4) permits such changes to be suspended for Minnesota reporting purposes only but does not permit the suspension of changes in the methods of maintaining the system of accounts.

Further discussion of PSC 351(a)(4) revolved around the Northern States Power Company's written comment, received February 18, 1975, referring to the fact that the Commission may prescribe the option to be followed if optional accounting is available under the federal system of accounts. Northern States Power Company reasoned that this authority of the Commission was provided by the Minnesota Public Utilities Act, Minn. Stat. Sec. 216B.10, Subd. (1). The staff recommended that no change be made because PSC 351(a)(4) does not pertain to the Commission's authority to prescribe the option to be followed if optional accounting is permitted under a federal system of accounts, nor do any of the provisions in PSC rules 350-352. The staff suggested that an additional accounting rule be added at a later date after the Commission has determined the optional accounting procedures to be followed.

The Commission finds that PSC 351(a)(4) should not be amended since PSC 351 (a)(4) does not pertain to the Commission's authority to prescribe the option to be followed if optional accounting is permitted under a federal system of accounts. Further, the Commission finds that any change in PSC 350-352 would be a substantive change and would require a rehearing of the rules. The Commission finds that such a hearing would delay the effective date of these rules and feels that such a delay is undesirable given the necessity of the required information for purposes of effective regulation. The Commission agrees with the staff that an additional accounting rule can be promulgated at a later date after careful consideration by the Commission.

Otter Tail Power Company by written comment, received February 18, 1975, suggested that the Commission delete that part of PSC 351(a)(4) in which the Commission "reserves the right to suspend such orders, pronouncements or changes for Minnesota reporting purposes." It was argued that in view of the language in Minn. Stat. Sec. 216B.10, Subd. 1 the right to suspend orders, pronouncements, or changes does not appear to be a prerogative given the Commission under the Minnesota Public Utilities Act, and that adoption of accounting orders, changes or pronouncements prescribed by a federal agency or authority would seem to be a decision for the utility.

As earlier noted, the Commission finds that suspension relates only to reporting for Minnesota purposes, not to the maintaining of the system of accounts. The Commission also finds that the adoption of any accounting orders, pronouncements or changes prescribed by a federal agency or authority would not be the decision of a utility unless the material prescribed specifically gave the utility the option of adopting or not adopting.

The staff recommended that PSC 351(a)(4) be changed to clarify that the FPC can change the FPC Uniform System of Accounts, but only the REA can change the REA modifications to the FPC Uniform System of Accounts. This change would also correct typographical errors in capitalization.

The Commission finds that PSC 351(a)(4) should be amended to clarify that only the REA can change the REA modifications to FPC Uniform System of Accounts. This change will guarantee this Commission with one uniform system of accounts for all Minnesota utilities. The Commission also finds that it is necessary to clarify what date is meant by the terms "effective date."

Therefore, the Commission amends PSC 351(a)(4) to read as follows:

> All FPC orders, pronouncements or changes affecting the FPC Uniform System of Accounts and all REA orders, pronouncements or changes affecting the REA modifications to the FPC Uniform System of Accounts after January 1, 1975 shall be effective for accounting and reporting purposes on the effective date of the orders, pronouncements or changes. However, the Commission reserves the right to suspend such orders, pronouncements or changes for Minnesota reporting purposes.

PSC 351(b) requires that public utilities with annual gross operating revenues of less than $25,000 shall follow the appropriate FPC system of accounts for Class C and D utilities. The staff proposed that PSC 351(b) be amended. The staff felt that PSC 351 (b) could be constructed as in conflict with PSC 351(a)(2) since the later rule permits the Minnesota Cooperative Electric Associations to use the FPC Uniform System of Accounts as modified by REA Bulletin 181-1.

The Commission agrees with and adopts the staff's finding. The Commission amends PSC 351(b) to read as follows:

> Public Utilities with annual gross operating revenues of less than twenty-five thousand ($25,000) dollars, not required to conform to the FPC Uniform System of Accounts as modified by REA Bulletin 181-1, shall follow the appropriate FPC System of Accounts for Class C and D utilities.

PSC 351(c) permits exceptions to specific provisions of the system of accounts. The Commission finds that it is necessary to permit specific exceptions since unique situations will most likely arise and require individual exceptions to the adopted system of accounts. Further, the Commission notes that no comments, either written or oral, were received regarding PSC 351(c).

PSC 351(d) caused some controversy at the hearing. The rule reads as follows:

> "Public utilities with utility operations not located in Minnesota shall maintain accounting records in such a manner that the accounting information for Minnesota utility operations can be separated from the accounting information of utility operations not located in Minnesota. Methods used in such separations of accounting information are subject to approval of the Commission. The method of separation shall be submitted by petition to the Commission for review and approval six months after the effective date of this rule or in the first related proceeding of the public utility, whichever comes first.

A spokesman for Northern States Power Company suggested to the Commission that a utility should not be required to do its accounting on a jurisdictional basis. (T. p. 16-17). The company's rationale was that this would be a costly hardship and the public benefit derived would not be commensurate with the cost involved. The staff did not recommend a change because the rule does not require a utility to maintain its accounting on a jurisdictional basis.

The Commission agrees with the staff. PSC 351(d) does not require a utility to maintain its accounting on a jurisdictional basis. The Commission finds that the proposed rule only requires records to be maintained so that accounting information can be separated for each jurisdiction.

Secondly, Northern States Power Company suggested that a utility and the staff come to an agreement on a method of separation that allows for the appropriate allocation of expenses which would not otherwise be booked on a day to day basis as to Minnesota property (T. p. 16). They stated that if this were done, there would be no problem in maintaining jurisdictional accounting information.

The Commission finds that no change is warranted. The Commission finds that the rule intends that separations will include the allocation of accounting data applicable to more than one jurisdiction, as well as the direct assignment of accounting data that is applicable to only the jurisdiction of Minnesota with the Commission approving the procedures used.

A spokesman for Northern States Power Company also requested that the wording of PSC 351(d) be changed so that the timetable for submitting separation studies for review and approval would be a <u>minimum</u> of six months after the effective date of the rule (T. p. 18). The rationale appeared to be that separations are not that high of

a priority item and do not need to be required so quickly.

The Commission does not concur with Northern States Power Company's request. The Commission finds that the six month maximum time period after the effective date of the rule is not an unreasonable amount of time. It should be noted that the utilities will be required to make annual filing with the Commission in 1977. The Commission believes that effective regulation requires that separation procedures be approved prior to the filing of annual reports. Since this Commission only has jurisdiction over Minnesota operations, it is desirable that the petitions for approval of separation procedures be submitted prior to the end of 1976 to enable the Commission to carry out its duties and responsibilities in a timely manner.

Another change of PSC 351(d) was proposed during the hearing by a Northern States Power Company spokesman. It was suggested that separations studies not be required in a proceeding before the Commission occurring prior to the specified time after the effective date of the rule (T. p. 17-18). The company's rationale for the suggested change was that the intent of the rule is to determine separations apart from the rate case. Northern States Power would prefer that the separation procedures determination for Northern States Power not be involved in its rate case. The Minnesota system costs are about the same as the average system costs for customers located in Minnesota and not served by the Minnesota division. Since the system costs are about the same and only .03% of Minnesota customers are served by the North Dakota division and 1% are served by the South Dakota division the separations procedures determination is not a major factor.

After careful review and analysis, the Commission finds that it is the intent of the rule to review and approve separation procedures apart from the rate case whenever possible. However, when separations are involved in a rate case and the methods of separation used by a utility have not been previously reviewed and approved by the Commission, this step must be completed as a part of the rate case. The necessity of involving previously unapproved separations in a rate case results from the fact that the Commission only has jurisdiction over Minnesota operations and must be able to accurately determine the rate of return on Minnesota property. Even though Northern States Power indicates that a very minor separation is involved for Northern States Power, this may not be the case for other utilities and it is the responsibility of the Commission to determine itself that proper separations have been made.

Northern States Power Company also commented in writing, received February 18, 1975, that they wished to amend PSC 351(d) from ". . . review and approval six months after the effective date of this rule or in the first related proceeding of the public utility, whichever comes first" to ". . . review and approval within nine months from the effective date of this rule." The Company's rationale for the proposed change was their noting that the staff stated in its explanation of this section that separations will be treated apart from a general rate proceeding. Northern States Power intends to submit a separations proposal to the Commission as soon as possible; however, Northern States Power does not feel that the matter is of such major significance to the Commission or to its customers that it should be given a higher priority of work assignment than other matters that must be accomplished under this new Act.

The Commission finds that the company's written comment is merely a restatement of its oral comment at the hearing. The Commission finds that no change is warranted for reasons stated previously above.

A spokesman for People's Natural Gas Company commented at the hearing that a provision be added to PSC 351(d) to allow for changing separations procedures that have already been approved by the Commission. Their rationale was that a situation may arise which would warrant a change in the allocation procedures, such as an accounting error, revisions in the accounting system or other unforeseeable events (T. p. 30-32).

By written comment, received February 18, 1975, the company suggested that an addition to PSC 351(d) is needed to provide a utility the opportunity to justify in a rate proceeding a change in the basis of allocations and not be bound by a prior certification. Their reasoning was that "It is conceivable that a company may, in the preparation of a rate proceeding, determine the need for changing one or more allocation factors based on circumstances existing at that time."

The Commission agrees that such an addition to PSC 351(d) is appropriate. It is very possible that a situation may arise in which it is recognized that a more appropriate basis is available for use in a previously approved separation method. It should also be noted that separations is a broad term which includes the assigning of accounting data to the jurisdiction to which it directly applies, as well as the allocation of accounting data that is applicable to more than one jurisdiction.

In light of the above comments, the Commission amends PSC 351(d) to read as follows:

> Public utilities with utility operations not located in Minnesota shall maintain accounting records in such a manner that the accounting information for Minnesota utility operations can be separated from the accounting information of utility operations not located in Minnesota. Methods used in such separations of accounting in-

formation are subject to approval of the Commission. The method of separation shall be submitted by petition to the Commission for review and approval six (6) months after the effective date of this rule or in the first related proceeding of the public utility, whichever comes first. A utility or the department staff may petition for a change in an approved separation procedure for good cause shown.

A spokesman for Otter Tail Power Company suggested in a written comment several amendments to PSC 351(d). Otter Tail wished to

(1) Amend ". . . Minnesota utility operations can be separated from the accounting information . . . " to ". . . Minnesota utility operations can be separated or allocated from the accounting information . . ."; and

(2) Amend ". . . Methods used in such separations of accounting information . . ." to ". . . Methods used in such separations or allocations of accounting information . . ."; and

(3) Amend ". . . the method of separation shall be submitted by petition . . ." to ". . . the method of separation or allocation shall be submitted by petition . . ."

Otter Tail's rationale was that such proposed amendments would clarify Section PSC 351(d) to insure the allocation of expenses and capital to the Minnesota portion of an integrated system. Otter Tail also noted that since it conducts its business in three states and maintains an integrated accounting system for the company's total service system that it was neither practical, nor good business planning, even where possible, to maintain an integrated utility system by keeping separate accounting records.

The Commission does not agree with Otter Tail's contention. As noted above, separations is a broad term which includes the assigning of accounting data to the jurisdiction to which it directly applies, as well as the allocation of accounting data that is applicable to more than one jurisdiction. Therefore, the Commission finds that no amendment to PSC 351(d) is necessary at this time.

PSC 351(e) states that "Public utilities engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electric service shall maintain separate records in accordance with the appropriate FPC system of accounts for such utility operations." The staff recommended that this provision be amended to clarify that the REA could require accounting different from that required by the FPC for other business operations and that the cooperatives would have to follow the modification of the REA. The staff proposed that that part

of PSC 351(e) which reads ". . . FPC system of accounts or REA modifications to that system for such operations be amended to read ". . . FPC system of accounts or REA modifications to that system for such operations." The staff also recommended that this provision be amended to clarify that the phrase "any other business" includes both nonregulated utility and nonutility operations such as a water utility and a coal mining operation.

The Commission agrees with and adopts the staff's finding that the REA could require accounting different from that required by the FPC for other business operations. Further, the Commission finds that the term "any other business" as used in PSC 351(e) includes both nonregulated utility and nonutility operations; therefore, no change is warranted in this matter. In light of the above, the Commission amends PSC 351(e) to read as follows:

> Public utilities engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electric service shall maintain separate records in accordance with the appropriate FPC system of accounts or REA modifications to that system for such operations.

PSC 352 Implementation of Minnesota Uniform System of Accounts.

The purpose of PSC 352 is to establish the basic guidelines for utilities to implement the Minnesota Uniform System of Accounts.

PSC 352(a) requires that any necessary conversion from one system of accounts to the proposed system of accounts be completed by January 1, 1976. It was suggested by a spokesman for the Department of Water and Gas, City of Duluth, that there be added a provision to PSC 352(a) to allow an extension of time for compliance with the adopted system of accounts. The Commission learned that the Duluth Department of Water and Gas is not currently using the FPC Uniform System of Accounts. It does not at present have a work order system or time accounting for its personnel. The Department does not have the cost records of gas and water systems installed by developers and dedicated to the Department and the Department's budget for the year does not contain any funds that will be needed to convert the present accounting system over to the FPC system of accounts. (T. p. 21-25).

The Commission finds that the Minnesota Municipal Utility Association assisted the staff in developing and distributing a survey to the municipally-owned utilities to determine:

1. The predominant accounting system used by the municipally-owned utilities;
2. What impact a change in the system of accounts would have on the municipally-owned utilities; and

3. Various other questions concerning depreciation methods.

Of the 133 municipally-owned electric utilities, 53 (40 percent) responded to the survey. Of the 53 respondents, 41 (83 percent) are using the FPC system of accounts or some other form of enterprise funds accounting; 10 (18 percent) are using a cash or other accounting system (T. p. 25-26).

Based upon the above mentioned survey and the testimony from the City of Duluth, the Commission finds that PSC 352(a) should provide for a controlled extension of time for municipal utilities to comply with the FPC Uniform System of Accounts if good cause is shown. The Commission finds that since the proposed implementation date has passed the implementation date should be changed from January 1, 1976 to January 1, 1977. Therefore, the Commission amends PSC 352(a) to read as follows:

> Each public utility, not currently in compliance with the appropriate FPC Uniform System of Accounts shall implement the appropriate FPC Uniform System of Accounts by January 1, 1977. If a municipal utility is unable to comply by January 1, 1977, with any of the provision of PSC 352, the municipal utility shall petition the Commission within three (3) months of the effective date of PSC 352 for an exception. The petition shall include the justification for non-compliance, the length of the desired extension of time, the plan for compliance and any actions taken to date to implement the appropriate FPC Uniform System of Accounts.

At the hearing, the Department of Water and Gas, City of Duluth, asked for an extension of time in which to ake comments on PSC 352, as proposed. Their reasoning was that time is needed to adequately address the problem of conversion to the FPC Uniform System of Accounts (T. p. 26-27). The Commission allows twenty days after the hearing as the amount of time in which to make written comments and to present those comments. After a careful search of the record, the Commission fails to find any written comments from the City of Duluth received either before or after the deadline date.

PSC 352(b) requires filing certain information with the department staff if a utility uses an account numbering system other than the FPC numbering system. The Commission finds that the purpose of reporting these different numbering systems is to provide the Commission with a cross-reference to the proposed system of facilitate utility audits, to insure that such numbering systems properly account for items as defined in the proposed system of accounts and to facilitate communications between the Commission and the utility on accounting matters.

The Commission amends PSC 352(b) to read as follows:

"Public utilities using account numbers which differ from the FPC account number shall submit to the Department of Public Service by November 1, 1976:

(1) Three (3) copies of such account numbers with the descriptive title with a cross-reference to the appropriate FPC account numbers.

(2) Such copies shall be accompanied by a statement from a responsible utility officer verifying that such accounts can be translated into the appropriate FPC acocunts for reporting and auditing purposes.

(c) Public utilities shall submit any changes to account numbers that occur after November 1, 1976. Changes shall be submitted in the form prescribed by PSC 350(b).

The Commission finds that the changes made in PSC 352(b) were necessary for greater clarity and to correct typographical errors. The Commission also finds that since the proposed filing date has passed, the filing date should be changed from January 1, 1976 to January 1, 1977.

BY ORDER OF THE COMMISSION

Lawrence J. Anderson
Secretary

SERVICE DATE: JUN 29 1976

(S E A L)

JS/sr