

AN OVERVIEW BY THE LEGISLATIVE AUDITOR
OF THE
MANAGEMENT AUDIT OF THE PUBLIC UTILITIES PROGRAM
Volume III
The Regulation of Transportation Services

INTRODUCTION

This is the third volume in a series of management audit reports on the public utilities program. The first volume examined the organization and general management of the utilities program. The second volume covered the actual regulatory process, with emphasis on the energy and communications utilities. Volume III concentrates on the regulation of transportation services, particularly with respect to motor carriers, inasmuch as regulation of land transportation services is much more fully developed than in the areas of air and water transportation. The purpose of this overview is to summarize the major findings and recommendations and the responses of the agencies affected by the report.

ECONOMIC REGULATION OF TRANSPORTATION SYSTEMS

Economic Regulation of Motor Carriers. In Hawaii, most of the economic regulatory activities in the transportation field deal with land transportation. The principal means of land transportation in this State is motor carriage—trucks, vans, buses, and limousines. Because there are so many licensed motor carriers in the State, one would normally expect the motor carrier industry to be competitive, with competition benefiting the consuming public. However, in spite of the intrinsically competitive nature of the motor carrier industry, government regulation operates in a way that makes the industry non-competitive and non-efficient.

Perhaps the most illustrative aspect of government's counter-productive effort in regulation is the provision of the Hawaii Motor Carrier Law which allows the motor carriers to agree among themselves on the rates to be charged to consumers and exempts any such agreement from the State's antitrust laws. What government regulation has done is to impose monopolistic practices on what would otherwise be a competitive situation; whereas, government regulation, if it is to be justified at all, should make the industry more competitive and efficient. Under present law, however, since the motor carrier industry agrees on the rates to benefit all of its members, including those which might be inefficient, the rates that are set are bound to be higher than they would otherwise be if competition were allowed to operate freely.

There is little reason why government should intervene to make a competitive industry non-competitive, and, therefore, our basic recommendation is for the State to withdraw from the economic regulation of motor carriers.

We recognize the argument advanced by certain segments of the motor carrier industry which believe that deregulation would result in excessive or "cutthroat" competition, that rates will be set by some carriers at levels below costs, that this would in turn cause a lowering in rates by other carriers at the sacrifice of quality and quantity of service. There is no hard evidence that such would be the chain of events. In any event, if excessive competition is a principal concern in the industry, it should be dealt with by government in more specific regulatory methods than under the present anti-competitive, pro-monopolistic laws. Specifically, if some form of economic regulation is found to be necessary (a need which is by no means all that clear), more specific measures could be enacted to prohibit below-cost rate-setting by individual motor carriers. Additionally, if there is concern that the system makes it all too easy for inefficient businesses to enter the industry, government could establish financial, capital, and other standards which must be met before a motor carrier license or permit is issued. Finally, there could be provisions for continuous surveillance of the motor carrier industry to ensure that the rates of carriers are at levels not less than cost and that the standards required to be met for entrance into the industry are continuously maintained.

Our conclusion is that the end to be sought in the motor carrier field is to make existing competition work, not to convert that which is competitive into a collective monopoly, as is tending to be the result under the current system.

Regulation for the Protection of Consumers. Our recommendation that the motor carrier industry be deregulated applies only to *economic* deregulation. This does not mean that there should not be regulation for other purposes, such as for the protection of consumers. Individual consumers, because of their infrequent utilization of common carriers, are at a decided disadvantage in dealing with motor carriers, and government does little to correct the imbalance. The current regulatory mechanism is almost completely devoid of means to protect the interests of individual consumers.

Under the current system, consumer interests are hardly considered in motor carrier ratemaking. There is a conglomeration of tariffs and schedules now in effect in Hawaii which number in the thousands, making it virtually impossible for consumers to understand what they mean. Standards for service are lacking and, in the case of transportation of goods, individual customers have little by which to judge the quality of service to be rendered by the carrier or to determine which among several carriers is likely to offer the best service. And, finally, what little regulation exists for the protection of consumers is rendered meaningless by the lack of government enforcement.

The future direction of consumer protection is dependent upon what government does with respect to economic regulation of the industry. If the present system of economic regulation continues, then, at least, the statutes should be amended to require affirmative approval of the public utilities commission before any proposed rate is allowed to go into effect; all proposed rates should be subject to review by the PUC within a reasonable time and to public hearings; the rate structure should be simplified; the PUC should establish standards and criteria relating to quality of service; and there should be a formal monitoring system to ensure adherence to authorized rates and standards of service. If economic regulation takes on a more limited form designed specifically to prevent excessive competition, some of the foregoing consumer protection measures should still be incorporated into the system.

If motor carriers are deregulated, the office of consumer protection should assume responsibility for ensuring fair treatment of all consumers, including the establishment of a complaint-handling procedure. In addition, all motor carriers should be required to file their rates with the department of regulatory agencies, and such rates should be easily accessible and understandable to the public.

SAFETY REGULATION OF MOTOR CARRIERS

Organizational Issues. The public utilities commission and the public utilities division have neither the organization nor the motivation to administer the program of regulating motor carrier safety. As a result, the regulation of motor carrier safety is in a deplorable condition and a state of shambles, so much so that the federal government has found it necessary to reassert jurisdiction over the safety of interstate motor carriers operating in Hawaii.

Since the PUC and the PUD are reluctant to assume responsibility for regulating motor carrier safety, this function should be transferred to the office of the highway safety coordinator and the county police departments. However, if such a shift is to result in improvements to the safety program, the highway safety coordinator's office itself needs to be reorganized. Moreover, there is the need for the coordinator's office to develop greater commitment to the highway safety program. The present coordinator's office is neither properly staffed nor sufficiently motivated to carry out its responsibility in the highway traffic safety area, much less to assume responsibility for regulating the safety of motor carriers.

Specifically, if the motor carrier program is to move from its current moribund condition, the position of the highway safety coordinator, now held by the director of the department of transportation, should be made a full-time position and the office of the coordinator should be manned by the full complement of staff authorized by the legislature. The office should proceed at once to coordinate the various safety programs, including assessment of shortcomings in the program in light of the federal requirements, formulation of such statewide standards as are necessary to improve the program, and identification to the legislature of the resources required to comply with federal safety standards and to provide for enforcement of statewide standards by the county police departments.

Driver Licensing. PUC rules governing driver qualifications and licenses to operate commercial vehicles are vague, uncertain, and confusing. The limited standards that do exist are not vigorously enforced by the public utilities agency.

Physical fitness standards for drivers are weak and incomplete; instructions to physicians conducting physical examinations of drivers are inadequate; reports submitted by doctors are hardly reviewed; and waivers for physical disabilities are granted without limitation or concern for the safety of the public. We found improper disability waivers being granted to such drivers as one with a vision deficiency of 20/400 in his left eye and suffering from alcoholism, and another, blind in his left eye and the recipient of numerous traffic citations.

The public utilities agency has no program and no standards whatsoever governing driver training and performance evaluation, even though it is recognized that training and evaluation of drivers are key aspects of any licensing program.

Our basic recommendation is that the office of the highway safety coordinator should assume the primary responsibility for the establishment of driver licensing standards, including the standards for the licensing of commercial vehicle drivers, and that the county police departments enforce such standards. In addition, the coordinator's office should establish physical fitness standards and standards for continuous driver training and periodic evaluation of the driving performance of motor carrier vehicle drivers.

Vehicle Safety. There is no assurance that motor carrier vehicles are currently undergoing effective, periodic safety inspections. The public utilities commission's rules on vehicle safety are vague and unspecific; inspection stations are being certified on improper standards, are being permitted to operate without adequate instructions on vehicle safety standards, and continue their operations without periodic reexaminations; and inspection personnel are not being trained for competency and are not being provided with periodic training in inspection procedures.

Not only is periodic vehicle safety inspection being largely neglected, but the requirement for continuous and regular maintenance of motor carrier vehicles is being ignored.

As with standards for drivers, we believe that primary responsibility for standards for vehicle safety should be assigned to the office of the highway safety coordinator.

Vehicle Size, Weight, Use and Modification. Although state statutes prescribe limitations on the size and weight of vehicles, they do not pinpoint responsibility for the administration of the statutory requirements. Consequently, no agency is now devoting sufficient attention to vehicle sizes and weights. In the meantime, both the department of transportation and the counties are issuing permits allowing vehicles to exceed the statutory size and weight limits without much deliberation or consideration of the safety implications involved. To correct this situation, we believe that the legislature should fix responsibility for vehicle size and weight regulation on the office of the highway safety coordinator and responsibility for enforcement on the county police departments, with technical assistance from the weights and measures division of the department of agriculture. Also, consideration should be given to the construction and maintenance of state-owned weighing facilities for the purpose of enforcing size and weight standards.

The public utilities agency is doing nothing about ensuring the safe transportation of hazardous materials by motor carriers. The office of the highway safety coordinator, in consultation with the fire marshal and the department of labor and industrial relations, should develop standards for the transportation of hazardous materials, and the county police departments should assume responsibility for enforcement.

The modification, construction, and reconstruction of motor carriers are being permitted without adequate assurance of the safety of such modified, constructed, or reconstructed vehicles. PUC rules in this area are sparse, reviews of applications are cursory, and enforcement of the requirement for securing permits is nil. There need to be developed comprehensive, up-to-date regulations governing the modification of motor carrier vehicles. The regulations should extend to the shops where vehicles are modified and should require the display of suitable identifying marks on all vehicles modified according to regulations.

The PUC rules on safety equipment for motor vehicles are outdated and enforcement of the limited rules which do exist is virtually nonexistent. Again, safety equipment regulation is a function which should be assumed by the office of the highway safety coordinator with the county police departments being responsible for enforcement.

Reporting and Investigating Accidents. Reporting and investigation of traffic accidents make it possible to determine the frequency, causes, and severity of accidents, and from such information to develop remedial action. However, the public utilities agency does not have an effective mechanism for the reporting and investigation of motor carrier accidents.

Motor carriers are not reporting the accidents in which their vehicles are involved, and, when they do submit accident reports, their reports are often incomplete, inaccurate, and inconsistent. The public utilities agency makes no analysis of accident information, conducts no meaningful investigation of accidents, and takes virtually no action on the results of such cursory accident investigations it conducts.

We note in our audit report numerous specific cases where accidents should have led to complete investigations and corrective action but did not. Sadly, the accident involving a 1955 vintage truck which resulted in the death of the driver is all too typical. In that particular accident, other drivers indicated that the vehicle was unsafe, that its steering was difficult, and that the driver's door flew open by itself. Records showed that the truck had been in for repairs several times before the accident. Despite all these factors, the case was closed on the recommendation of staff because "the driver of this one car accident died."

Our recommendation is that the reporting and investigation of motor carrier accidents should be transferred from the public utilities division to the county police departments under standards and procedures prescribed by the office of the highway safety coordinator.

RESPONSES OF THE AGENCIES

The two principal agencies affected by the report are the public utilities commission and the department of regulatory agencies.

The chairman of the public utilities commission expresses general concurrence with the findings and recommendations. With respect to the major proposal concerning economic deregulation of motor carriers, he states that volume III of the report treats the subject much more comprehensively than volume I, and that, therefore, there are now some parameters for regulatory review and reform. He states: "The problems identified now provide all parties to participate effectively in a review of the regulatory scheme for motor carriers."

The director of regulatory agencies states: "We concur with the general overviews of the report and recognize many of the deficiencies mentioned therein." He cautions, however, that "effective regulation of public utilities will not be accomplished with existing resources," and that a more effective program requires further state commitment. We, in turn, agree.

CONCLUSION

This report is likely to arouse controversy, particularly with respect to the recommendation for economic deregulation of motor carriers. While we believe that our recommendation is sound, there is indeed room for a review of various alternatives. We hope that our report will assist in that review and contribute to legislative deliberations. The continuing positive responses of the public utilities commission and the department of regulatory agencies to all three volumes of the audit suggest that improvements to the public utilities program can be achieved.

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