

ENERGY POLICY BACKGROUND – Regulatory Reform

Minnesota's regulatory model is distinctive relative to other states, given the prominent role that three agencies play in the regulatory structure. In 2002, a House Research Department study explored the history of utility regulation in Minnesota and found a number of overlapping responsibilities and identified potential structural improvements that could be made to ensure effective regulation of the state's electric, gas and telecommunications companies subject to regulatory oversight. Our recommendations are designed to make changes to the system so the customers' concerns are more central to decision-making.

Customer-Focused Analysis

Customers' confidence would likely increase if the barriers to nonpartisan analysis are lifted by merging the energy analysis functions of the Department of Commerce with the analysts at the Public Utilities Commission. Doing so would provide the benefit of independent (i.e., not associated with any one officeholder's agenda) analysis of proposed regulatory or legislative initiatives. The following is a brief history of the evolution of Minnesota's energy regulatory bodies away from such a model.

Public Utilities Commission

The modern Minnesota Public Utilities Commission (PUC) was created in 1980 when the Legislature spun off the Public Service Commission into its own agency, creating the Department of Public Service from what had been the Administrative Division of the former Department of Public Service. In 1999, Governor Jesse Ventura merged the energy and telecommunications divisions of the Department of Public Service into the Department of Commerce. The 2001 Legislature made this change official¹.

The Public Utilities Commission is an independent regulatory commission, with five commissioners each appointed by the Governor with the advice and consent of the state Senate, and may not be removed, except for cause. A majority of the five commissioners cannot belong to the same political party². The PUC has administrative staff that analyzes and advises the commissioners on telecommunications, natural gas and electricity matters, as well as assists consumers with complaints³.

According to the House Research Department's 2002 report on the PUC, the commission has a unique structure relative to other states' regulatory agencies, due to the responsibilities it shares with the Minnesota Department of Commerce. The PUC retains its rate-setting and policy-making powers, as well as its quasi-judicial powers. However, its investigative, analysis and advocacy functions are shared by the Department of Commerce's Telecommunications and Energy Divisions, and some are shared by the Office of the Attorney General's Residential and Small Business Utility Division.

While it has its own staff and analytical capabilities, the Public Utilities Commission depends on the Department of Commerce for its initial analysis of proposals brought by parties for the PUC to decide. This interdependence was an intentional decision by the Legislature in creating and reforming the commission, but the structure raises questions about the independence of the PUC. One potential drawback, identified by the 2002 House Research report, was the lack of independent analysis presented to the Legislature of various policy decisions.

Returning the PUC's ability and charge to provide its own analysis could increase its own regulatory ability while providing a valuable tool for intervening parties and legislators to use when making decisions on energy issues.

¹ The Minnesota Public Utilities Commission and Related Agencies: Structure and Function., Minnesota House Research Department, Sept. 2002

² Minn. Stat. § 216A.03, subd. 1

³ House Research Department, *id* at 7.

Department of Commerce

According to the 2002 report, the Department of Commerce may be “transforming away from [its] historical “regulator” role to one that focuses more strongly on providing public interest advocacy at the commission⁴. Its’ functions are primarily administrative, and serves as analyst to the commission on each filing made by regulated entities, as well as advocate to the Legislature on behalf of the Commissioner of Commerce and the Governor. The role of the Department is somewhat unclear – since it contains elements of advocacy as well as regulation. Minnesota law, however, is somewhat specific on the purpose for the advocacy functions of the Department of Commerce. According to section 216C.09, the Department’s focus in terms of advocacy at the PUC is somewhat narrowly tailored to increased energy efficiency and conservation, development of renewable resources, and effective energy forecasting and education. These are important areas on which to focus advocacy, but the competitiveness of retail customers’ rates is not listed as an advocacy priority for the Department.

However, the report asserts that a primary reason for initially placing analysis and advocacy capabilities into a single administrative decision-maker was that the “comprehensive scope of authority was generally deemed too broad and deep for a single administrative decision-maker, whose policy direction, thus the fates and future of regulated entities, might change with a general election.⁵”

Office of the Attorney General

The Residential and Small Businesses Utility Division (RUD) has its origins within the Department of Commerce in 1978, but was transferred to the Office of the Attorney General in 1983. It works specifically to advocate for small utility consumers at the PUC and at the Legislature. Resource constraints prevent the RUD from participating in every proceeding, and its participation is limited to dockets that are most likely to affect small customers.

⁴ House Research Department, *id* at 15.

⁵ House Research Department, *id* at page 3.