

**MANAGEMENT AUDIT OF THE
PUBLIC UTILITIES PROGRAM
OF THE STATE OF HAWAII**

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the

**Legislative Auditor of the State of Hawaii
Honolulu, Hawaii**

**Report No. 89-17
February 1989**

THE OFFICE OF THE LEGISLATIVE AUDITOR

The office of the legislative auditor is a public agency attached to the Hawaii State legislature. It is established by Article VII, Section 10, of the Constitution of the State of Hawaii. The expenses of the office are financed through appropriations made by the legislature.

The primary function of this office is to strengthen the legislature's capabilities in making rational decisions with respect to authorizing public programs, setting program levels, and establishing fiscal policies and in conducting an effective review and appraisal of the performance of public agencies.

The office of the legislative auditor endeavors to fulfill this responsibility by carrying on the following activities.

1. Conducting examinations and tests of state agencies' planning, programming, and budgeting processes to determine the quality of these processes and thus the pertinence of the actions requested of the legislature by these agencies.
2. Conducting examinations and tests of state agencies' implementation processes to determine whether the laws, policies, and programs of the State are being carried out in an effective, efficient, and economical manner.
3. Conducting systematic and periodic examinations of all financial statements prepared by and for all state and county agencies to attest to their substantial accuracy and reliability.
4. Conducting tests of all internal control systems of state and local agencies to ensure that such systems are properly designed to safeguard the agencies' assets against loss from waste, fraud, error, etc.; to ensure the legality, accuracy, and reliability of the agencies' financial transaction records and statements; to promote efficient operations; and to encourage adherence to prescribed management policies.

5. Conducting special studies and investigations as may be directed by the legislature.

Hawaii's laws provide the legislative auditor with broad powers to examine and inspect all books, records, statements, documents, and all financial affairs of every state and local agency. However, the office exercises no control functions and is restricted to reviewing, evaluating, and reporting its findings and recommendations to the legislature and the governor.



LEGISLATIVE AUDITOR
KEKUANAO'A BUILDING, RM. 500
465 SOUTH KING STREET
HONOLULU, HAWAII 96813

FOREWORD

In response to Senate Concurrent Resolution No. 89, Senate Draft 1, the Office of the Legislative Auditor with the assistance of the Legislative Reference Bureau conducted a management audit of the State's public utilities process as covered by Chapter 269, Hawaii Revised Statutes. This audit focused upon the policy making, adjudicatory, and enforcement activities of the Public Utilities Commission. The audit also included an assessment of the role of the Consumer Advocate in safeguarding the interests of consumers of utility services within the public utilities process.

We wish to acknowledge the cooperation and assistance extended to our staff by officials and personnel of the Hawaii Public Utilities Commission; the Division of Consumer Advocacy in the Department of Commerce and Consumer Affairs; the Department of Budget and Finance; the Public Utilities Commission assistants on Kauai and on Maui; GTE Hawaiian Telephone; Hawaiian Electric Company; Kauai Electric Company; GASCO; the California Public Utilities Commission; the Idaho Public Utilities Commission; the Minnesota Public Utilities Commission; the Rhode Island Public Utilities Commission; the Delaware Public Service Commission; and the Utah Public Service Commission.

Newton Sue
Acting Legislative Auditor
State of Hawaii

February 1989

TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION, BACKGROUND, AND AUDIT FRAMEWORK	1
	Request for the Audit	1
	Objectives of the Audit	2
	Scope of the Audit	2
	Organization of the Report	3
	Background	3
	Audit Framework	6
	Areas not Covered in Detail in this Audit	12
2	REGULATORY ROLES AND RELATIONSHIPS	15
	Summary of Findings	15
	Concern with Agency Roles and Relationships	16
	Sorting Out Roles and Relationships	16
	Passive Rather Than Active Approaches to Agency Roles	22
	Recommendations	28
3	AN ASSESSMENT OF REGULATORY POLICY MAKING AND ENFORCEMENT ACTIVITIES ..	31
	Summary of Findings	31
	The Role of Rule Making in the Public Utility Regulatory Process	32
	Failure of the PUC To Modernize Its Rules	33
	Failure of the DCA to Adopt Any Rules	38
	The Role of Complaint Handling in Public Utility Regulation	39
	Inadequate Attention to Complaint Handling	42
	Neglect of the Area of Consumer Education	48
	Recommendations	50

<i>Chapter</i>	<i>Page</i>
4	ORGANIZATIONAL AND PERSONNEL MANAGEMENT 53
	Summary of Findings 53
	Failure To Keep Pace with Needs 53
	Relatively Modest Level of Present Staffing 57
	Need for Improved Personnel Management 60
	Recommendations 66
	NOTES 67
	COMMENTS ON AGENCY RESPONSE..... 73

LIST OF TABLES

<i>Table</i>	<i>Page</i>
2.1	Docket Filing and Pending Dockets, Fiscal Years 1982-83 through 1986-87 24
3.1	PUC Dockets Relating to Rule-Making 35
3.2	Analysis of Informal Complaints Filed with the PUC Against Oahu Utility Companies, Calendar Year 1986 45
3.3	Analysis of Informal Complaints Filed with the PUC Against Oahu Common Carriers, Calendar Year 1986 46
4.1	Summary of Revenues and Expenditures, Public Utilities Regulatory Program, Fiscal Years 1985-86 Through 1987-88 58

Chapter 1

INTRODUCTION, BACKGROUND, AND AUDIT FRAMEWORK

Request for the Audit

In its 1988 session, the Hawaii State Legislature requested the Legislative Auditor through Senate Concurrent Resolution No. 89, Senate Draft No. 1, to conduct an audit of the State's public utility regulatory process as covered under Chapter 269, Hawaii Revised Statutes.

After taking note of the previous management audit of the Public Utilities Commission (PUC) performed by the Auditor and reported on in 1975, the Legislature specifically requested the Auditor to conduct, with the assistance of the Legislative Reference Bureau, a comprehensive audit encompassing the following:

1. A review of the policies and procedures under which the PUC is presently operating;
2. An update and elimination of statutory provisions that are obsolete or no longer applicable;
3. Identification of areas of regulation that are inhibiting the development of business while serving no purpose in protecting the public interest;
4. An analysis of the effectiveness of the PUC including parameters for measuring effectiveness;
5. An evaluation of the organizational structure of the PUC with particular reference to the development, application, and enforcement of rules and regulations;
6. An examination of decisions rendered by the PUC with reference to a time frame and general trends that indicate an inclination for or against business interests; and
7. An assessment of the role of the PUC as an active enforcement agency or passive regulatory agency.

The Legislature further requested that the role of the Consumer Advocate (CA), or the Division of Consumer Advocacy (DCA) in the Department of Commerce and Consumer Affairs, "not be eliminated from the examination of the regulatory responsibilities under the jurisdiction of the PUC."

Objectives of the Audit

The audit's major objective was to assess the adequacy of the present utility regulatory process in dealing with issues, problems, and developments in complex and changing areas, such as telecommunications, energy, deregulation, and intergovernmental relations. The audit therefore focused on meeting the following objectives:

1. Assessing changes and improvements made by the PUC and DCA in recent years with respect to rule-making, organization, personnel management, case management, complaint handling, consumer education, and enforcement activities.

2. Identifying problems arising from or associated with Chapter 269, Hawaii Revised Statutes, due to obsolescence or inapplicability to the State's current economic climate and conditions.

Scope of the Audit

This audit reviews the following topics: (1) appropriateness and applicability of current utility legislation; (2) adequacy of coverage of current PUC policies, rules, and procedures; (3) management of the PUC and DCA in terms of providing technical and analytical staff support in case management and enforcement of the PUC's rules and regulations; and (4) the effectiveness of the PUC and CA in dealing with telecommunications, energy, and other utility issues.

The audit specifically has sought to determine: (1) if the two agencies are meeting their responsibilities in a timely and efficient manner; (2) if relevant statutes, rules, procedures, and practices are adequate to meet current technological and economic conditions; (3) if the PUC devotes appropriate attention to its rule-making, case management, enforcement, and complaint-handling roles; (4) if the staffing of the PUC and DCA provides appropriate and sufficient support; and (5) if the DCA fulfills its role as the representative of utility consumers.

For the most part, this audit has not looked in any detail at matters relating to motor carriers, water carriers, water and sewer utilities, and cable television. At the end of this chapter, however, we do summarize the major findings and recommendations set forth in our earlier report with regard to these areas of concern. Generally, we feel the results of the earlier audit with respect to these subjects are still worthy of consideration.

The scope of this audit has been affected by the recent changes in leadership that have occurred in both the PUC and the DCA. Due to the immediacy of these events, we have had to focus primarily on conditions and developments as they existed prior to these leadership changes, and only limited consideration could be given to the effects flowing or expected to flow from the changes.

In the case of the PUC, a new chairman, a new commissioner, and a new administrative director all came into office in July and August 1988. In the short time since then, they have already begun to inaugurate various changes in the organization and operation of the PUC. However, because many of the changes are still in the process of being developed or are not yet official, it is premature to consider them firmly fixed or to subject them to normal audit examination. Similarly, the new head of the DCA did not assume office until May 1988, and he is still very much in a shakedown period during which changes continue to be somewhat formative. Here again, then, it is too soon to arrive at any final conclusions regarding changes he is putting into effect. In both cases, however, we do note where recently installed or proposed changes appear to relate to our findings and recommendations.

As for the time frame of this audit, it is focused on activities and events of the last five years. However, some of the issues discussed in earlier management reports of this and other offices have been referenced as necessary to assess the effectiveness of the present PUC and DCA.

Organization of the Report

This report consists of four chapters. Chapter 1 is this introduction, which also provides some background on the PUC and DCA. Chapter 2 delves into agency roles and relationships within the public utility regulatory process. Chapter 3 is an assessment of existing regulatory policies and procedures. Chapter 4 examines organizational and personnel management of the PUC and the DCA.

Background

The Public Utilities Commission. The Hawaii Territorial Legislature established the PUC through Act 89, Session Laws of Hawaii 1913. This Act formed the basis for utility regulation in Hawaii by creating an independent regulatory commission with broad oversight and investigative authority over utility companies. The Minister of the Interior and Director of Public Works of the Kingdom, Republic, and Territory of Hawaii had been responsible for public utility regulation prior to 1913. This was accomplished primarily through the granting of charters and franchises to the affected utilities.

The first commissioners were three individuals who were appointed by the Governor and confirmed by the Senate and who served on a part-time basis. This number increased to five in 1933 when representation of the islands of Kauai, Maui, and Hawaii became a requirement. In 1976, the Legislature enacted Act 165 which converted the PUC to a body of three full-time commissioners appointed by the Governor and confirmed by the Senate for overlapping six-year

terms. This act also moved the PUC from the Department of Regulatory Agencies (now the Department of Commerce and Consumer Affairs) to the Department of Budget and Finance for administrative purposes, and established three PUC assistant positions in the neighboring counties to represent the commission in all utility matters.¹

Act 165, Session Laws of Hawaii 1976, was enacted in part as a result of an audit of the public utilities regulatory program conducted by the Auditor. The audit report, composed of three volumes, found serious organizational, procedural, and staffing deficiencies in the PUC and in the Public Utilities Division (PUD, now the DCA) of the Department of Regulatory Agencies. This audit spurred the Legislature to examine and reorganize Hawaii's public utilities regulatory program.²

From 1976 when the PUC was reconstituted until 1988, only seven different individuals have served on the commission, and two of those were newly appointed in 1988. During this same period of time, three of the commissioners have served as chairman, with the first one serving from 1976 until 1985. As previously indicated, the present chairman assumed that role in August 1988. The staffing of the PUC, including the three commissioners, has increased from 8 to 23 during the past 12 years.

The Division of Consumer Advocacy. The 1975 legislative audit also figured in the enactment of Act 124, Session Laws of Hawaii 1976. This Act designated the Director of the Department of Regulatory Agencies as the Consumer Advocate in proceedings before the PUC, and made the advocate responsible for representing, protecting, and advancing the interests of consumers of utility services. Prior to Acts 124 and 165, Session Laws of Hawaii 1976, the Director of Regulatory Agencies had been charged with the general duty of protecting consumers, including providing such protection in proceedings before the PUC. At the same time, the PUC was placed within the Department of Regulatory Agencies for administrative purposes. A single staff, the Public Utilities Division (PUD), was charged with the dual functions of representing the director as Consumer Advocate and of providing the PUC with administrative and support services. As a result, the roles and relationships between and among the director, the PUC, and the staff of the PUD were confused and awkward.³ Based on recommendations of the 1975 audit, Acts 124 and 165, Session Laws of Hawaii 1976, separated the PUC from the PUD and the Department of Regulatory Agencies.

The PUD's staff remained relatively intact during the first few years after 1976. The bulk of the staff remained with that agency while only the chief clerk moved out with the commission (which was reassigned to the Department of Budget and Finance for administrative purposes). A few years later, the utilities administrator and chief rate analyst left the PUD to join the

commission's staff. Subsequently in the 1980s, by which time the PUD had become the DCA, two engineers and two investigators moved from the DCA to the PUC.⁴

From a staff of 29 in 1976, the DCA now has a staff of 19. This reduction in staffing is largely the result of the elimination of positions which remained vacant for long periods of time following the departure of incumbents through retirement, resignation, or transfer to the PUC.

Subsequent developments. The 1976 amendments to Chapter 269, Hawaii Revised Statutes, "Public Utilities Commission," did not fundamentally change Act 89, Session Laws of Hawaii 1913, which is still the basic law that regulates public utilities in Hawaii. Since 1976, the Legislature has enacted other laws affecting the PUC and DCA, but many of these are of a technical or "housekeeping" nature. Acts having some substantive effect are noted below:

- 1977 **Act 102** exempted producers of power generated from non-fossil fuel sources from the definition of "public utility" and gave the PUC authority to assist in setting "just and reasonable rates" for non-fossil fuel generated electricity supplied to a public utility by such a producer.
Act 168 stipulated that no more than 25 percent of the issued and outstanding voting stock of a Hawaii public utility may be held by any foreign corporation or nonresident alien without the PUC's prior approval.
- 1977 **Act 20** (Special Session) transferred responsibility for motor carrier safety from the PUC to the Department of Transportation.
- 1981 **Act 167** eliminated all regulation of aerial transportation enterprises.
- 1983 **Act 219** "clearly and specifically" authorized the PUC to promulgate rules (without implying it was not authorized to promulgate rules before the act) and permitted the PUC to appoint "such hearing officers as may be necessary" as well as one or more attorneys independent of the attorney general.
- 1984 **Act 289** required the PUC to render an interim rate increase decision if the PUC had not issued its final decision on a public utility's rate application within the nine-month period required by HRS 269-16. The PUC may postpone its interim rate decision 30 days if it considers the evidentiary hearings incomplete.
- 1986 **Act 116** required the PUC to implement a "lifeline" telephone program for residential users, or a discounted rate for those the PUC identifies as being elderly or handicapped and having a limited income.
- 1988 **Act 250** specified the PUC is a party to all matters from which an order of the commission is appealed and required it to file appropriate responsive briefs or pleadings defending all such orders.

Act 254 raised the civil penalty to a public utility for violating or failing to confirm or comply with Chapter 269 or any lawful order of the PUC from a maximum of \$1,000 to \$25,000 for each day such violation continues.

Act 368 required public utilities to file with the PUC verified copies of contracts or other documentation of agreements for the purchase of goods or services from affiliated companies.

Audit Framework

This audit was conducted within a framework similar to that of our management audit of the public utilities program in 1975. We took into account the industries regulated, the regulatory functions of the Public Utilities Commission and Consumer Advocate through the Division of Consumer Advocacy, and the objectives of the public utilities program. It should be noted that the following discussion is modeled closely after the framework presented in our audit of 1975.⁵

The industries regulated. The privately owned industries subject to regulation in Hawaii may be categorized as energy supply, communications, transportation, water supply, and sewage disposal services. As will be seen, water and sewers have not been an area of intense regulatory effort. The companies in the three major groupings are briefly described in the following paragraphs.

Energy. This category includes industries that supply electric and gas services to consumers. There are three electric and one gas utilities in Hawaii.

Electric. The three electric utilities are Hawaiian Electric Industries, Molokai Electric Company, and Kauai Electric Division. Hawaiian Electric Industries serves the islands of Oahu, Hawaii, Maui, and Lanai through its subsidiaries: Hawaiian Electric Company, Hawaii Electric Light Company, and Maui Electric Company. As this report was being completed, Hawaiian Electric Industries was in the process of also acquiring Molokai Electric Company, which provides electric service to the Island of Molokai. Kauai Electric Division is owned by Citizens Utilities Company of Connecticut, which purchased Kauai Electric in the early 1970s from sugar plantations that had previously owned the utility. Hawaiian Electric Company is by far the largest segment of the industry in the State. As for Hawaiian Electric Industries, it has become quite a diversified entity with interests in such areas as banking, insurance, and interisland surface transportation. Several of these other interests fall beyond the purview of the PUC.

Gas. GASCO, Inc. is Hawaii's only gas company and is a subsidiary of Pacific Resources, Inc. Its main operations are on the Island of Oahu, but it also conducts business on the other islands. GASCO has a nonregulated division that handles the distribution of liquefied petroleum or

bottled gas. ENERCO, Inc., another regulated subsidiary of Pacific Resources on Oahu, produces synthetic natural gas. This essentially leaves GASCO with the function of transmitting gas.

Telecommunications. The telecommunications category includes telephone, telegraph, cellular, paging and mobile services, and interisland data transmission services as well as cable television companies.

Telephone. Hawaii has a single statewide telephone system that is owned and operated by the GTE-Hawaiian Telephone Company (Hawaiian Telephone). The Kingdom of Hawaii granted Hawaiian Telephone a charter in 1883, and it was an independent corporation until General Telephone and Electronics Corporation acquired the company in 1967. Hawaiian Telephone is now a wholly owned subsidiary of this large mainland-based telecommunications and industrial conglomerate.

Hawaiian Telephone is also involved in international communications by sharing in the ownership of the long-distance submarine cables connecting Hawaii with the world and through participation in the satellite telecommunications network. Operations beyond Hawaii's boundaries are subject to regulation by the Federal Communications Commission (FCC) and thus are not under the State's control. Moreover, Hawaiian Telephone is involved in other business activities which are not subject to regulation by the PUC. Besides being a large retailer of telephone instruments and other equipment through its Phone Marts, it is a major contractor for the construction and installation of telecommunication systems for large users like the military and the University of Hawaii. The regulation of Hawaiian Telephone is complicated, therefore, by the need to separate the intrastate and regulated aspects of the business from the FCC-regulated and nonregulated operations and to ascertain and monitor the interrelationships between these different segments of the company's business. This situation is not unique to Hawaii, but factors of distance and isolation distinguish Hawaii's position from those of other states (except for Alaska).

Hawaiian Telephone is a significant factor in the State's economy and is one of Hawaii's largest private employers in terms of full-time employees.

Telegraph. The PUC has regulated Western Union of Hawaii, Inc. since 1972. Western Union of Hawaii was incorporated in Delaware in 1971 and is a wholly owned subsidiary of Western Union Corporation, a large nationwide telegraph company. Western Union of Hawaii provides certain data transmission and related services. It is not now as active as it once was due to competition from the entities listed below.

Cellular telephone. The PUC regulates Hawaii's two cellular telephone companies: GTE Mobilenet of Hawaii, Inc. and Honolulu Cellular Telephone Company. Cellular companies divide geographic areas into "cells," each of which has a radio transmitter. A customer is connected with that transmitter as he moves from one area to another. GTE Mobilenet provides wireline and Honolulu Cellular non-wireline telephone service on the island of Oahu.

Paging and mobile telephone companies. The State currently has seven operating and regulated firms that provide paging and mobile telephone services: Dr. Mark A. Goldman, dba Island Radio-Phone; Ram Paging Hawaii; Pacific Mobiletelephone Corporation; Radiocall, Inc.; Page-Com Hawaii, Inc.; General Telcourier, Inc.; and Tel-Page Corporation. These companies service customers through radio paging and mobile telephones. Mobile telephones are provided through base units attached to Hawaiian Telephone Company's network. Hawaiian Telephone is also involved in the paging and mobile telephone business but is now scaling back its operations in this field.

Interisland data transmission. Tel-Net Hawaii, Inc., a regulated entity, is the only company in the State currently involved in transmitting data between the islands. Tel-Net Hawaii is a digital microwave transmission carrier that is limited to transmitting data on a point-to-point basis in the State of Hawaii.

*Cabletelevision.*⁶ Eight cable television companies operate in Hawaii. As of December 31, 1987, there were nearly a quarter of a million subscribers; over 200,000 subscribers are on the island of Oahu. On Oahu, Oceanic Cablevision, Inc., the largest of the eight companies, has 74.1 percent of the statewide subscribership and McCaw Communications of Hawaii Kai, the second largest company has 5.5 percent of the statewide subscribership. Jones Spacelink of Hawaii, Inc. (formerly known as COMTEC, Inc.), Sun Cablevision of Hawaii, and McCaw Cablevision LP Maui County/Hawaii County service clients on Hawaii Island. McCaw Cablevision LP Maui County/ Hawaii County also provides cable service on Maui, Molokai, and Lanai. Hawaii Cable Vision Company provides cable service in West Maui. Garden Isle Cablevision Company and Kauai Cable TV service the island of Kauai.

Transportation. The transportation category includes companies engaged in transporting people and cargo over land and sea.

Motor carriers. The PUC assumed jurisdiction over various types of motor carriers and responsibility for safety regulation of almost all types of trucks and buses with the passage of the Hawaii Motor Carrier Act, Session Laws of Hawaii 1961. In 1977, the responsibility for the safety regulation of motor carriers was transferred from the PUC to the Department of Transportation. As a result, the PUC is now primarily concerned with the economic regulation of several different

classes of motor carriers. The most extensive regulation applies to common carriers of passengers and property, which include motor vehicle transportation companies offering their services to the general public (with a number of specific exceptions set forth in the statute, such as taxicabs, school buses, city buses, ambulances, and rubbish trucks). Some regulation is also exercised over contract carriers of passengers and property, which encompass those carriers who provide transportation services to specific customers under contractual arrangements.

Some of the affected companies are relatively large, but the motor carrier industry generally is characterized by a great number of small firms. Many are owner-operator entities involving one or two vehicles. Motor carriers are a significant factor in the State's economy and employment picture.

Water carriers. The only regular water carrier currently regulated by the PUC is Young Brothers, Ltd., a wholly owned subsidiary of Hawaiian Electric Industries. Young Brothers provides barge service for the shipment of property between the islands. Closely affiliated with Young Brothers is the nonregulated subsidiary of Hawaiian Electric Industries, Hawaiian Tug and Barge Corporation, which provides contract tug and barge services to various customers, including Young Brothers.

Water supply companies. The PUC regulates 11 small water companies. The majority of the water carriers are located on the neighbor islands: six on the island of Hawaii (Kilauea Water Company, Kohala Ditch Co., Ltd., Kohala Ranch Water Company, Miller and Lieb Water Co., Punalu'u Water and Sanitation Corp., and Waikoloa Water Co., Inc.); two on Maui (Kaanapali Water Corp. and Kapalua Water Company); two on Kauai (H. Hackfeld & Company, Ltd. and Princeville Water Co.); one Molokai Public Utilities, Inc. on Molokai. These utilities are small private water supply companies subject to the control of the PUC.

Sewage disposal companies. Private sewage companies were placed under the PUC's jurisdiction through Act 59, Session Laws of Hawaii 1974. At that time, a major private sewage disposal system in Hawaii Kai (East Honolulu Community Services, Inc.) fell under the PUC's jurisdiction. Today, six of the seven regulated sewage plants are located on the neighbor islands: three on the island of Hawaii (Mauna Lani STP, Inc., Waikoloa Resort Utilities, Inc. and Waikoloa Sanitary Sewer Co., Inc.); and one each on Maui (Kapalua Waste Treatment Co.), Molokai (MOSCO, Inc.), Kauai (Princeville Utilities Co., Inc.) and Oahu (East Honolulu Community Services, Inc.).

Regulatory functions. The Public Utilities Commission is the agency primarily responsible for regulating public utilities. Its general authority is derived from Chapter 269, "Public Utilities Commission;" Chapter 271, "Motor Carrier Law;" and Chapter 271G, "Hawaii Water Carrier Act" of the Hawaii Revised Statutes.

The functions performed by the PUC under these chapters may be categorized as certification and licensing, rate-making, safety regulation, and economic and business regulation. The PUC is also vested with rule-making and investigative powers to assist it in discharging its responsibilities. A brief description of these functions follows.

Certification and licensing. Certification and licensing are governmental authorizations for businesses to operate as certain types of public utility. These regulatory devices control or limit entry into a market or particular kind of utility business and ensure that only those who meet certain specified safety, financial, and other standards may operate as a public utility.

Rate-making. The purpose of rate-making is to establish fair and reasonable rates that public utilities may charge the public for their services. The PUC has broad powers to fix the rates and fares of all public utilities, including regulated transportation services. Section 269-16, Hawaii Revised Statutes, governs the rate-making procedure and requires prior approval by the PUC for “any increases in rates, fares, or charges.”

Safety regulation. Safety regulation consists of activities to ensure the safety of the public served by the utilities and of employees of utility companies. Section 269-7, Hawaii Revised Statutes, empowers the PUC to examine the manner in which each public utility is operated with reference to the safety or accommodation of the public and to the safety of its employees. The PUC as part of its safety regulation responsibilities also inspects and monitors Hawaii’s gas pipelines. The commission performs a minimum of 75 field inspection a year. The inspections are done in conjunction with the federal program administered by the U.S. Department of Transportation’s Research and Special Programs Administration. The federal government pays 50 percent of the inspections’ costs, and the PUC’s efforts in this area are audited biennially and inspected annually. Prior to 1977, the PUC also had broad responsibility for the safety regulation of motor carriers in Hawaii, but as indicated above this function has been transferred to the Department of Transportation.

Economic and business regulation. Economic and business regulation includes activities related to supervising, controlling, and regulating internal business operations of public utilities. The PUC has broad powers in this area. Chapters 269, 271, and 271G, Hawaii Revised Statutes, authorize the PUC to examine, supervise, and regulate the following: (1) issuance of stocks, bonds, notes, and other evidence of indebtedness; (2) sale of assets; (3) wages paid to employees; (4) valuation of physical property; (5) merger or consolidation of public utilities; systems of accounting and bookkeeping; (6) construction, modification, or improvement of facilities; and (7) the disposition of income.

The Division of Consumer Advocacy. “Consumer Advocate,” Part II of Chapter 269, Hawaii Revised Statutes, creates a division of consumer advocacy within the Department of Commerce and Consumer Affairs to provide administrative support to the director of that department in his role as Consumer Advocate. Section 269-54, Hawaii Revised Statutes, vests the Consumer Advocate with the following powers: rule-making; investigative; assist, advise, and cooperate with federal, state, and local agencies to protect and promote the interests of public utilities consumers; recommend legislation in the interests of consumers of public utility services; organize and hold conference on problems affecting consumers; perform “such other acts as may be incidental to the exercise of the functions, powers, and duties” of the Consumer Advocate; and represent the interests of consumers of utilities before any state or federal agency with jurisdiction over matters affecting those interests.

Part II also permits the Consumer Advocate to “institute proceedings for appropriate relief” before the PUC whenever it is determined a public utility is violating any requirement of the PUC. The Consumer Advocate may also serve on any public utility a request to furnish information relevant to the performance of his or her duties. Finally, Section 269-55, Hawaii Revised Statutes, requires the Consumer Advocate to provide a “central clearing house of information” by collecting and compiling all consumer complaints. The Consumer Advocate is also charged with monitoring the PUC’s handling of such complaints.

Program objectives.⁷ An evaluation of any program requires a consideration of that program’s objectives. In the State’s program structure, the PUC is placed in the *Transportation, Communications, and Utilities* program and the DCA within the program, *Consumer Advocate for Communications, Utilities and Transportation Services*. These two programs are almost exclusively concerned with public utilities and consumers. This suggests that the state program structure views the PUC and DCA as having the objective of protecting consumers through regulation.

The objective of the *Transportation, Communications, and Utilities* program implies consumer protection but it also suggests economic development goals as shown below:

“To ensure that regulated companies provide communication, utilities and transportation services to the public at acceptable standards of quality, dependability and safety at fair rates by establishing and enforcing appropriate service standards.”

On the other hand, the *Consumer Advocate for Communications, Utilities and Transportation* program, which includes the cable television program, has clear consumer protection goals and implied economic development goals:

“To ensure that individuals have available to them communication, utility and transportation services meeting acceptable standards of quality, dependability and safety at fair rates, and to achieve this by advocating the establishment and enforcement of appropriate service standards and ratemaking methods.”

Although not explicitly recognized in the State’s formal program structure, the activities of the PUC and DCA also affect and are affected by the State’s programs relating to economic development, environmental protection, and public safety.

Areas not Covered in Detail in this Audit

As previously indicated, time and resource constraints prohibited us from examining in depth all of the affected areas of regulatory concern--especially motor and water carriers, water supply and sewage disposal services, cable television, monitoring of utility safety practices, and utility capital expenditure planning. We did, however, examine and make recommendations on many of these subjects in our 1975 management audit which we feel are still valid. The Legislature may wish to consider these recommendations in future deliberations on the public utilities regulatory program.

Transportation. We recommended in our 1975 audit that motor carriers be deregulated except for safety aspects, which should be assigned to the highway safety coordinator for standards and county police departments for enforcement.⁸ We found in 1975 and believe today that the current economic regulation of motor carriers does not encourage competition or efficient practices and that the attendant rates are higher than they would be under competitive conditions.⁹ Barring full-scale deregulation of the motor carrier industry, the Legislature may wish to consider deregulating certain segments, such as dump trucks and the smaller size passenger vehicles for transporting tourists (that is, the 1-to-7 category).

Water and sewer utilities. Our last audit also found that “scant attention” had been given to the regulation of private water and sewer companies. This is still true today, although the number of such private utilities has increased from four to 18 since 1975. The PUC is now moving toward regulating this area through the rule-making process; current regulations are contained in each firm’s tariff. We noted in 1975 that water and sewage services are necessities provided under monopolistic conditions and therefore proper subjects of PUC regulation. However, we felt that such regulation should be placed with the counties as they generally own and operate water and sewer systems and thus have more expertise than the PUC in these fields.¹⁰ The PUC and Legislature should still consider such a transfer of regulatory authority.

Cable television. In 1975, we recommended that cable television be placed under the jurisdiction of the PUC as it was a monopolistic business.¹¹ Cable television was then, and is now, under the jurisdiction of the Department of Regulatory Agencies, or the current Department of Commerce and Consumer Affairs. Technological advances since 1975 are erasing the differences between and increasing the opportunities for competition among the various types of telecommunication facilities and services. The economic and other ramifications of this development are great, and the Legislature may wish to consider the placement of cable television companies under the jurisdiction of the PUC.

Chapter 2

REGULATORY ROLES AND RELATIONSHIPS

The Public Utilities Commission (PUC), the Division of Consumer Advocacy (DCA) of the Department of Commerce and Consumer Affairs, and the Department of the Attorney General all have important roles to play in Hawaii's public utilities regulatory program. In this chapter, we examine the roles of and interrelationships among these three organizational entities with respect to exerting regulatory control over public utility activities in Hawaii.

Summary of Findings

We find as follows regarding roles and relationships of agencies involved in regulating public utilities in Hawaii:

1. While some sorting out and enhancement of functions, duties, and powers have occurred as a result of actions taken to implement recommendations from our previous management audit of the public utilities regulatory program, ambiguities and deficiencies in these areas still exist and still detract from program effectiveness. More specifically:

- The Division of Consumer Advocacy and the Department of the Attorney General have not developed an adequate means of assuring a high level of continuity, coordination, and competence in legal representation of consumer interests before the Public Utilities Commission.
- The Public Utilities Commission, the Division of Consumer Advocacy, and the Department of the Attorney General have not given adequate attention to making sure that a comprehensive and coordinated approach is taken to identifying, representing, and protecting Hawaii's interests relative to federal regulation of public utility activities.

2. Generally speaking, the Public Utilities Commission and the Division of Consumer Advocacy have been passive and reactive rather than aggressive and pro-active in defining and carrying out their separate roles.

- In the case of the Public Utilities Commission, this approach is reflected in the agency's heavy emphasis on adjudication and lack of policymaking and enforcement and in its slow build-up of administrative capabilities.

As for the Division of Consumer Advocacy, it becomes involved in less than 20 percent of the cases before the Public Utilities Commission and in a number of instances at the commission's request rather than on its own initiative.

Concern with Agency Roles and Relationships

In the previous management audit of Hawaii's public utilities program which we reported on in 1975, we found that one of the major problems detracting from the program at that time was a confusion in roles, functions, duties, and powers among the several organizational entities involved in carrying out the program. The distinction between consumer advocacy on one hand and adjudication, policymaking, and administration on the other hand was unclear. Similarly, there was no clear demarcation between economic regulation and other types of regulation (such as for safety, environmental protection, and promotion of economic development). Both the PUC and the Public Utilities Division (PUD) were parts of the Department of Regulatory Agencies, with the PUD expected to serve as Consumer Advocate on behalf of the departmental director *and* as administrative and staff support to the PUC in the discharge of its adjudicatory, policymaking, and enforcement functions. The Department of the Attorney General, in turn, was required to represent both the PUC and the PUD, even when they came into conflict with one another.

As a result of this confusion, we also found in our previous audit that the public utilities program had become seriously bogged down and was being rendered ineffective. To deal with this situation, we recommended that the consumer advocacy function be clearly separated from the other functions assigned to the PUC. We also recommended that the responsibility for economic regulation of public utilities be clearly focused in the PUC (or eliminated altogether in the case of motor carriers and telephone interconnect activities) and that other types of regulation be assigned to other agencies. In terms of legal representation, we recommended that the Attorney General should represent only one party, the PUD, and that the PUC should have its own legal counsel.¹

In response to these recommendations, the Legislature separated the PUC from the Department of Regulatory Agencies and the PUD, and assigned it for administrative purposes to the Department of Budget and Finance. The commission itself was converted from five part-time members to three full-time members. The Department of Regulatory Agencies (through the PUD) was clearly constituted to be the Consumer Advocate in proceedings before the PUC.² Except for the regulation of motor carrier safety which was transferred to the

Department of Transportation, all regulatory functions previously assigned to the PUC remained with the PUC. The PUC was given the authority to retain its own legal counsel while the attorney general continued to be the legal representative of the PUC.³

When we were asked once again by the Legislature to conduct a management audit of the public utilities regulatory program, we turned first to see what actions had been taken with respect to our previous recommendations regarding agency roles and how well the implementation of these actions was proceeding. Our interest in this area was heightened by the concern about agency roles expressed by the Legislature in its request for this audit. The Legislature was especially interested in finding out whether a passive or active approach to regulation was being taken.

Accordingly, in the remainder of this chapter, we set forth the results of our current examination of agency roles and relationships with regard to Hawaii's public utilities regulatory program.

Sorting Out Roles and Relationships

Compared to the situation encountered in our previous management audit of the public utilities regulatory program, considerable progress has been made with regard to the sorting out of roles and relationships among affected agencies. The consumer advocacy function with regard to proceedings before the PUC has become much more clearly defined. Similarly, the independent role of the PUC has become more clearly delineated. Nevertheless, we find there are still some troublesome areas regarding agency roles and relationships in this field. These are discussed below.

Legal representation of DCA. Utility regulatory law is a specialized area of legal representation which requires time, experience, and, frequently, specialized training in order to develop the necessary expertise to handle cases effectively. While not as formal and as stringent as judicial proceedings, PUC proceedings are nevertheless quite legalistic. Moreover, besides requiring familiarity with the particular (and often quite intricate) administrative process followed within a jurisdiction, the handling of utility cases also requires the ability to understand, integrate, and present information and materials relating to a number of different disciplines--law, economics, finance, accounting, engineering, and other technologies (such as telecommunications and energy generation).

To meet their needs in this area, Hawaii's regulated utilities and transportation companies rely upon in-house legal staffs and outside law firms who specialize in utility regulatory law and who have developed considerable experience and expertise in this legal field. This is in addition

to other staff with expertise in other areas, such as economics, finance, accounting, and engineering. As a consequence, the State's Consumer Advocate faces formidable adversaries when contesting issues before the PUC.

Thus, if the DCA is to be effective in representing consumer interests before the PUC, it must be able to match within a reasonable degree the capabilities of those on the opposing side. This means having legal counsel who not only are expert and experienced in the field of utility regulatory law but are also able to work effectively as part of a total team in developing and carrying out legal strategy in representing and protecting consumer interests.

As previously indicated, the Attorney General is designated to serve as the legal representative of the DCA (the successor to the PUD), under the Department of Commerce and Consumer Affairs (DCCA), which is the present title of what used to be the Department of Regulatory Agencies.⁴ Unfortunately, this relationship has been an unstable one insofar as actual legal staff has been concerned. One factor contributing to this instability is the fact that legal staff are often assigned to the DCA only on a part time basis. As a result, the DCA has to compete for service with other demands on the time and attention of its attorneys. Of much greater concern, however, is the high rate of turnover in legal personnel representing the DCA. In the period between 1980 and 1988, there have been at least eight changes among the deputy attorneys general assigned to the DCA (or its predecessor, the PUD). During this time, only two of the deputies have served more than three years (including one currently assigned). The average has been less than two years.

Under these arrangements, it is extremely difficult to develop the expertise and experience necessary to represent consumer interests effectively in proceedings before the PUC. Representatives of the utilities have told us that it even makes their jobs more difficult because they continually have had to spend much time and effort just to familiarize new deputies with the regulatory process and with the status of cases pending before the PUC. With this turnover and with deputies often being assigned on a part time basis and really answerable to the Attorney General and not to the director of the DCCA in his capacity as Consumer Advocate, the DCA has frequently been put in a difficult position insofar as being able to set and pursue strategy and maximize the utilization of available resources.

In this regard, it should be noted that the DCA differs from several other units under DCCA relative to legal representation. Both the Office of Consumer Protection (OCP) and the Regulated Industries Complaints Office (RICO) have their own legal staffs which are separate from the Department of the Attorney General. Even the Division of Financial Institutions has

its own financial institutions law analyst. In the cases of OCP and RICO, separate legal staffs are apparently justified on the basis that legal work is an integral and continuing part of the normal operations of those two units. Much the same logic would apply to DCA.

At the time we were doing the fieldwork for this audit, the principal deputy assigned to DCA had been on the job for more than three years and displayed considerable commitment, ability, and capacity to work smoothly with the DCA staff. Thus, the situation is not critical currently with regard to this relationship problem. However, at the same time, we note that he is assigned to the DCA only part time and that there are periods when he must divert his time and attention to other matters. Moreover, the present situation is subject to change at any time without DCA being in a very good position to do much about it. For any number of reasons, one or both of the deputies now assigned to DCA could be wholly or partially assigned to other duties or leave the Department of the Attorney General altogether and be replaced by other deputies with little or no background in utility regulatory law.⁵

If the DCA is to be effective in carrying out its responsibilities, it must be assured of continuity, competence, and control in the handing of its legal representation before the PUC. At present, such assurance is shaky at best. This suggests that either the Department of the Attorney General should come up with a better plan for providing legal services to the DCA or DCA should be allowed to follow the example of OCP and RICO by employing its own legal staff.

Responsibility for protecting state interests in federal utility regulatory matters. As brought out in our previous management audit of Hawaii's public utilities regulatory program, public utility activities in Hawaii are affected by a wide range of federal actions, programs, and agencies. In some instances, the impact is indirect. In other instances, state regulation is preempted and nullified by overriding federal regulation. Moreover, in recent years, the federal impact has been subject to sometimes wide and sudden fluctuations. A number of factors contribute to this situation, including legal (the federal court break-up of the AT&T telephone monopoly), political and philosophical (the deregulation of various transportation and telecommunication services), and technological (satellite and fiber optic telecommunications).

Considering the significance of federal involvement in public utility activities in Hawaii, it is important for the State to position itself where it can be kept fully aware of what is happening at the federal level and can act in a timely and effective manner to represent and protect Hawaii's interests insofar as these may be affected by federal actions and programs. At present, several different agencies have roles to play with respect to the federal impact on public utility activities in Hawaii. Generally, however, these roles are not clearly recognized and defined and, as a consequence, the State lacks a comprehensive and coordinated approach to identifying, representing, and protecting its interests in this area.

As the advocate of consumer interests in the whole field of public utilities, the DCA is responsible for representing and protecting consumer interests before federal agencies as well as before the PUC. With the nature and scope of its jurisdiction subject to modification by federal actions, the PUC should continuously be aware of and ready to react to relevant actions and proposals at the federal level. As the chief legal agency for the State with concern for state authority and liability and employment of outside legal counsel, the Department of the Attorney General must also be geared to deal with federal issues affecting public utility activities in Hawaii as these emerge and evolve.⁶

In the case of the DCA, its statutory authority and responsibility with regard to federal actions in the public utilities field are quite clearly stated. Section 269-54 (b) (7), HRS, specifically authorizes it to “represent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests.” Chapter 269, HRS, however, is silent concerning the PUC’s authority and responsibility with regard to federal matters. Nevertheless, considering the broad nature of the general powers and duties given to the PUC by this chapter, it does not appear that the PUC is precluded from acting in this area. As for the Department of the Attorney General, it is not specifically assigned authority and responsibility in this area by statute, but Section 28-1, HRS, does charge it with representing the State in most legal proceedings.

All three of these agencies have access to sources of information concerning federal activities relating to public utilities. Sometimes this access is direct, such as when they are on mailing or notification lists to receive particular filings or notices. More often, however, the information comes indirectly through other parties, such as national organizations to which they belong, commercial specialized news services, and members of Hawaii’s congressional delegation. In the case of the DCA, it also retains a legal consultant in Washington, D.C. to monitor proceedings of the Federal Communications Commission (FCC) and to alert the DCA regarding any actions or cases which might affect consumers in Hawaii.⁷

Due to Hawaii’s distance from Washington, it is not always satisfactory to rely upon generalized information sources to meet the State’s particularized needs on a timely basis. This is why the DCA has hired its Washington consultant on FCC matters. Regardless of the source of information, it is also essential to have the capability to receive and understand the information, assess its likely impact on conditions in Hawaii, and to take appropriate follow up action in a timely manner. Where several different agencies may be involved, it is also important to have some means of coordinating the interchange of information and follow up action among them.

At present in Hawaii, however, many of the elements of an effective program for dealing with federal public utility regulatory matters are lacking. None of the three primarily involved agencies is organized and equipped to carry out responsibilities in this area in a comprehensive, consistent, and timely manner. Coordination among the three of them on any continuing basis is virtually nonexistent. The DCA is probably doing the most. As already indicated, it has a Washington, D.C. legal consultant monitoring FCC matters on a continuing basis. When intervention on behalf of Hawaii's consumers is deemed appropriate, this same legal consultant usually represents Hawaii. The DCA also tries to keep abreast of other federal activities which may affect Hawaii's public utility consumers. However, no one within the DCA is specifically assigned the responsibility of monitoring federal activities on an ongoing basis and of making sure that comprehensive coverage is provided.

As for the PUC, it rarely becomes involved in federal matters. Except for a few "friend of the court" briefs filed on its behalf, we found little evidence of any direct participation during the past 12 years. For the most part, it relies upon the DCA to look out for Hawaii's interests at the federal level. It has not assigned anyone to be responsible for federal matters and makes no concerted effort to monitor what is happening in this area.

As already indicated, Hawaii's statutes do not require, direct, or specifically authorize the PUC to be active regarding federal public utility regulatory matters. In this sense, Hawaii differs from some other states where there are statutory provisions on the subject. For example, Minnesota authorizes its commission to cooperate with federal agencies for the purpose of harmonizing federal and state regulations within the state and to conduct joint hearings with federal agencies where this is deemed advisable and in the interests of the people of that state.⁸ Similarly, Maine provides for its commission to participate with other state and federal regulatory bodies in joint hearings and studies of mutual interest.⁹

Like the PUC, the Department of the Attorney General does not focus any regular or sustained attention on federal public utility regulatory matters. To the extent it becomes involved in such matters, it appears to be on an ad hoc basis as specific issues are brought to its attention.

In our previous audit, we recommended that representation of Hawaii's interests in federal proceedings be recognized as an important and integral part of the State's public utilities regulatory program and that appropriate steps be taken to organize for and carry out this responsibility, including developing sources of information that will advise affected agencies on a timely basis of federal regulatory proceedings where Hawaii's interests may need to be represented.¹⁰ We regret to find more than 12 years later that these recommendations have not yet been adequately implemented. The affected agencies need to recognize their individual and

Emphasis on adjudication. Since the PUC was split off from the Department of Regulatory Agencies in 1976, it has devoted a very high proportion of its time and attention to the function of adjudicating cases. In the late 1970s, this was probably unavoidable with three commissioners who were new to the field of public utility regulation and who had extremely limited staff resources (in terms of both numbers and expertise) to back them up. Then in the early 1980s during a period of economic instability and high inflation, the PUC was hit with a rash of rate cases.

The PUC had to handle nine major rate cases which were filed between December 1980 and April 1983. Most of these cases took well over a year to dispose of; the shortest lasted 12 months and one took 19 months while another took 20 months. As rate cases are usually quite complicated and detailed, they tend to consume considerable staff resources as well as time.

Since 1984, however, there has been little activity in the area of utility rates. Nevertheless, the PUC's case docket has remained fairly heavy. This is reflected in Table 2.1 which summarizes docket filing and completion data for fiscal years 1982-83 through 1986-87. As can be seen in this table, annual filings have ranged from a low of 229 to a high of 330. The average for the period was 272 cases per year. Generally, the PUC has completed within a year two-thirds of the cases filed in that year; most of the cases pending at the end of a year were filed during the last quarter of that year. Cases pending at the ends of years range from 88 to 199.

It should be noted, however, that about two-thirds of the cases handled during the period covered by Table 2.1 involved regulated transportation companies. These tend to be relatively simple cases which do not require the time, attention, and effort that must be devoted to rate cases and other complicated utility cases. Moreover, these are the kinds of cases which can be handled by hearings officers (which the PUC is authorized to use) and do not require the time and attention of the full commission.

Due to the absence of any agreed upon means of measuring the workload of the PUC as well as a general lack of relevant data, it is impossible to determine with any precision the extent of the PUC's heavy emphasis on adjudication. However, available records do not indicate much activity outside of the area of adjudication. Further indication of inactivity in the area of policymaking has been the PUC's inattention to such issues as energy resource planning, deregulation of telecommunications, deregulation of transportation, the impact of tax reform on utility finances, and maintaining or enhancing the quality of utility services.

Table 2.1

Docket Filings and Pending Dockets
Fiscal Years 1982-83 through 1986-87

No. of Dockets	1982-83	1983-84	1984-85	1985-86	1986-87
Filed	301	229	230	269	330
Completed	193	138	158	193	150
Completion Rate	64.1%	60.3%	68.7%	71.7%	45.5%
Uncompleted	108	91	72	76	180
Prior Year Pending	7	11	16	17	19
Total Pending	115	102	88	93	199

Source: Public Utilities Commission, Department of Budget and Finance, Annual Report for Fiscal Years 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, State of Hawaii.

Even in the adjudicatory process, the PUC has not gone very far outside of the area of ratemaking or become involved in such matters as environmental concerns. This is illustrated by the PUC's actions with regard to the "biomass" generating facility of Molokai Electric Company (MOECO). In an attempt to find a better alternative to its antiquated diesel generating facility, MOECO in the early 1980s embarked upon a plan to develop a new plant that would generate power by using biomass material (hay, pineapple plants, wood chips, etc., as well as coal) as fuel. However, the effort was plagued with many troubles and the plant never fulfilled expectations and became inoperative. It was at this point that MOECO came to the PUC to seek permission to sell the plant to a third party who would be exempt from PUC regulation, would rejuvenate the plant, and then would sell energy back to MOECO.

Under PUC rules, approval was required to dispose of the assets and to enter into the new purchase power agreement. Although environmental concerns were raised (including the contention that the proposed use of kiawe wood chips as fuel would denude the island of Molokai of all its kiawe in less than five years), the PUC declined to consider environmental factors in reaching its decision and chose instead to let these matters be handled by other agencies.¹¹ Thus,

collective responsibilities in this area and to organize themselves to fulfill these responsibilities effectively. At a minimum, this means (1) fixing specific responsibility within agencies for monitoring and assessing the potential impact of federal activities and (2) establishing some mechanism for exchanging information and views among agencies. It is important, of course, to ensure that coverage is comprehensive, continuing, and coordinated.

Passive Rather Than Active Approaches to Agency Roles

When the Legislature acted on the findings and recommendations of our previous management audit of the public utilities regulatory program, it vested considerable discretion in the affected agencies, the PUC and the DCA. It gave the agencies broad grants of authority and responsibility and did not set any strict limits on their activities. As a result, the agencies were given considerable leeway in defining their own roles. In this audit, we were interested in knowing whether the agencies have since been passive or active in defining their roles.

Based upon our current examination of the public utilities regulatory program, it may be said that the PUC and DCA generally have been passive and reactive rather than aggressive and proactive in defining and carrying out their respective roles. In the discussion that follows, we set forth the reasons for reaching this conclusion.

Public Utilities Commission. When we last looked at the PUC in the early 1970s, we found an organization with many broad powers and responsibilities, but with many functions not being carried out effectively and with some functions being almost totally neglected. In areas relating to economic regulation, public safety, and environmental protection, the PUC was expected to exercise adjudicatory, policymaking, and administrative (enforcement) authority and responsibility. To do all of these things, reliance was placed upon a commission composed of five part-time lay members without a staff of their own and with administrative support provided by a staff which was also charged with the duty of representing consumer interests before the commission.

In response to our recommendations, the PUC was given a more independent status, the commission was reconstituted into three full-time members, and the PUC was given its own staff. Authority and responsibility regarding motor carrier safety was transferred to the Department of Transportation, but the PUC retained all of the other authority and responsibilities it previously had. In the ensuing years since 1976, the PUC has not taken significant initiatives to expand its operations or enhance its effectiveness. For the most part, it has simply waited for matters to come to its attention (usually in the form of case filings) and then has reacted (sometimes by taking no action at all). Almost all of its emphasis has been on adjudication; very little attention has been given to policymaking and administration.

in giving its approval, it did not even make this action contingent upon compliance with all other governmental requirements. In effect, then, the PUC did not consider environmental protection as being as its responsibility or something about which it should be officially concerned.

This passive approach to its role is also evident in the PUC's stance regarding proposed legislation relating to public utility regulation in Hawaii. Since 1976, the PUC itself has rarely, if ever, initiated any proposed amendments to the statutes relating to it. Moreover, when proposed legislation in this area has been initiated by others, the PUC has either declined to express its views on or has opposed such proposals.

For example, during the 1988 legislative session, the PUC uniformly opposed legislation relating to such issues as capital expenditures, competitive bidding, interisland telecommunication services, mandatory renegotiation of purchase power agreements, information on public utility affiliated companies not subject to PUC regulation, and increasing penalties for noncompliance with PUC rules. In almost all cases, the PUC's position was that it already had sufficient authority to deal with the matters in question. Nevertheless, the Legislature enacted laws on such matters as making the PUC a party to Hawaii Supreme Court proceedings involving the appeal of PUC decisions, regulating business dealings between regulated public utilities and nonregulated affiliated companies, and raising penalties for violations of PUC orders from a maximum of \$1000 per violation to \$25,000 per day of violation.

It may be argued, of course, that since Chapter 269, HRS, does not give the PUC specific direction to consider policy goals in such areas as economic development, environmental protection, and energy conservation in its actions, then the PUC is justified in taking the passive role that it has displayed over the years. In this regard, it is noteworthy that some other states have enacted statutory provisions which articulate more clearly policies or concerns that are to be taken into consideration by their public utility regulatory agencies. Some of the more pertinent of these statutory provisions are summarized below:

Florida: The statute is aimed at ensuring consistency with the state's comprehensive plan and it requires its public service commission to take into consideration, when approving plans of the utilities subject to its regulation, the compatibility of each of the plans with the state comprehensive plan.¹²

Minnesota: The public utility law has specific guidelines and directs the commission "[t]o the maximum reasonable extent ... to set rates to encourage energy conservation and renewable energy use and to further the goals..." relating to the department of energy and economic development, relating to

cogeneration and small power production and relating to energy conservation improvements with any doubt as to “reasonableness” to be resolved in favor of the consumer.¹³

New York: The public service statute directs the commission to “encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the *public safety, the preservation of environmental concerns and the conservation of natural resources.*”¹⁴ (emphasis added)

Illinois: The state’s public utilities law states that “[t]he General Assembly finds that the health, welfare and prosperity of all Illinois citizens require the provision of adequate, efficient, reliable, *environmentally safe and least-cost public utility services* at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens.” The law further states that the goals and objectives of public utility regulation shall be to ensure *efficiency, environmental quality, reliability, and equity.*¹⁵ (emphasis added)

Recent changes in the membership and chairmanship of the PUC may influence whether or not legislation giving more specific directions to the PUC is needed in Hawaii. While it is still too soon to make any lasting assessment of the situation, early indications are that the reconstituted commission will be more pro-active than its predecessor commissions. Already it has initiated a number of new dockets with potentially far reaching ramifications rather than wait for these matters to be brought before it by others.

Slow build-up of administrative capabilities. The PUC’s approach to its role over the period since 1976 is also epitomized by the method and rate of development of its own administrative capabilities. When the PUC was separated from the Department of Regulatory Agencies, it started off with a severe handicap by virtue of the fact that the bulk of the staff remained with the PUD and did not go with the PUC. While the PUD retained 29 positions, the PUC was given only 8 positions. Included in the latter total were the three new full-time commissioners none of whom had had any previous experience in public utility regulation. The persons filling the other 5 positions included the former transportation administrator who returned to become the administrative director, a legal counsel, an auditor, the chief clerk, and a secretary. The legal counsel, a former deputy attorney general, was hired on contract by the commission.¹⁶

Thus, despite the broad grant of authority and responsibility and large task that it was given, the PUC was initially provided with very meager resources. Over the next several years, it

acquired 8 additional positions, but only 4 of these might be considered technical or subject matter support to the commission; the others consisted of 3 neighbor island representatives and 1 clerical position. Between 1980 and 1984, no additional technical positions were acquired by the PUC while one vacant clerical position was eliminated. Since then, there has been a gradual increase of staff up to the present 26 positions (including 3 vacant positions, the 3 commissioners, and the 3 neighbor island representatives).

In terms of staff numbers and qualifications, then, the PUC has been suffering from inadequate resources for much of the period since 1976. Even now, there are vacancies in two key technical areas and in the much needed area of clerical support. During this same period, the PUC has sought additional funding and positions from time to time, but for the most part, the agency has not made a strong case for its needs. This problem of staffing for the PUC is discussed more fully in a later chapter.

One way for making up for staff shortages is to employ outside consultants. This is particularly appropriate where workload tends to fluctuate and to require highly specialized expertise, which quite often characterizes the situation at the PUC. However, the PUC has neither sought nor received much additional funding for the employment of outside consultants. In contrast, the DCA regularly receives and expends substantial funds for this purpose.

Detracting from administrative capabilities has been the PUC's lack of an internal procedures manual, a library or other source of reference material, and adequate working space for the staff. Only recently have computers been acquired so that the agency can keep track of information and the staff can have the ability to access large amounts of data in an effective manner. The second chairman of the commission had recognized many of these shortcomings and was beginning to make progress in dealing with them prior to his departure from the PUC. However, many of the problems still remained when the present administration took office. Fortunately, it has given high priority to the resolution of these problems. The challenge is a formidable one.

Division of Consumer Advocacy. When looking at the DCA, it should be recognized that relative to the PUC, its role is more clearly and narrowly defined, and it has had more resources with which to work. Unlike the PUC with its broadly stated authority and responsibility to carry out adjudicatory, policymaking, and enforcement functions touching upon economic regulation, enhancement of public safety, environmental protection, and other matters, the DCA is specifically and exclusively charged with the task of looking out for the interests of consumers of public utility services in Hawaii. Moreover, when the PUC was separated from the Department of Regulatory Agencies in 1976, the PUD (predecessor of the DCA) was left with the bulk of the previously combined staff (including most of those with the most experience and expertise in public utility regulatory matters).

Under these circumstances, it should be expected that the DCA would be able to move more expeditiously than the PUC in shaping and carrying out its newly assigned role. Generally speaking, this has been the case. The DCA has fairly clearly established itself as the consumer protector in the public utilities field. Even so, however, it too has evidenced signs of passivity in its approach to its job.

Inconsistent initiative in entering cases. A truly pro-active Consumer Advocate would continuously be at the forefront in identifying possible impacts of utility company actions on the interests of consumers and in initiating or entering proceedings before the PUC aimed at protecting such interests. While the DCA has indeed been the initiator of actions filed with the PUC, in many instances--including cases with significant potential impact on consumers--the DCA has waited to be invited or directed by the PUC to become involved in such proceedings. Examples of this tendency are provided by recent "show cause" and investigation cases relating to the impact of the Tax Reform Act of 1986 on utility revenues and to the frequency, extent, and causes of electrical blackouts on Oahu and the neighbor islands. In these PUC-initiated cases, the PUC has been the one requesting the DCA to participate rather than being requested by the DCA to initiate action.

For some reason, the DCA appears to be extremely reluctant to become involved as a direct complainant in proceedings before the PUC. Prior to 1985, the DCA filed about a half dozen formal complaints dealing with transportation matters with the PUC. But since 1985, no formal complaints have been filed by DCA. While it or its predecessor was still performing the complaint handling function on behalf of the PUC, such a position might be understandable. However, since the staff members handling complaints were transferred from the DCA to the PUC in 1985, this should no longer be an inhibition on actions of the DCA.

Recommendations

With respect to roles and relationships in the regulation of public utilities in Hawaii, we recommend as follows:

- 1. The Department of Commerce and Consumer Affairs (in its capacity as Consumer Advocate in the public utilities field) and the Department of the Attorney General should jointly review that matter of how best to assure effective legal representation for the Consumer Advocate in the field of public utilities. If a proper level of continuity, coordination, and competence cannot be assured through the Department of the Attorney General, then the Division of Consumer Advocacy should be authorized to employ its own legal counsel to represent it in public utility regulatory proceedings.*

2. *The Public Utilities Commission, the Division of Consumer Advocacy, and the Department of the Attorney General should join together to establish and carry out a comprehensive and coordinated approach to identifying, representing, and protecting Hawaii's interests relative to federal regulation of public utility activities. This should include providing for: (a) the interchange of information among the three agencies, (b) the determination of when and by whom Hawaii's interests should be represented before federal bodies, and (c) the fixing of responsibility within each agency for monitoring federal activities and preparing recommendations regarding policy positions.*

3. *The Public Utilities Commission should take a more active and comprehensive approach to its role as Hawaii's primary public utility regulatory body. This includes taking a more balanced approach to its adjudicatory, policymaking, and enforcement responsibilities and broadening its scope of concern to encompass other considerations (environmental, public safety, economic development, etc.) besides economic regulation in its decisionmaking. If it feels that it needs clearer legislative direction on such matters, then it should seek such clarification from the Legislature.*

4. *In conjunction with the preceding recommendation, the Public Utilities Commission should take appropriate steps to strengthen its administrative capabilities. Inasmuch as the Public Utilities Commission has come under new leadership which has indicated its intention to improve internal operations, it should proceed with the preparation and implementation of an improvement plan.*

5. *The Division of Consumer Advocacy also should take a more active and comprehensive approach to its role as Consumer Advocate in the field of public utilities, including taking the initiative on all matters of significant consequence to Hawaii's consumers.*

Chapter 3

AN ASSESSMENT OF REGULATORY POLICY MAKING AND ENFORCEMENT ACTIVITIES

In this chapter we assess the policy making and enforcement activities of the Public Utilities Commission (PUC) and of the Division of Consumer Advocacy (DCA) of the Department of Commerce and Consumer Affairs as reflected in the approaches of these agencies to rule making, to the handling of consumer complaints, and to the provision of consumer information and education.

Summary of Findings

Although our previous management audit report on the public utilities program issued in 1975 pointed to serious deficiencies in the regulatory approach then being taken to rule making, consumer complaint handling, and consumer education, very little has been done to improve operations in these areas in the ensuing 13 years. More specifically:

1. The Public Utilities Commission is continuing to rely upon rules and regulations that for the most part date back to the 1960s and early 1970s, and thus has not complied with statutory requirements governing the updating of administrative rules.
2. Meanwhile, the Division of Consumer Advocacy has avoided altogether the adoption of any rules and regulations despite its recognition that existing rules and regulations are inadequate.
3. Neither the Public Utilities Commission nor the Division of Consumer Advocacy is giving adequate attention to the handling of consumer complaints in the public utilities field. As a result, present efforts in this area are weak and disjointed, and complaint handling has been rendered largely ineffective as a means of assuring and promoting the protection of public utility consumers.
4. The Division of Consumer Advocacy has done virtually nothing in the area of consumer information and education; moreover, it has failed to develop any plan or strategy for action on the matter.

The Role of Rule Making in the Public Utility Regulatory Process

Agencies charged with regulating public utilities, including Hawaii's PUC, are entrusted with a complex and challenging task. In effect, they are expected to serve as a substitute for the marketplace in determining, or at least setting limits on, economic decision making on the part of regulated public utilities and their customers. To perform this difficult function, these agencies are vested with broad regulatory powers. Key among these powers is the authority to adopt and enforce rules and regulations which have the force of law. This reflects recognition by legislative bodies that while they can set general policies, they themselves cannot give the public utilities field the detailed and continuing attention required to carry out this marketplace function. Much the same applies with respect to other areas of regulatory control given to public utility commissions, such as those relating to public safety and environmental protection.

Rule making, then, represents the means by which regulatory agencies: (1) establish the precise machinery for carrying out the public utility marketplace function (such as setting rates and approving capital expenditures) and exercising other types of regulatory control, and (2) set various standards (such as for quality of service, for public safety, and for environmental protection) which the regulated industries are expected to meet.

Having the authority to make and amend rules also gives regulatory bodies the flexibility to react and adjust to changing conditions. This is especially important in times when many significant and rapid changes may be occurring. Such has been the case in recent years in the public utilities field where the giant AT&T telephone monopoly has been broken up by court action; where the federal government has given strong impetus to deregulation of airline services, trucking, and telecommunication services; where there has been considerable restructuring and consolidation within affected industries as a result of corporate mergers and acquisitions; and where far reaching technological innovations are occurring, such as the uses of satellites, fiber optics, and digital switches in the telecommunications field.

From the foregoing, it can be seen that rule making lies at the heart of the policy making authority and responsibility of affected regulatory agencies. In the cases of the PUC and the DCA, both are given rule making power under Chapter 269, HRS.

Requirements of the Hawaii Administrative Procedure Act. To provide an orderly, consistent, and readily understandable process for adopting and implementing rules and regulations and to promote equity and justice throughout this process, the Legislature has enacted the Hawaii Administrative Procedure Act (APA)(Chapter 91, HRS) which sets forth standardized requirements all affected agencies (including the PUC and the DCA) must meet when exercising their rule making authority and responsibility. Among these requirements is

the mandate that each agency compile, index, and publish all of its rules in the manner prescribed by the revisor of statutes. Compilations are to be supplemented as often as necessary and revised "at least" every ten years. Moreover, all agencies were required to compile and publish all existing rules in the format prescribed by the Revisor of Statutes (that is, the Ramseyer format) within two years of June 21, 1979 (that is, no later than June 21, 1981).

The APA further stipulates that the adoption, amendment, or repeal of any rule by a state executive agency is subject to the approval of the Governor. Pursuant to this statutory provision, the Governor has established procedures for the review and approval of proposed rules. Under these procedures, such review and approval is required before the proposed rules go out for public hearings and before they are finally adopted. The procedures also require all proposed rules to obtain an "approval as to form" from the attorney general.

Previous audit findings relating to rule making.¹ In our 1975 audit report on the public utilities program, we found that the PUC was not paying sufficient attention to its rule making responsibilities. As a result, many rules were out of date while there were no rules in areas where they were needed. Accordingly, we recommended that the PUC recognize the importance of its rule making responsibilities, that it update or establish rules as appropriate to the various facets of its authority and responsibilities, and that it develop and implement a system for maintaining its rules on a current, comprehensive, and integrated basis.

Failure of the PUC To Modernize Its Rules

In the 13 years since 1975, there has been little change in the situation affecting the PUC's rules. Many of the rules have not been revised at all during this period; others have undergone only minor amendment. Only five new rules have been adopted. Only two of the latter are in the Ramseyer format although all rules were statutorily required to be in this format by June 21, 1981.

At the time of our last audit, the PUC's rules were in the form of "general orders" (G.O.s). There were 10 of these G.O.s. The first set forth the general rules of practice and procedure before the PUC. The others contained specific rules relating to the individual industries regulated by the PUC. At the time of our current audit, 13 G.O.s were still in effect (although some have undergone amendment in the interim). In addition, two new rules using the Ramseyer format and system of numbering have been adopted.

Five of the 15 rules date back to the 1960s; 7 were adopted or last revised in the 1970s; 3 were promulgated in the 1980s. In all of the areas covered by these rules, there have been significant industry and technological changes within the past 13 years. Of the three rules adopted in the

1980s, one related to accounting rules for motor carriers while the other two were adopted in response to the federal government's Public Utilities Regulatory Policy Act (PURPA) which was aimed at encouraging the development of alternative sources of energy.

PUC efforts to comply with APA requirements. The PUC has made some efforts to comply with the requirements of the APA, but generally these efforts have been tardy and far short of what is needed. For example, it was not until May 1981--just before the statutory compliance deadline of June 21, 1981--that the PUC entered into a contract with a legal consultant to draft or redraft the PUC's rules so as to bring them into conformance with the requirements of both the APA and PURPA.² This contract was for the period of May 1981 through December 31, 1981.³ The contract also called for preparing "other rules" to be in conformance with the APA. The contract was later amended to extend the consultant's services to June 30, 1982. The PUC justified the extension on the grounds that there was a surplus of funds from the PURPA program (which terminated on December 31, 1981) and that formatting the rules to comply with the APA requirements still needed to be finished. The consultant completed his work sometime in 1983.

The PUC entered into another contract with the same consultant in June 1986.⁴ This contract was for the period of June 1 to September 30, 1986. This time, the consultant was to assist in the preparation and promulgation of the rules in the Ramsmeier format as required by the APA. In March 1988, the PUC submitted to the Governor for his initial review and approval proposed changes in G.O.s Nos. 1, 2, 3, 3-A, 7, and 8.⁵ The proposed revised rules were also submitted for approval as to form to the Attorney General. The Attorney General returned two of the draft rules with comments which were incorporated into redrafts of those rules.

So far, however, none of the proposed revisions has gone to the public hearings stage and the PUC still has not formally revised any of the 13 G.O.s so as to bring them into compliance with the APA. At the time of this audit, the consultant was still drafting revisions, and the commission and staff were still reviewing his work.

As might be expected from efforts aimed primarily at complying with the required APA format, many of the changes incorporated in these revisions of the G.O.s are concerned more with form than with substantive content. For example, the proposed revisions of G.O. No. 1, the general administrative procedures of the PUC, generally involve the renumbering and reorganizing of existing sections to fit the Ramsmeier format. Only two new sections--"Protective Orders" and "Applications to Change Tariff Provisions by Utilities with Annual Gross Utility Operating Revenues of Less than \$2,000,000"-- have been added. Other substantive changes relate to expanded requirements for exhibits and other data for test years used in rate cases and for financial and affiliate information required in tariff change applications.⁶

The one proposed revision that provides for extensive substantive change is that for G.O. No. 8 relating to standards for telephone service. This revision is quite comprehensive and contains a number of new sections which address some of the technological strides made in the telecommunications field since the rule was last amended in 1972.⁷ It represents the results of a special government-industry task force that was set up for the purpose of bringing this rule up to date. Unfortunately, however, six years have elapsed since the task force submitted its report. In the meantime, there have been many new developments in the telecommunications field. As a consequence, a further updating of the rule is needed to bring it into line with current conditions.

PUC dockets on rule making. In addition to, and sometimes overlapping, the efforts to bring the PUC's rules into compliance with the APA, there have been five dockets opened before the PUC in the period since 1980 which relate to making changes in the PUC's rules. Three of these were initiated by the PUC itself; the other two were initiated by the Hawaiian Electric Company and by a motor carrier association. Table 3.1 summarizes the status of these dockets at the time of this audit.

Table 3.1
PUC Dockets Relating to Rule-Making

<u>G.O.</u>	<u>Rule</u>	<u>Docket No.</u>	<u>Date</u>	<u>Status</u>
7	Electricity	4250	3-23-81	Open
8	Telecommunications	4369	9-22-81	Closed, 5-18-88
1	Administrative Procedures	4775	1-20-83	Open
8	Telecommunications	5266	2-15-85	Open
3A	Classification of Passenger Carriers	5293	4-24-85	Closed, 5-18-88

As can be seen from Table 3.1, three of the dockets still remain open. The other two were closed on May 18, 1988, following the submission of proposed rule revisions to the Governor in March 1988. These two rule changes are also still pending. Brief descriptions of these rule making dockets are set forth below.

Docket No. 4250--Electricity (G.O. No. 7). In 1981, Hawaiian Electric Company (HECO) requested that a docket be opened to update the meter testing standards in G.O. No. 7. HECO submitted draft rules that would amend the rules adopted in 1965 and make the PUC's meter testing regulations consistent with the current requirements of the American National Standards Institute (ANSI). HECO stated that the proposed amendment would improve the efficiency of an electric utility's meter testing operations and would not adversely affect customers or the quality of service. Seven years later, the PUC still has taken no action on this rule update request.

Such inaction on the part of the PUC forced HECO to take an alternative course to obtain its desired objective. In 1984, HECO again approached the PUC on this matter. With Maui Electric Company (Kauai Electric Company was also allowed to intervene), it filed an application requesting approval of a waiver of G.O. No. 7's meter testing standards and permission to use the current ANSI standards. HECO stated that this was necessary to comply with county requirements and to eliminate a conflict between PUC and county rules. The longer periodic testing intervals permitted by ANSI would also enable utility companies to realize savings in their meter testing expenses. The PUC granted the requested waiver and permission to conform to the ANSI standards until such time as G.O. No. 7's standards were revised.⁸

While Hawaii's electric utilities are thus allowed to follow the ANSI standards, this is accomplished through the backdoor route of a waiver of the rules and is not reflected directly in the rules of the PUC. This does not represent a very desirable approach to rule making.

Dockets No. 4369 and No. 5266--Telecommunications (G.O. No. 8). The PUC adopted G.O. No. 8 in 1965 and last amended this rule in 1972. In 1981, the PUC opened Docket No. 4369 and established a joint task force--consisting of a consultant contracted by the PUC and representatives of the PUC, the Public Utilities Division (predecessor of the present Division of Consumer Advocacy), and the Hawaiian Telephone Company--to review the adequacy of existing telephone service standards and to determine if a rule making proceeding on the matter should be initiated.⁹

In May 1982, the task force completed its review and recommended that new measures, standards, and practices be included in a revised general order. However, it was not until almost three years later, in February 1985, that the actually initiated formal rule making proceedings by opening Docket No. 5266.¹⁰

In March 1988, the PUC submitted to the Governor for his initial review and approval the newly formatted "Chapter 71, Telecommunications Service Rules." At that time, the PUC indicated that "just about all of the recommendations of the Task Force" had been embodied

in the new chapter, which would also repeal G.O. No. 8.¹¹ Then, in May 1988, the PUC finally closed Docket No. 4369, which had originally established the task force. Docket No. 5266 still remains open.

In the meantime, it should be recognized that many important developments have been occurring in the telecommunications field (such as widespread use of digital switches and fiber optics) which render the task force's recommendations obsolete and out of date. Thus, even if the new Chapter 71 is actually adopted, it still will not be adequate to meet present needs. This is already apparent with regard to provisions regarding refunds for loss of service. Major outages due to faults in the digital switches being used have led to a reexamination of this matter by the PUC.

Docket No. 4775--Administrative Procedures (G.O. No. 1). On January 10, 1983, the PUC submitted to the Governor for his initial review and approval proposed revisions to G.O. No. 1 which would bring the PUC's general procedural rules into conformance with the APA. This revision had been prepared by the legal consultant who had been hired for this purpose. Ten days later, the PUC opened Docket No. 4775 for the "purpose of repealing General Order Number 1 and substituting "Title 6, Chapter 61, Proposed Rules of Practice and Procedure Before the Public Utilities Commission." On March 16, 1983, the Attorney General returned the proposed revisions with some suggested changes. On May 30, 1984, the Governor signified his approval for the PUC to proceed with public hearings on the proposed rule changes. To date, no hearings have been held on this docket and the docket remains open.¹²

Docket No. 5293--Transportation (G.O. No. 3-A). The PUC adopted G.O. No. 3-A, "Classification of Passenger Carriers" in 1979. Under this rule, passenger motor carriers were divided into three classifications for regulatory purposes. These three categories were: 1 to 7 passengers, 8 to 17 passengers, and more than 17 passengers. The classifications reflected the sizes of the vehicles most commonly used at that time. The rules were somewhat different for the three classifications (tending to be more stringent for the larger vehicles).

In April 1985, an association representing motor carriers in the 1 to 7 and 8 to 17 classifications requested the PUC to initiate procedures to amend the classification scheme so that the three classifications would be 1 to 7, 8 to 25, and more than 25. This was to reflect changes taking place with regard to the sizes of tour groups and the sizes of vehicles used to transport these groups. With the sizes of groups tending to be smaller, the industry was swinging to greater use of minibuses capable of carrying up to 25 passengers. Due to cost and comfort considerations, this size vehicle has become quite popular with tourists.

In response to this request, the PUC opened Docket No. 5293 on April 24, 1985. It was not until March 1988, however, that the PUC finally submitted to the Governor for his initial review and approval a combined and reformatted version of G.O.s Nos. 2, 3, and 3-A. On the basis of this action, the PUC then closed Docket No. 5293 on May 18, 1988. However, the proposed new rules still have to go through the public hearings process after the PUC receives executive approval to do so.¹³

Thus, at the very earliest, it will be sometime in the Spring of 1989 before the new rules can be adopted and put into effect. Considering the importance of the tourist industry to Hawaii, it should not take four years or more to change rules affecting this industry. Until these changes are put into effect, many passenger carriers will either have to comply with inappropriate regulations or operate in violation of the existing rules.

No rules for water and sewer utilities. In our previous audit of the public utilities program, we noted that rules and regulations were absent with regard to private water and sewer utilities subject to the PUC's regulation. Since then, the number of such companies has increased from 4 to 18. Most of these companies are located on the neighbor islands. Despite this industry growth, however, no rules and regulations have yet been developed, much less adopted, with respect to water and sewer utilities.

When we inquired about this continued lack of rules, we were told; (1) the need for such rules is not critical because many of the basic requirements governing these utilities can be, and are, included in the tariffs approved for the affected companies, (2) the PUC has been aware of the need for rules in this area but has been unable to give the matter attention due to a heavy workload and insufficient personnel resources; and (3) the PUC is planning to establish a task force (composed of representatives of the PUC, the DCA, and the affected water and sewer companies) to develop appropriate rules and a uniform system of accounting.¹⁴ Such a task force is expected to meet in 1989.

After more than 12 years of inaction, the sooner such effort gets under way, the better.

Failure of the DCA to Adopt Any Rules

The foregoing discussion has focused on the failure of the PUC to update its existing rules and to adopt new rules where these may be needed. At the same time, however, it should also be recognized that the DCA (on behalf of the director of the Department of Commerce and Consumer Affairs in his capacity of consumer advocate) has statutory authorization to adopt rules as may be necessary to perform the function of Consumer Advocate. While this authority may not be as broad and as far reaching as that of the PUC, nevertheless it represents a powerful tool

which the DCA can utilize to carry out its consumer protection objectives. For example, if the DCA is dissatisfied with the PUC's rules governing such matters as consumer complaints, consumer information, and disclosure by utilities of information about matters affecting consumer interests, there appears no reason why it could not adopt rules of its own on these subjects (so long, of course, as direct conflicts with PUC rules are avoided).

Since the separation of the consumer advocacy function from the PUC in 1976, however, there appears to have been no serious effort made by the DCA (or its predecessor) to develop and adopt any rules and regulations of its own. This is true despite expressed dissatisfaction with some of the PUC's rules and with efforts by the PUC to update its rules. The most it has done in this area has been to petition the PUC on a sporadic basis to initiate rule making action and to participate in the several task forces which the PUC has set up from time to time to work on developing or revising rules for the PUC.

The main reason given by the DCA for not having been more aggressive in the area of rule making is that it felt it was in a weak position relative to the PUC with regard to being able to adopt rules and gain compliance with them on the part of the regulated utilities. We do not feel, however, that this is an adequate justification for inaction. The best way to determine whether present authority is sufficient is to go through the actual process of adopting rules and seeing if they work. If they work, then the desired objective will have been attained. If they do not work, then alternative courses of action can be assessed (such as seeking legislative strengthening of the agency's rule making authority). Until the DCA establishes a stronger record for itself in the area of rule making, it is not in a good position to criticize the PUC's inadequacies with regard to rule making.

The Role of Complaint Handling in Public Utility Regulation

Consumer complaints can be an important management and marketing tool in almost any consumer-oriented industry. They provide a means by which the industry can gauge customer reaction to the industry's goods and services and can determine where faults and deficiencies are occurring which deserve corrective action. Progressive companies recognize the value of an effective complaint handling process and devote considerable attention to making sure complaints are dealt with promptly and satisfactorily, searching out the causes for complaints, and taking remedial action to prevent the continuing recurrence of the same complaints. This is reflected in such things as "hot lines" and the establishment of careful procedures to record and analyze complaints, their causes, and corrective actions taken.

Even where companies fail to consider consumer complaints as a matter of prime concern or actually refuse to act on them voluntarily, governmental machinery has been established to protect consumer interests by providing a complaints handling process. This is in recognition of the uneven relationship that often exists between a company and its customers and the need for someone else to step in and bring this relationship into a more even balance.

In the public utilities field, it is to be hoped that the utilities themselves will recognize the importance of consumer complaints and will institute measures on their own to make sure complaints are dealt with promptly and effectively. At the same time, in a monopolistic situation where competition is absent and the customer has little or no recourse to take his or her business elsewhere (which normally characterizes public utilities), a company may feel little incentive to do much about consumer complaints. This is when it is important that the regulatory authorities take appropriate steps to ensure that there is an effective process for handling complaints.

Normally, then, there are several different levels at which complaint handling is dealt with in the public utilities field. First, is the company level; here consumers lodge their complaints directly with the company and follow-up action is taken by the company without any direct involvement of governmental authorities (although the regulatory rules may prescribe certain consumer rights and recordkeeping requirements). Next is the informal regulatory level; here complaints are lodged with the regulatory authorities who then oversee the follow-up action taken (which may actually be performed by the utility under regulatory surveillance). Finally, there is the formal regulatory level; here a formal complaint is filed and formal proceedings are followed to investigate the matter and arrive at some resolution enforceable through the authority of the regulatory body.

To be considered adequate, a complaints handling process in the public utilities field should encompass all three levels of complaint handling activity and should be aimed at analyzing and determining the causes of complaints as well as arriving at equitable resolutions of particular problems. Under this approach, complaint handling should serve as an important indicator of the quality of service being rendered.

Earlier audit findings regarding complaint handling.¹⁵ In our 1975 audit report on the public utilities program, we found that the standards governing the quality of service set forth in the PUC's rules were "incomplete, vague, and indefinite." We further found that the PUC lacked an "integrated system for the handling, recording, and analyzing of data on consumer complaints." Accordingly, we recommended that a complaint handling process be established that would facilitate the airing of consumer complaints, ensure proper attention to those complaints, and enable utility services to be monitored and upgraded.

Shared responsibility for complaint handling by PUC and DCA. The PUC and the DCA are given shared responsibilities with regard to complaint handling. While Chapter 269, HRS, does not explicitly assign such responsibility to the PUC, it does vest the PUC with various functions which relate to the investigation and rectification of consumer complaints. These include the following:¹⁶

- Examining the condition of each public utility and conducting investigations on its own motion or upon sworn written complaint;
- Requiring information from public utilities concerning any matter the PUC is empowered to investigate;
- Compelling the attendance of witnesses and production of documentary evidence during its investigations and proceedings;
- Instituting proceedings to require utilities to correct deficiencies;
- Conducting investigations, upon written complaint or upon its own motion, to compel motor carriers to comply with PUC requirements;
- Investigating, on its own initiative or upon written complaint, whether any water carrier has failed to comply with statutory or PUC ordered requirement; and
- Giving reasonable notice in writing to affected utilities concerning investigations it is conducting or actions it is instituting.

In addition to the foregoing, Section 269-55, HRS, relating to public utilities consumer advocate (DCA) specifies that one of the duties of DCA is to “monitor the handling of consumer complaints by the public utilities commission.” This reflects the apparent legislative assumption that the PUC would continue to have responsibility for handling consumer complaints after the consumer advocacy function was separated from the PUC just as it had this responsibility up to then.

In its rules, the PUC has divided complaints into two categories: “formal” and “informal.” Formal complaints must be filed in writing and must specify the facts involved, the relief desired, and the sections of law which have allegedly been violated. The PUC must then give the affected utility the opportunity to answer the charges within a given time period, after which a hearing on the matter must be held.

As the term indicates, informal complaints call for less stringent procedural requirements. Complaints are still supposed to be submitted in writing and to indicate what the problems are and the type of relief sought, along with supporting documentation (such as bills and letters). If it appears that the complaints are susceptible to “informal adjustment,” the PUC may transmit copies or the substance of the complaints to the affected utilities for appropriate follow-up action.

The PUC may also seek voluntary resolution of complaints through correspondence or conferences with the affected parties. In any event, complainants must be notified of the disposition of complaints before cases are to be closed. Informal proceedings are discontinued whenever formal complaints are filed.¹⁷

The PUC's rules also impose certain responsibilities on the regulated utilities themselves with regard to complaint handling. For example, the standards for electricity, gas, and telephone service require each utility to make a "full and prompt investigation" of all complaints received from customers, either directly or through the PUC, concerning charges, practices, facilities, or service. Similarly, gas and electric utilities must keep chronological records of all complaints and method of disposition for at least two calendar years after the complaints have been adjusted.

These are basically the same rules that were in effect when we conducted our last audit of the public utilities program. At that time, we found that "the general orders are silent as to how utilities should react to valid complaints and what actions, if any, they should take other than conducting full and prompt investigations."¹⁸ In short, neither then nor today do the PUC's rules provide for a comprehensive and consistent approach to the whole area of complaint handling.

With regard to the DCA, it is given explicit responsibilities relative to complaint handling, but the statutes do not further define or describe these responsibilities or indicate how they should interact with or relate to the powers and duties of the PUC. Section 269-55 simply states that the Consumer Advocate "shall provide a central clearing house of information by collecting and compiling all consumer complaints and inquiries concerning public utilities and shall monitor the handling of consumer complaints by the public utilities commission."

In addition to the foregoing, the DCA is also authorized to conduct investigations to secure information required for the administration of Chapter 269, HRS. It may also institute proceedings for "appropriate relief" before the PUC if it determines that a public utility has failed to comply with any of the PUC's rules, regulations, or other requirements. Finally, the DCA is empowered to adopt rules necessary to effectuate the purposes of Part II (relating to the consumer advocate) of Chapter 269, HRS.

As noted earlier, despite its own authority to adopt rules, the DCA has not adopted any rules at all, including in the area of complaint handling.

Inadequate Attention to Complaint Handling

Since our 1975 audit report on the public utilities commission and the separation of the consumer advocacy function from the PUC in 1976, very little sustained attention has been given to complaint handling by either the PUC or the DCA despite (or perhaps because of) their shared

responsibilities in this area. As a consequence, very little has been done to change or improve the conditions that we found in 1975. Hawaii still lacks a comprehensive and integrated approach to complaint handling where consumer rights are clear and widely known, where there is machinery for the consistent, equitable, and timely handling of complaints, and where complaints at all levels are being monitored and evaluated as a means of determining the quality of service and improving that quality.

Disruption and confusion due to organizational split. Much of the neglect of complaint handling that has occurred (especially during the late 1970s and early 1980s) can be attributed to the organizational separation of the PUC from the PUD (now the DCA) in 1976. As noted in the preceding chapter, when this split occurred, most of the staff remained with the PUD while only a few went to serve the reconstituted commission made up of three members who were completely new to the field of public utilities regulation. Thus, while the PUC's responsibilities relating to complaint handling remained basically unchanged, the three staff members who had previously handled this function remained with the PUD and the PUC was provided with no direct resources to take care of complaint handling.

With this split, then, one agency ended up with the relevant staff resources while the other retained its pre-existing responsibilities. Although the PUD was given its own responsibilities relative to complaint handling, this staff was not used to define and implement a new or different role for the PUD relative to this area of its duties and powers. Instead, the three investigators continued to perform much as they had previously. Recognizing that it had the resources needed by the PUC for complaint handling, the PUD agreed to assist the PUC in this area until relationships and procedures could be clarified and the PUC was given the necessary personnel to perform its complaint handling responsibilities. This does not mean, however, that all complaint handling was taken care of by the PUD's investigators. Inasmuch as the PUC had a representative permanently stationed in each of the three neighbor island counties whereas the PUD's staff was not dispersed geographically in this manner, the PUC ended up attending to many of the complaints made on the neighbor islands. On a sporadic basis, other staff members have also been expected to handle complaints in addition to their other regular work assignments.

This situation continued until January 1985 when two of the investigators were transferred to the PUC. In 1987, the third investigator was transferred to the Regulated Industries Complaints Office, another unit within the Department of Commerce and Consumer Affairs. Since 1987, then, the DCA has had no staff assigned to work in the area of consumer complaints. In addition to its three neighbor island representatives (who have other duties besides handling complaints), the PUC has had the two investigators since 1985. However, besides investigating

complaints, these investigators have also been responsible for carrying out the PUC's pipeline safety inspection program in accordance with federal requirements. From time to time, other staff members may also work on complaint cases when their particular expertise may be needed.

In summary, no concerted individual or joint attention has been given to complaint handling by the PUC and the DCA in the past 12 years. Since the three investigators were transferred out of the DCA, that agency seems to have assumed that it no longer had any ongoing responsibilities in the area of complaint handling and has given the subject virtually no attention. As for the PUC, it has not seen any need to focus on this subject. As a result, it continues to let the two investigators and three neighbor island representatives operate in much the same manner as they always operated with respect to complaint handling, with occasional assistance from other staff members on an as-needed basis. Under these circumstances, it should come as no surprise that no significant improvement in complaint handling has occurred since our previous audit.

Inadequacies in the PUC's current handling of complaints. When trying to assess the PUC's complaint handling process for this current audit, we found ourselves severely handicapped by the paucity of information on the subject within the PUC. For example, the PUC has no agency-wide system for receiving and logging complaints or for compiling information on the disposition of complaints. Similarly, there is no requirement or system for the collection of information on complaints handled directly by the utilities themselves.

The two investigators on Oahu and the three neighbor island representatives each have their own methods of recording complaints. The logs of the two Oahu investigators include telephone complaints which are resolved by telephone. No file record is kept on these transactions. At the end of the fiscal year, the complaints by utilities (those in logs and files) are aggregated for the PUC's annual report to the Governor and the Legislature. For example, its report for fiscal year 1985-86 indicates that 778 informal complaints were received for that year, of which 567 concerned utilities and 211 related to transportation.

While summary complaint information may sometimes be reported on a fiscal year basis, the actual complaint handling file (written complaints) on Oahu is kept on a calendar year basis. Thus, it is impossible to go behind these reported figures and determine what they specifically include. For instance, we were told that 451 of the 778 complaints reported for fiscal year 1985-86 were for the island of Oahu, including 122 relating to electricity, 13 relating to gas, 247 relating to telephone, 3 relating to interisland barge service, and 66 relating to motor carriers. However, when we examined the complaint files for Oahu for calendar year 1986, we could find only 88 written informal complaints in the files. According to the investigator, the remaining complaints were logged complaints that were resolved over the telephone. This is a very high number of complaints where the only record is a log sheet with notations.

With such scant information we were unable to make a more detailed review of the resolved telephone complaints that were logged by the investigators, but we did analyze the 88 written complaints on Oahu for 1986 that were contained in the PUC's files. The results of this analysis are summarized in Table 3.2 (for the electricity and telephone utilities; there were none for the gas, water, and sewer utilities) and Table 3.3 (for motor carriers; there were none for water carriers). These tables show that: (1) out of 68 complaints against the electric and telephone utilities, the most numerous related to billing and payment problems (33) and customer service problems (16), and (2) out of 20 complaints against motor carriers, 10 involved allegations of illegal activity (such as operating without a certificate). We also found that only 12 out of the 88 complaints had been recorded on the PUC's official complaint form. The PUC keeps no information on telephone inquiries or on the number of informal complaint forms sent to complainants but not returned to the agency.

Table 3.2
Analysis of Informal Complaints Filed with the PUC
Against Oahu Utility Companies
Calendar Year 1986

<u>Type of Complaints</u>	<u>Hawaiian Telephone Co.</u>	<u>Hawaiian Electric Co.</u>
Billing/Payment	21	12
Rates	4	—
Customer Service	12	4
Service Interruption	2	2
Service Termination	2	1
Out of Order/Static	3	—
PUC G.O. Violation	1	—
Credit	—	1
Total	45	23

Note: There were no written complaints to the PUC on Oahu gas, water or sewer utilities in 1986.

Source: Complaint Files, Public Utilities Commission.

In terms of actual procedure, the PUC receives informal complaints through either telephone calls or letters and then handles them via an informal internal process. On Oahu, telephone calls are routed to the two investigators when they are available and to available technical staff when the investigators are out of the office. The two investigators normally handle cases, with backup assistance by technical staff as needed. Where calls are considered to involve legitimate

complaints, a complaint form is sent to be completed by the caller or as noted above; but complaints may also be resolved via the telephone. When the complaint forms are sent to complainants, the PUC staff estimates that only about 50 percent of the forms sent out are returned. Copies of written complaints (letters or on returned PUC forms) are then usually sent to the affected utilities with a request that the utilities respond directly to the complainant with a copy of the response to be provided to the PUC. Generally, the investigators accept the solutions and responses of the utilities, but in a few instances they request a further review to see if a better solution might be provided. Much the same process is followed by the three neighbor island representatives except that the interaction is likely to be much more direct due to the smaller size of activities on those islands.

Table 3.3

Analysis of Informal Complaints Filed with the
PUC Against Oahu Common Carriers
Calendar Year 1986

<u>Types of Complaints</u>	<u>Number of Complaints</u>
Illegal Activities	10
Damaged/Missing Goods	4
Billing/Payment	4
Driver's Behavior	<u>2</u>
Total	20

Source: Complaints Files, Public Utilities Commission.

In effect, then, most of the complaint handling occurs at the utility company level. In the cases of the two largest utilities (Hawaiian Electric Industries and Hawaiian Telephone Company), complaints from the PUC are forwarded to designated individuals or departments within the companies for resolution. The telephone company has committed itself to responding to oral complaints or inquiries from the PUC within three working days and to address written complaints or inquiries within ten working days.

In addition, Hawaii's utilities have also developed their own in-house complaint handling systems. The electric, gas, and telephone companies on Oahu each has formal procedures for receiving, logging, and taking action on complaints. Representatives of these companies indicated that they view complaints as a matter of high priority and that they try to resolve complaints as expeditiously as possible. For the larger utilities, telephone and written complaints may average

a hundred or more per month. However, many of these are said to involve questions about billing and service practices which can be dealt with quite quickly by company employees.

From the regulatory perspective, there is no reporting, monitoring, or analysis of complaints handled directly by the utilities themselves. There is also no attempt to relate the types and frequency of complaints received directly by the utilities to those channeled through the PUC. As a consequence, regulators are unable to use the handling of complaints as a means of measuring quality of service or of detecting the emergence of new problems.

Inadequacies in DCA's approach to complaint handling. The DCA has been somewhat ambivalent in its approach to complaint handling. On one hand, it has been fairly attentive to complaints of Hawaii consumers regarding matters subject to regulation by federal agencies. This is in recognition of the responsibility given to the consumer advocate under Chapter 269, HRS, to represent Hawaii's consumers before federal agencies as well as the PUC. On the other hand, since the DCA's three investigators were transferred out of division, the DCA has given virtually no attention at all to complaint handling by the PUC or by the utility companies. This is despite its statutory mandates to maintain a clearing house of information on complaint handling and to monitor the PUC's performance with respect to complaint handling.

Matters subject to federal regulation include the interstate movement of household goods, long distance telephone service, and ocean-borne common carriage--all of keen importance to some or many consumers in Hawaii. Due to this importance and the fact that federally related matters often tend to be quite complex, the DCA has indicated that it accords a high priority to this area of its responsibility. This is reflected in the fact that the DCA's executive director, transportation administrator, and utilities administrator coordinate the handling of such complaints with the affected federal agencies.¹⁹ Even so, such matters are handled on a case by case basis; the DCA has not established any formal procedures to ensure that these matters are handled on a comprehensive, integrated, and consistent basis. In short, the level of agency activity in the federal area is highly dependent upon the interest and attention of particular individuals; the DCA is not geared organizationally to function regularly in this area.

Based upon available information, the DCA has recognized the important role that complaint handling can and should play in the area of public utility regulation and did make at least one attempt to define and implement its statutory responsibilities in this regard. Sometime in 1980, it prepared a report showing the types and disposition of complaints received by the PUC.²⁰ In this report, it noted that the PUC's informal complaint handling process offered the following benefits: (1) it gives consumers immediate attention and assistance; (2) it enables complaints to get through utility company organizational levels to the management level which is adept at

handling consumer problems; (3) it benefits the utilities by having the PUC screen fact from emotion and thereby allow the utilities to give immediate consideration to the issues involved; and (4) it relieves the commissioners of the additional workload that would be involved in hearing and acting upon formal complaints.

However, this report seems never to have left the division. There is also no indication that any further efforts were made to update the report or to disseminate it beyond the division.

Need to focus on complaint handling. Assuming that a comprehensive and integrated approach to complaint handling should be effectuated with respect to public utility regulation in Hawaii, it is apparent from the foregoing that attention needs to be focused on bringing this about. There are several ways the situation might be improved: (1) by vesting this responsibility entirely in the PUC; (2) by making the DCA fully responsible for complaint handling; or (3) by having the PUC and the DCA jointly work out how each should function with respect to complaint handling. There are advantages and disadvantages to each of these alternatives.

Inasmuch as neither the PUC nor the DCA has given the subject of complaint handling much attention in recent years, perhaps the best first step would be for the two agencies to examine jointly the whole issue of complaint handling with the objective of determining how it might be dealt with most effectively. Based upon this joint effort, they could then recommend an appropriate course of action to the Legislature.

In any such joint effort, consideration should be given to the complaint handling procedures of other state agencies, such as the Regulated Industries Complaints Office and the Office of Consumer Protection under the Department of Commerce and Consumer Affairs, as possible models for handling complaints in the public utilities field. Similarly, they should look to the experience of other jurisdictions for guidance in improving the complaints handling process and in updating present outmoded rules and standards in this area. Subjects that might be included in such a review include the following: (1) complaint data analysis as a means of monitoring quality of service; (2) aggressive methods of ensuring utility compliance with service standards; (3) mediation of service termination and other disputes between utilities and their customers; (4) rules governing complaint handling; (5) interest on customer deposits (Hawaii's required minimum is 6 percent per year while some jurisdictions go as high as 12 percent); (6) rules for repairs and other "people-delivered" services; and (7) conservation and resource programs.

Neglect of the Area of Consumer Education

Consumer protection is divided among several different agencies in Hawaii, many of them under the Department of Commerce and Consumer Affairs. For a large number of regulated

professions and occupations, this function is carried out by various professional and occupational regulatory boards and the Regulated Industries Complaints Office. For a broad area of commercial activity, the function is performed by the Office of Consumer Protection. In the public utilities field, the DCA and the PUC share responsibility for this function. In some of these areas, consumer education is clearly recognized as an important element of an overall approach to consumer protection. For example, some of the professional and occupational boards have set up educational funds to support education and dissemination of information relating to their professions and occupations.

In like manner, the Office of Consumer Protection is statutorily empowered to do the following relating to consumer education:²¹

- Assist federal, state, and local agencies in protecting and promoting the interests of consumers;
- Conduct investigations and analysis of issues and take appropriate action to protect consumers;
- Recommend new laws to the Governor and the Legislature that will be in the interests of consumers;
- Organize and hold conferences on consumer problems and encourage fair and responsible business practices;
- Provide a central clearing house of information by collecting and compiling consumer complaints;
- Provide, promote, and conduct consumer education programs; and
- Perform other acts incidental to the specific powers and functions given to the office.

Chapter 269, HRS, gives many of these same powers and functions to the DCA insofar as the public utilities field is concerned. However, it is not quite so explicit with regard to the subject of consumer education. Even so, it appears reasonable to infer that an aggressive program of consumer education would fall within the authorized duties and powers of the DCA.

This was the view taken by the Department of Budget and Finance when it conducted a management study of the PUC and the PUD (now DCA) in 1980.²² This study concluded consumer education was important in the public utilities field, but was being sorely neglected at that time by both the PUC and the PUD. The study recommended that the PUD assume a consumer education and information function tied closely to its complaint monitoring and clearing house activities (since data so obtained can be evaluated and used to develop appropriate consumer education and information actions). It further recommended that the PUD model its consumer education program after that of the Office of Consumer Protection.

In response to this study, the PUD submitted a plan to the head of the department to establish and promote a consumer education program. No action appears to have been taken on this proposal. Since then, the subject of consumer education seems to have received little attention by the DCA. In 1984, the investigators, while still assigned to the division, did participate in a consumer fair. Then in 1985, the DCA organized and conducted a "Telecommunications Users' Workshop" involving representatives of business and residential users of telecommunication services. Input from the participants in this workshop was used by the DCA in testimony it presented to the PUC in a Hawaiian Telephone Company rate increase proceeding. Otherwise, we could find no evidence of DCA activity directed toward consumer education.

Thus, at the present time, the DCA is not doing anything in the area of consumer protection. Moreover, it does not have any plans for action in this area. In discussions with the divisional staff, they recognized the value of a good consumer education program. However, to initiate a consumer education program, they conceded they would have to start from scratch because there was no foundation at present on which to build such a program. Considering the importance of consumer education, there should be no further delay on this matter.

Recommendations

We recommend as follows:

1. *The Public Utilities Commission should move as expeditiously as possible to adopt and put into effect a comprehensive and modernized set of public utility rules and regulations for the State of Hawaii. As part of this process, it should:*

- *Promptly bring all of its rules into conformance with the requirements of Chapter 91, Hawaii Revised Statutes.*
- *Convene task forces or hire consultants as necessary or appropriate to review and revise existing rules governing the electric, gas, and telecommunication utilities--particularly those relating to standards and quality of service--so as to bring them up to date and to make them relevant to current conditions.*
- *Expedite the work of the task force assigned to develop rules for the water and sewer utilities so that general requirements can be set up for these utilities as soon as possible.*

2. *The Division of Consumer Advocacy should conduct a forthright assessment of the need and value of its own separate set of rules to supplement or fill in gaps in the rules of the Public Utilities Commission. Then, on the basis of this assessment, it should proceed as expeditiously as possible to formulate and adopt such rules. In these efforts, particular attention should be given to such matters as information disclosure, complaint handling, and consumer education.*

3. *The Public Utilities Commission and the Division of Consumer Advocacy should jointly undertake a review of the whole area of complaint handling with the objective of establishing a comprehensive, integrated, and effective approach to this aspect of public utility regulation. This review effort should encompass the several different levels at which complaint handling is dealt with and should view complaint handling as a means of improving the general quality of service as well as a way to bring about specific corrections where these may be needed. It should also focus on making the process simple and easy to use, on ensuring prompt follow-up action, and on achieving fairness and equity for all affected parties.*

4. *The Division of Consumer Advocacy should carefully examine the role it might play with respect to consumer education in the public utilities field. Based upon this examination, it should then develop and implement a plan for carrying out this role.*

5. *The Public Utilities Commission and the Division of Consumer Advocacy should report to the 1990 session of the Legislature the progress of actions taken with respect to the foregoing recommendations.*

Chapter 4

ORGANIZATIONAL AND PERSONNEL MANAGEMENT

In this chapter we examine some aspects of organizational and personnel management of both the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) of the Department of Commerce and Consumer Affairs. Inasmuch as personnel expenditures constitute 85 percent of the budgets of the two agencies, emphasis is placed upon this area of agency management.

Summary of Findings

1. Organization and staffing for the public utilities regulatory program--especially for the Public Utilities Commission--have failed to keep pace with the needs facing the two affected agencies. Following their separation in 1976, the Public Utilities Commission suffered a severe cutback in resources and only very gradually built them up to their current level while the authorized staffing of the Division of Consumer Advocacy dropped significantly.

2. Staffing of the Public Utilities Commission and of the Division of Consumer Advocacy is relatively modest when compared to: (a) the income to the State generated by the public utilities regulatory program (from fees, fines, etc.), (b) the resources of the regulated utilities, and (c) the magnitude of the impact of the regulated industries on the people and economy of Hawaii.

3. Personnel management in the public utilities regulatory program is suffering from numerous and serious shortcomings, including: (a) poor physical work environment, (b) lack of backups for key technical and management personnel, (c) lack of staff procedural manuals, (d) outdated and obsolete job descriptions, (e) prolonged vacancies, (f) absence of training and career development programs, (g) severe lack of basic reference materials, and (h) failure to make regular job evaluations.

Failure To Keep Pace with Needs

When we reported on our previous management audit of the public utilities program in 1975, we pointed to numerous shortcomings in the organization and management of the program. In addition to recommending the separation of the consumer advocacy function from the other

regulatory functions of the PUC, we suggested many other areas where improvements needed to be made. Effective implementation of our recommendations required not only organization changes but also the allocation of more resources (primarily personnel) to the public utilities regulatory program.¹

Pursuant to our recommendations, the consumer advocacy function was separated from the PUC in 1976 when the PUC was transferred out of the Department of Regulatory Agencies (now the Department of Commerce and Consumer Affairs) and attached administratively to the Department of Budget and Finance. This resulted in the creation of two agencies, instead of the previous one. In the ensuing 12 years since this split, however, there has not been much internal organizational change within these two agencies (they are still both basically patterned after the organization of the PUC in 1974), and there has been no significant increase in personnel resources allocated to the program.

Particular situation with regard to the PUC. When the PUC was split off from the Department of Regulatory Agencies in 1976, it started off its new existence under a severe handicap. When the commission was reconstituted into three full time members, the three new commissioners came to their positions with virtually no experience or background in the field of public utility regulation. This might not have been quite so bad if there had been a qualified, experienced, and numerically adequate staff to assist them. Such was not the case, however. For the first year, the commission was allocated only four staff positions--an administrative director, an auditor, a chief clerk, and a secretary.

Over the years since then, the PUC has only built up its staff capabilities on a very gradual and piecemeal basis. In 1977, the only additions were the three assistants for the neighbor islands. While they added to the PUC's presence on the neighbor islands, they did not provide the commission with additional direct staff support. Only in 1978 did the PUC begin to acquire more technical expertise when two public utilities/transportation specialists and another auditor were added to the staff. One engineer came on the staff in 1980 and another was added in 1982. Two investigators transferred to the PUC from the DCA in 1985, but also brought with them their existing complaint handling and pipeline safety inspection functions. In 1986, another auditor was added. Then, in 1987, two attorneys (one had been under contract to the PUC since 1975 as legal counsel) were converted to regular full time employees of the PUC. Over the years, the PUC has also increased its clerical staff by three persons. Currently, the PUC has three vacancies--for a financial analyst, an engineer, and a clerk-typist.

In 1986, the then new commission chairman recognized many of the shortcomings of the PUC and requested the administrative director to formulate a plan that would enable the agency to

function more effectively while providing opportunities for staff development and promotion. The plan prepared in response to this request called for a major reorganization of the PUC and an increase in staffing by 10 additional positions (along with the reassignment and revision of a number of existing positions). The plan was an ambitious one, but no changes materialized from it. After no additional positions were granted in 1986, the administrative director recommended that the PUC "forgo the submission of supplemental request for FY 1988-89." The chairman concurred in this recommendation by signifying that the agency should "try to manage w/ current budget."²

This is the situation which the new administration of the PUC inherited when it came into office in mid-1988. The new administration has prepared a request for a 66 percent increase in the PUC's budget (\$1.01 million to \$1.68 million) and a 35 percent increase in staffing (26 positions to 35 positions) for the 1989-91 biennium. The increases include additional staff for the commission, consultant services, staff training, resource materials and equipment.

The experience of the DCA. The experience of the DCA (and its predecessor, the PUD) was somewhat different during the period since 1976, but the net result was the same in many respects. Unlike the PUC, the DCA started off with a fairly large and experienced staff and a relatively generous allocation of positions, but over the years has seen a marked dwindling of its authorized position count--due in great part to its failure to fill vacant positions. In 1981-82, it had 35 budgeted positions of which only 21 were filled. Over subsequent years, it has been reduced to 19 positions. This reduction has occurred over several budget cycles and is the direct result of positions remaining vacant for long periods of time.

Despite this attrition of positions, the DCA has been fairly successful in retaining a cadre of experienced personnel. Among the 10 professional staff members presently working for the DCA, 6 have been with the agency for more than 10 years and 4 of these 6 have been there for more than 15 years.

Impact of failure to keep pace. It is difficult to know what the full impact has been of not providing the public utilities regulatory program with greater organizational and staffing support. However, in the course of this audit when we discussed various apparent shortcomings with affected agency personnel, heavy workloads and inadequate resources were usually cited as reasons for not doing such things as bringing rules up to date or developing more adequate complaint handling and consumer education programs.

Some of the effects also showed up on a specific basis. A case in point is the clerical support situation at the PUC. Public utility regulation involves a great deal of paperwork and requires the maintenance of voluminous records in a form that complies with quite rigorous legal

requirements. To handle all this paperwork and recordkeeping, the PUC has only six clerical positions, of which one has been vacant for some time. When we embarked upon this audit, we found that the three commissioners had so little clerical support available to them that they had to make their own appointments, do their own filing, and pick up their own mail.

We found further that due to insufficient clerical staffing, the supervisor and clerical staff had to function in at least five major capacities: (1) secretarial support for the commissioners and the executive director; (2) accounting and fiscal program support; (3) personnel technician support; (4) general clerical support, and (5) backup for the chief clerk in her absence. While a genuine effort was made to fulfill these multiple duties, often the results were not completed in the most efficient or effective manner.

The effects of this situation show up in the PUC's recordkeeping and information handling operations. When we made our last audit of the PUC in the mid-1970s, we found a general lack of system for recording and filing information and documents.³ As a consequence, the records of the agency were in a shambles and often difficult, if not impossible, to use. In the face of such conditions, we stated that it was essential for the PUC to have "an effective records management and information handling system which will enable it to locate and use records when needed, to maintain the integrity of its records, and to strengthen regulatory procedures and enforcement through ready access to accurate and up-to-date information."

In the current audit, we did find that improvements had been made in the docket control and in the docket files. However, the general files of the agency are still in need of improvement. We found many misfiled documents, letters, and other records while other materials could not be located although they were known to have existed. Numbering, dating, and cross referencing of office documents are almost non-existent.

Sometimes the only way to track down information in the agency's files is to look at the outgoing mail file. Outgoing letters are batched on a monthly basis and circulated for review among the commissioners and the technical staff. All types of correspondence are included in this file--responses to complainants, to utility companies, to other state agencies, and to other jurisdictions. Many of these letters are not easily found, however, in the agency's central files under the relevant subject, company, agency, or other headings. Thus, despite its cumbersomeness to use, the outgoing mail file is often the only way to determine whether particular information may be available within the agency.

In short, many of the deficiencies we found 13 years ago still exist within the PUC. Without more adequate staffing as well as other improvements, these deficiencies are not likely to be overcome.

Relatively Modest Level of Present Staffing

While recognizing the need for additional resources if the public utilities regulatory program is to function effectively, it is also important to bear in mind that resources are not unlimited and that the costs of regulation should not be unreasonable in terms of the benefits to be gained. For this reason, we took a look at the current level of support being provided to this program. On the basis of our examination, the current level of staffing for the program appears to be relatively modest. Reasons for reaching this conclusion are discussed more fully below.

Comparison of revenues and expenditures. Both the PUC and the DCA are funded out of the general fund of the State of Hawaii through the respective budgets of the Department of Budget and Finance and the Department of Commerce and Consumer Affairs. At the same time, Chapters 269 and 271, HRS, impose fees upon regulated utilities and motor carriers which are payable into the general fund.⁴ There is no explicit requirement that such fees cover the costs of regulation or that there be any direct relationship between the revenues thus collected and the amounts expended by the PUC and the DCA. On the other hand, it is not unreasonable to assume that the revenues thus derived provide a fair indicator of what the State might expect to spend on regulating the affected industries.

Accordingly, we took a look at the revenues and expenditures associated with the public utilities regulatory program for the three most recent fiscal years (1985-86, 1986-87, and 1987-88) for which information was available. The results are summarized in Table 4.1. As can be seen from this table, the program generated revenues between \$2.5 million and \$3.0 million during each of these three years while the combined expenditures of the PUC and the DCA, not counting fringe benefit amounts paid to employees, were approximately \$1.7 million for each of the three years. As a result, revenues exceeded expenditures by approximately \$1 million per year. The program, then, is more than financing itself by a very substantial amount.

As can also be seen from Table 4.1, the major source of revenue is the public utility fees. Under Section 269-30, HRS, these fees are imposed at the rate of "one-eighth of one per cent of the gross income from the public utility business carried on by the public utility during the preceding year." Thus, it represents a very small portion of the revenues collected by the utility companies and of what ratepayers (customers) pay to the utilities.

Opposing resources of regulated industries. When looking at the staffing of the PUC and the DCA, it is also important to recognize that in carrying out their respective roles in the regulatory process, they are confronted in many instances by very large corporate entities with massive resources which can be used to support and defend the positions of the utilities.

Moreover, while these entities only have to be specialists in their own particular industries, the PUC and DCA must be equipped to deal with the specialized aspects of all the regulated industries.

Table 4.1

Summary of Revenues and Expenditures
Public Utilities Regulatory Program
Fiscal Years 1985-86 Through 1987-88

	<u>1985-86</u>	<u>1986-87</u>	<u>1987-88</u>
REVENUES:			
Public Utility Fees	2,509,727	2,689,814	2,312,363
Application Fees	3,825	5,100	5,670
Fines, Forfeit./Penalties	4,874	4,879	50,794
Other Fees: Gross Revenue-			
Motor Carriers	<u>232,699</u>	<u>233,829</u>	<u>298,370</u>
Total Revenues	<u>2,751,125</u>	<u>2,933,622</u>	<u>2,667,197</u>
EXPENDITURES:			
Public Utilities Commission			
Personal Services	671,307	745,260	780,194
Current Expenses	<u>219,528</u>	<u>108,728</u>	<u>127,687</u>
Subtotal Expenditures	890,835	853,988	907,881
Division of Consumer Advocacy			
Personal Services	468,987	458,093	467,698
Current Expenses	<u>372,962</u>	<u>394,512</u>	<u>358,819</u>
Subtotal Expenditures	841,949	852,605	826,517
Public Utility Regulatory Program			
Personal Services	1,140,294	1,203,353	1,247,892
Current Expenses	<u>592,490</u>	<u>503,240</u>	<u>486,506</u>
Total Expenditures	1,732,784	1,706,593	1,734,398
REVENUES LESS EXPENDITURE	1,018,341	1,227,029	932,799

Source: Administrative Services Office, Department of Budget and Finance and Division of Consumer Advocacy, Department of Commerce and Consumer Affairs.

Besides whole staffs or offices devoted almost exclusively to dealing with regulatory matters, Hawaii's larger utilities can call upon the regular financial, accounting, engineering, and other technical staffs within their own or affiliated companies for backup support. In addition, the utilities frequently employ private legal counsel with extensive experience in the specialized field of public utility law, and contract for other outside expertise as needed.

In the cases of both the PUC and the DCA, each has only about 10 staff members at present who might be termed technical staff for purposes of regulating all of Hawaii's utilities. The public agencies can also contract for the services of outside experts, but only to the extent allowed within appropriated funds. The DCA has budgeted funds at around \$300,000 per year for this purpose and does make regular use of outside consultants. However, the PUC has made very limited use of outside experts. Overall, then, it can be said that the resources of the utilities greatly overshadow the resources available to the PUC and the DCA.

Relative to impact of regulatory decisions. It is also relevant to look at the staffing of the public utilities regulatory program in terms of the impact of the decisions made through the public utilities regulatory process. Decisionmaking with large and far reaching effects justify more attention and resources than those decisions and activities which have limited impact.

Activities falling under the jurisdiction of the PUC and DCA are some of the most vitally significant for the well being of our community and have tremendous social and economic ramifications. In today's modern technological society, almost everything is dependent upon or affected by the availability of utility services. The breakdown or prolonged interruption of electrical or telephone service can be highly disruptive, can result in severe economic losses, and can even be a threat to life and safety. Hundreds of millions of dollars flow annually into Hawaii's utilities under rates established by the PUC. Single decisions, such as the PUC's recent action to order rate reductions in response to the Tax Reform Act, can involve tens of millions of dollars. Major capital improvements by the utilities require approval by the PUC, and they too can involve many millions of dollars.

When viewed in this perspective, then, it would not be at all unreasonable to allocate several million dollars per year to provide for effective regulation of Hawaii's public utilities. In addition to being significant and pervasive in its impact, the subject matter involved in public utility regulation is often highly technical and complex. This means that it is essential to provide personnel resources at an adequate level, both quantitatively and qualitatively, to do the job that needs to be done.

Need for Improved Personnel Management

In a labor intensive field, such as public utility regulation, it is just as important to have adequate personnel management as it is to have sufficient personnel resources. Unless the available resources are given proper supervision, direction, motivation, and treatment, they are not likely to perform at adequate and effective level. It is for this reason that we took a close look at personnel management as part of this audit. In so doing, we approached the matter in broad perspective--that is, in terms of general working conditions as well as detailed procedures of personnel administration.

Based upon actual numbers of individuals or positions involved, personnel management for the public utilities regulatory program should be relatively simple. Including the 3 PUC commissioners, there is a total of only 45 positions in the two affected agencies--26 in the PUC and 19 in the DCA. At the time of this audit, 6 of these positions were vacant and had been for some time--3 in each agency. Compared to the regulated industries and to many other government agencies, these are quite small numbers. It would seem, then, that managing such small numbers of personnel should not be so difficult. Nevertheless, in our examination, we found many shortcomings in the area of personnel management. These are discussed more fully below.

Overcrowded work environment. Upon initiating this audit, we were immediately struck by the overcrowded work environment in which the PUC is currently forced to operate. In its Honolulu office, 23 positions--including the 3 commissioners-- are expected to be housed in facilities designed for only 17 employees. Despite the oftentimes technical, complex, and confidential work that has to be performed, over half of the staff are separated from each other only by partitions. In one instance, six employees must share a room designed to hold only three workers. If employees need privacy to do their work or deal with utility representatives or members of the public, they frequently have to resort to use of the agency's hearing room. The agency lacks needed space for a library, a computer room, and an employee lounge.

When a new commission chairman was appointed in 1986, a request was initiated to increase the PUC's allotted space to provide for an additional six staff positions and other needs. No action, however, was taken on this request. Two years later in April 1988, another request was made--this time for approximately 1200 square feet more of office space. With no action having been taken on this request, when the new administration of the agency took over in mid-1988 it submitted a request for an additional 1770 square feet. This request was still pending at the time of this audit. The agency should be able to function more effectively and efficiently if it is granted this extra space.

Space is not yet a critical problem at the DCA. However, the accumulation of docket files and materials from information requests to the utilities are beginning to cause storage problems. If this situation continues unattended, the growing files will begin to encroach upon staff working space. For this reason, the DCA should initiate action to eliminate unneeded files and to send other dated files to the State Archives to be stored or microfilmed.

Lack of backups for key personnel. Another problem of potential serious proportions has been the failure of both the PUC and the DCA to provide adequate backups for key technical and management personnel. Particular cases in point are the DCA's utilities administrator and the PUC's two transportation and utilities specialists. All three of these personnel have many years of experience in Hawaii's public utilities regulatory program and have developed a wealth of analytical and technical expertise. However, there are no individuals in training to step into their shoes should they decide to retire or if they should leave their positions for other reasons. Even now, matters that they are handling are often held in abeyance whenever they take leave or are otherwise away from their jobs.

Having key personnel without any backups leaves the two agencies in very vulnerable situations, especially as these personnel get older and reach retirement age. It would be wise, therefore, for both of them to start thinking in terms of developing backups for all persons in key positions.

Lack of staff procedural manuals. Neither the PUC nor the DCA has developed a staff procedural manual for the internal use of their employees. Even with an experienced staff, it is useful to make sure that matters are handled in an orderly and rational manner. Such manuals are particularly helpful, however, in helping new commissioners, administrators, and staff to become fairly quickly acquainted with an agency's operations and to know how things are supposed to function.

As in the case of other deficiencies, the need for action in this area has been recognized for some time but has not yet resulted in substantive results. An example of this is provided by the PUC's handling of its own internal accounting operations. For this purpose, it does not have an accountant or account clerk, but relies upon its supervisor of clerical services who, as previously mentioned, has many other duties. In 1987, a private certified public accountant firm audited the PUC's accounting system and procedures as required by the federal government's Gas Pipeline Safety Grant Program and recommended among other things that the PUC develop a "written manual prescribing procedures for accounting functions such as posting transactions to general ledger records, preparing periodic and annual financial statements, and other policies and procedures that are necessary for adequate accounting control."⁵ At the time of our audit, such a manual was still lacking.

Also in 1987, the then new chairman of the PUC initiated an effort to develop a more comprehensive staff manual that would cover such matters as official docket filing procedures, processing of utility capital expenditure requests, handling the processing of utility annual financial reports, and general internal office procedures. However, this whole matter was still pending when this chairman left office in mid-1988. The new administration of the agency has deferred action on the matter while it focuses its early priority attention on other areas of concern, such as the PUC's substantive work program.

As for the DCA, it has not given the subject of a staff manual much attention although the recently appointed head of that agency has conceded that his task of taking over his new job would have been facilitated if there had been an agency staff manual which he could have used for guidance regarding the DCA's operations. Now that he has had time to become more familiarized with conditions affecting his agency, it is hoped that the matter of a procedures manual will receive attention.

Outdated and obsolete job descriptions. For both employee and employer, it is important to know what the job expectations are for purposes of establishing compensation and evaluating performance. This can be accomplished through the development of formal job descriptions which are then updated as jobs change. In the cases of both the PUC and the DCA, the job descriptions for support and technical employees have not been formally updated since the two agencies were separated in 1976. In some instances, the job descriptions date back to the 1960s. In the meantime, many changes have been taking place within the regulated industries and in government's role with respect to these industries. The separation of functions between the two agencies has also had an effect upon what each does and upon what is expected of the employees of each. Yet, none of these changes are reflected or otherwise taken into account in the now long outdated job descriptions. In fairness to the affected employees and in the best interests of the two agencies in terms of having properly described and compensated positions, these job descriptions should be brought up to date as expeditiously as possible. Both agencies should then establish regular procedures to review all job descriptions on a periodic basis so as to keep them updated.

Prolonged vacancies. The PUC and DCA have also been plagued for years by continuing failures to fill vacant positions. As a result, many positions--often including key positions--have remained vacant for prolonged periods of time. This problem has been particularly acute with respect to engineering, financial analyst, and economist positions, but has also affected clerical positions.

It should be recognized that some of the factors contributing to this problem perhaps lie beyond their direct ability to control. Utility regulation is a relatively specialized field where qualified personnel may not be readily available for hire by government. Experience is gained either by working for the utilities themselves or by working in regulatory agencies at the state or federal levels. Persons with extended experience in either category are not likely to relocate unless attractive career and financial incentives are offered for them to do so. Inasmuch as most of the positions in the PUC and DCA are civil service, both agencies are limited as to what they can offer with regard to career opportunities and compensation. Thus, when asked why positions have remained vacant for so long, both agencies have stated that either they have been unable to obtain lists of eligible candidates from the Department of Personnel Services or the persons on these lists are unwilling to accept the offered positions or are not felt to be adequately qualified to meet agency needs.

In the case of engineers, many state government agencies have experienced difficulty in recruiting new employees because compensation offered by the State apparently has not been competitive. As a result, the Department of Personnel Services on September 1, 1988, declared the engineering series to be a shortage category and raised the compensation for these positions to make them more competitive with the private sector.

While the PUC and the DCA have not had a completely free hand to solve the problem of prolonged vacancies, it appears that they could have done more than they have to deal with this problem. For one thing, they have not focused specifically on personnel management as one of their major administrative responsibilities. Hence, they have not kept their job descriptions up to date. Neither have they emphasized organizational management as a means of upgrading positions and obtaining higher classifications or even exempt status for positions which call for specialized expertise in the field of public utility regulation. If an agency feels a matter should have high priority, then it should demonstrate this by building and supporting a strong case on behalf of the desired objective. From all indications, the agencies have been relatively passive regarding the filling of these vacant positions.

In the case of the DCA, it has at least compensated for the lack of staff resources by budgeting and expending substantial amounts for outside consultants to assist it in preparing for various cases. Where workload has its ups and downs and where there is shifting need for various types of specialized help, this is a reasonable alternative to building up an agency's staff. It is also viable as a temporary substitute for staff vacancies. The DCA has used consultant services in these manners. The PUC, however, has made very little use of consultants. In view of the fact that it faces many of the same problems and limitations as does the DCA, it should also consider following the DCA's example by making greater use of consultants.

Absence of training and career development programs. Another personnel management shortcoming exhibited by both the PUC and DCA has been the absence of any sort of organized training or career development programs for their respective staffs (including the commissioners in the case of the PUC and the administrator in the case of the DCA). Although both agencies have sent a number of personnel to at least one training session put on by the National Association of Regulatory Commissioners (NARUC), this has been done on a very sporadic and unsystematic basis. When a staff member has been sent to one of these sessions, it has usually occurred shortly after he or she joined the agency. In some cases, this event took place a decade or more ago. Yet, this constitutes the extent of formal training for most staff members.

Considering the dynamic nature of the public utilities field in recent years, staff training should be an important and continuing part of staff development and experience in both agencies. Moreover, as a means of retaining staff and maximizing their abilities, the two agencies should have programs aimed at increasing staff qualifications and providing opportunities for staff advancement and promotion. These are things which must be intentional and organized if they are to be effective.

In short, the PUC and DCA need to establish comprehensive training and staff development programs for their respective staffs. These programs should include in-house orientation and training as well as the utilization of outside resources such as NARUC. The new administration of the PUC has indicated a clear recognition of this need and has said that it will be requesting additional funds for this purpose in its budget for the 1989-91 fiscal biennium. The DCA would be well advised to do the same thing.

Lack of basic reference materials. Public utilities regulation is a highly technical and complex field. In recent years, it has also been a rapidly changing field. At the same time, it is a field in which a great deal of current literature is being produced. Therefore, to stay abreast of developments in this field and to be able to draw upon relevant data when needed, it is essential for the staffs of the PUC and DCA to have available to them a body of basic reference and resource materials. The DCA does have a limited form of agency library for this purpose. The PUC, however, is almost completely devoid of any sort of library or information resource.

A major reason given for the absence of such a resource is the lack of space for a library. The overcrowded situation of the PUC has already been noted. In the meantime, however, no effort has been made to set up or determine the types of books, periodicals, and other reference materials the staff should have to keep them current and enable them to perform their jobs effectively. Individual staff members do order periodicals and books for their own personal reference and do occasionally share these material with other staff members, but there is no

general or organized information on where staff members might look for data or reference materials. Indeed, when the new administration took over in mid-1988, it could not even locate a dictionary. (Since then, a dictionary has been ordered for each staff member.)

The new administration recognizes the value of having a source of basic information readily available to the staff and has requested additional space in which to locate a library and has included funds in its budget request to provide materials to put in the library. The failure to acquire reference materials in the past cannot be attributed to a lack of funds. For the past several years, the PUC has lapsed substantial unused funds back into the state treasury.

If the PUC and DCA were situated more closely to each other, it might be possible to establish a library that could serve the needs of both agencies. However, this is not the case at present. When the two agencies were separated, the DCA inherited the then existing library. Since then, the DCA has generally maintained the library, but it is not a particularly convenient and attractive place in which to work. Due to the presence of a telecommunications consultant over the past several years, this library does have a fairly reasonable body of current literature on telecommunications. However, to be fully useful, this library should receive more consistent attention and support.

Failure to conduct regular performance evaluations. At the time of this audit, neither the PUC nor the DCA was maintaining any sort of formal personnel evaluation program. This is true despite the fact that most employees in both agencies are in the State's civil service system and therefore should be appraised at the end of each 12 months of service in the case of regular employees and at the end of the probationary period in the case of new appointees.⁶ A random check of employees at both agencies revealed that it is not the practice to conduct annual appraisals. About the only time when evaluations seem to be made is when individuals are being considered for promotion or are completing their probationary periods. Otherwise, little, if any, attention is given to the whole subject of staff evaluations.

Performance evaluations of employees are a valuable management tool. Evaluations can be used to assess each employee's level of performance against predetermined objectives and levels of expectation, to indicate areas of strength and weakness, and to formulate the basis for rewards and corrective actions. They can thus be used for determining training needs and means of meeting those needs. Without a system for making evaluations, there can be no full blown approach to personnel management.

The absence of personnel evaluation programs on the part of the PUC and DCA is just another indication of their failure to focus adequate attention on the subject of personnel

management. Both agencies sorely need to develop an adequate awareness of the importance of personnel management and an effective means to give substance to this awareness.

Recommendations

With regard to organizational and personnel management for the Public Utilities Commission and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, we recommend as follows:

1. Both agencies should recognize organizational and personnel management as an area major responsibility and should focus priority attention on this area with the objective of bringing their organizations and personnel resources into line with the needs and demands facing regulatory agencies in an era of rapid and complex technological, structural, economic, and regulatory change in the field of public utilities.

2. The two agencies should give particular attention to personnel management, in its broadest sense, so as to provide a satisfactory physical work environment for their staffs; to accord fair treatment to all employees; to offer appropriate opportunities for training, career development, and advancement to staff members; and to assure the continuing availability of a qualified and well motivated work force.

NOTES

Chapter 1

1. Senate Conference Committee Report 46-76 on House Bill 2359-76, H.D. 1, S.D. 2, Eighth Legislature, 1976, State of Hawaii.
2. Special Committee Report No. 6, Eighth Legislature, 1976, State of Hawaii.
3. Senate Standing Committee Report 963-76 on House Bill 2375-76, H.D. 1, Eighth Legislature, 1976, State of Hawaii.
4. 1982 Haw. Sess. Laws, Acts 69 and 204. (The Legislature renamed the Public Utilities Division and the Department of Regulatory Agencies, to the Division of Consumer Advocacy and Department of Commerce and Consumer Affairs in 1982.)
5. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol I: The Organization for and the General Management of the Public Utilities Program*, pp. 12-20.
6. Act 112, Session Laws of Hawaii 1970. Jurisdiction of cable television is lodged with the director of Commerce and Consumer Affairs. In 1970, there were ten companies.
7. Budget testimony presented by the Department of Commerce and Consumer Affairs to the Hawaii House Committee on Finance, January 14, 1988 and budget testimony presented by the PUC to the Hawaii House Committee on Commerce and Consumer Protection, January 29, 1988.
8. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. I: The Organization for and the General Management of the Public Utilities Program*, p. 49.
9. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. III: The Regulation of Transportation Services*, Report No. 75-6, Honolulu, 1975, p. 31.
10. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. I: The Organization for and the General Management of the Public Utilities Program*, pp. 12, 48.
11. *Ibid.*, p. 50.

Chapter 2

1. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program: Volume I The Organization for and the General Management of the Public Utilities Program*, Report No. 75-3, March 1975, pp. 23-56.

2. Act 24, Session Laws of Hawaii, 1976.
3. Act 165, Session Laws of Hawaii, 1976.
4. Hawaii Revised Statutes, Section 269-53.
5. One of the two deputy attorneys general assigned to DCA left the Attorney General's Office to work in the private sector at the end of 1988. He was with DCA for a little over a year.
6. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program: Volume I The Organization for and the General Management of the Public Utilities Program*, pp.30-32.
7. Squire, Sanders and Dempsey, Washington, D.C.
8. Minnesota Statutes, Section 216A.05 (6).
9. Maine Revised Statutes, Title 35-A, Section 118.
10. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Volume II, The Regulation of Public Utilities*, pp. 66-74
11. Hawaii Public Utilities Commission, Docket No. 5945, D&O No. 9574 pp. 5-9, 15, 17-18
12. Florida Statute Ann., Section 186.008.
13. Minnesota Statute, Section 216B.
14. New York, Public Service Laws, Article 1, Section 5.
15. Illinois Revised Statutes, Sections 1, 8, and 9.
16. Currently, the PUC has two full time legal counsel.

Chapter 3

1. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. I: The Organization for and the General Management of the Public Utilities Program*, Report No. 75-3, Honolulu, 1975, pp. 72-74.
2. Contract No. 12619, May 1, 1981, pp. 1, 3.
3. Amendment No. 1 to Contract No. 12619, December 31, 1981, pp. 1, 3.
4. Agreement for Professional Services, June 30, 1986, pp. 2-6.

5. "Proposed Rules and Regulations Pertaining to the Rules of Practice and Procedures Before the Public Utilities Commission, State of Hawaii," memorandum from Hideto Kono, Chairman, Public Utilities Commission, to John Waihee, Governor, State of Hawaii, March 2, 1988; "Proposed Rules and Regulations Pertaining to Motor Carrier Rules, Regulations, and Classification of Property and Passenger Carriers," memorandum from Hideto Kono, Chairman, Public Utilities Commission, to John Waihee, Governor, State of Hawaii, March 2, 1988; "Proposed Rules and Regulations Pertaining to Standards for Electric Utility Service in the State of Hawaii," memorandum from Hideto Kono, Chairman, Public Utilities Commission, to John Waihee, Governor, State of Hawaii, March 2, 1988; and "Proposed Rules and Regulations Pertaining to Telecommunication Services in the State of Hawaii," memorandum from Hideto Kono, Chairman, Public Utilities Commission, to John Waihee, Governor, State of Hawaii, March 2, 1988.
6. "Repeal of State of Hawaii Public Utilities Commission 'Rules of Practice and Procedures Before the Public Utilities Commission of the State of Hawaii' and Adoption of Chapter 61, Title 6, Hawaii Administrative Rules," pp. 61-27, 61-42-61-44, 61-46-61-47.
7. "Repeal of State of Hawaii Public Utilities Commission 'Rules Relating to Standards for Telephone Service in the State of Hawaii' and Adoption of Chapter 71, Title 6, Administrative Rules."
8. Docket No. 5088, Order No. 8373, pp. 1-3.
9. Docket No. 4369, Order No. 6796, pp. 1-3.
10. Docket No. 5266, Order No. 8262.
11. Docket No. 4369, Order No. 9766.
12. "Proposed Revision of Commission's General Order No. 1 to Revised Format as Prescribed Under Act 216, Regular Session Laws, 1979," memorandum from Public Utilities Commission to Governor George R. Ariyoshi, January 10, 1983; Docket No. 4775, Order No. 7409, pp. 1-2; and Letter from Winfred K.T. Pong, Deputy Attorney General, to Melvin S. Ishihara, Administrative Director, Public Utilities Commission, March 16, 1983.
13. Docket No. 5293, Order No. 9767.
14. Letter from William W. Milks, Executive Director, Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, to Hideto Kono, Chairman, Public Utilities Commission, February 9, 1987; Letter from Hideto Kono, Chairman, Public Utilities Commission, to William W. Milks, Executive Director, Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, February 23, 1987; and Letter from Paul Shigenaga, Auditor, Public Utilities Commission, to Wynne E. Arnold, Executive Director and Secretary, State of New Hampshire Public Utilities Commission, August 11, 1987.
15. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. II: The Regulation of Public Utilities*, Report No. 75-4, Honolulu, 1975, p. 47.

16. HRS 269-7; HRS 269-8; HRS 269-10; and HRS 269-15; HRS 271-9; HRS 271G-7; HRS 269-54.
17. The recently-proposed revisions to G.O. No. 1 change little in the formal and informal complaint procedures and are instead concerned with putting the rule into the Ramseyer format. The revisions to G.O. No. 8 do not change the substance of this section. They require the telecommunications utility to do the following: (1) report results of complaint-related investigations to the PUC when so requested; (2) direct personnel involved in initial contact with an applicant or customer in which dissatisfaction with the decision or explanation of such personnel is expressed to inform the customer of his right to have the problem considered and acted upon by supervisory personnel of the utility; and (3) direct such supervisory personnel to provide the consumer with the name, address, and telephone number of the appropriate department of the commission to be contacted for further review of an unsolved problem.
18. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. II*, p. 51.
19. "Proposed Coordinated Complaint Handling Procedures," memorandum from William W. Milks, Executive Director, Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, to Robert A. Alm, Director, Department of Commerce and Consumer Affairs, July 16, 1987.
20. Untitled and undated (references are made to data from 1980) DCA study made pursuant to HRS 269-55, i.e., the PUC's handling of consumer complaints and a compilation of those complaints, pp. 18-19.
21. HRS 487-5.
22. Hawaii, Department of Budget and Finance, *Management Study of the Public Utilities Division, Department of Regulatory Agencies, and the Public Utilities Commission*, pp. 15-16.

Chapter 4

1. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. I: The Organization for and the General Management of the Public Utilities Program*, Report No. 75-3, Honolulu, 1975, Chapters 6 and 7. pp. 75-118.
2. "FY 1988-89 Supplemental Budget Request", memorandum from Melvin S. Ishihara, PUC Administrative Director to PUC Chairman Hideto Kono, August 24, 1987, with handwritten reply from Chairman Kono on August 25, 1987.
3. Hawaii, Legislative Auditor, *Management Audit of the Public Utilities Program, Vol. I: The Organization for and the General Management of the Public Utilities Program*, Report No. 75-3, Honolulu, 1975, pp. 94-95.
4. HRS 269-30 and HRS 271-36.

5. Endo, Yonimitsu & Company, Certified Public Accountants, *Audit of the Public Utilities Commission, Department of Budget and Finance, State of Hawaii for the Fiscal Years ended June 30, 1985, 1986, 1987*, Honolulu, 1988, p. 25.
6. Hawaii, Department of Personnel Services, Title 14, Administrative Rules, Subtitle 1, State of Hawaii Personnel Rules, May 8, 1981, Chapter 11, Employee Relations, Section 14-11-4, Performance Evaluation, (b) (1)-(2), pp. 11-1,2.

RESPONSES OF THE AFFECTED AGENCIES

AGENCY RESPONSES

A preliminary draft of this audit was transmitted on January 24, 1989, to the Public Utilities Commission, the Department of Commerce and Consumer Affairs, and the Department of the Attorney General. We asked each of these agencies to comment on the report.

A copy of the transmittal letter to the Chairman of the Public Utilities Commission is included as Attachment 1 of this section. Similar letters were sent to the Director of the Department of Commerce and Consumer Affairs (as Consumer Advocate in the public utility field) and to the Attorney General. Each of these agencies responded, and their responses are included as Attachments 2 through 4.

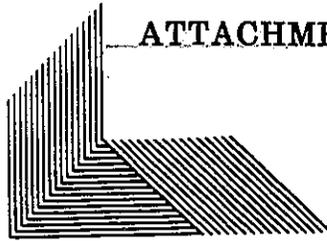
The Public Utilities Commission concurs in general with the recommendations relating to the commission and indicates that since mid-1988, it has taken steps to remedy many of the deficiencies cited in the report.

The Consumer Advocate and the Division of Consumer Advocacy concur with the recommendations relating to consumer education and the monitoring of consumer complaints and indicate they are focusing on meeting staff education and training needs and are working with the Attorney General to improve the level of legal services for the consumer advocacy program.

In his response, the Attorney General reports that a request for increased legal support for the consumer advocacy program has been submitted to the 1989 Legislature. He also expresses a willingness to work with the Public Utilities Commission and the Division of Consumer Advocacy in assuring that Hawaii's interests are adequately represented and protected at the federal level.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



January 24, 1989

C O P Y

Mr. Yukio Naito, Chairman
Hawaii Public Utilities Commission
465 South King Street, Room 103
Honolulu, Hawaii 96813

Dear Mr. Chairman:

Enclosed are three copies, Nos. 4 to 6 of our preliminary report, **Management Audit of the Public Utilities Program of the State of Hawaii**. This report was prepared pursuant to Senate Concurrent Resolution No. 89, Senate Draft No. 1, which requested an audit of the State's public utilities regulatory process as covered under Chapter 269, Hawaii Revised Statutes.

We invite your comments on the recommendations relating to the commission. If you decide to submit comments, we ask that you submit them by February 7, 1989, so that they can be included in the final report.

Since the report is not in final form and there could be changes to the report, access to it should be restricted to those persons whom you might wish to call upon to assist you in reviewing the report. The only other parties who have been provided with copies of this preliminary report are the Governor, the presiding officers of the Legislature, the Director of the Department of Commerce and Consumer Affairs, and the Attorney General. Public release of the report will be made solely by our office and only after the report is published in its final form and submitted to the Legislature.

We appreciate the assistance and cooperation extended to us during the course of the report.

Sincerely,


Newton Sue
Acting Legislative Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET
KEKUAHAA BUILDING, FIRST FLOOR
HONOLULU, HAWAII 96813

YUKIO NAITO
CHAIRMAN

CLYDE S. DUPONT
COMMISSIONER

PATSY K. YOUNG
COMMISSIONER

February 8, 1989

RECEIVED

FEB 8 2 23 PM '89

OFFICE OF THE AUDITOR
STATE OF HAWAII

Mr. Newton Sue
Acting Legislative Auditor
Office of Legislative Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Sue:

Thank you for the opportunity to review and comment on the preliminary report on Management Audit of the Public Utilities Program of the State of Hawaii.

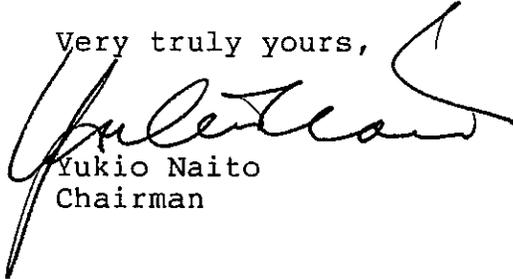
The report contains several recommendations relating to the Commission. Some of these require consideration by both the Public Utilities Commission and the Division of Consumer Advocacy. In general, we concur with the recommendations. Since mid-1988, the Commission has taken steps to remedy many of the deficiencies noted in the report.

With respect to the matter concerning federal regulation of public utility activities, we agree that the Commission should be more active in monitoring federal regulatory developments. In certain instances, such monitoring will need to be undertaken in coordination with the Division of Consumer Advocacy and the Attorney General. The Commission currently participates to some extent in activities relating to federal regulations through the National Association of Regulatory Utilities Commissioners, of which this Commission is a member. However, there is definitely a need for this Commission to develop a set of new programs aimed at protecting Hawaii's interest from any significant impact of federal regulatory activities. Accordingly, we are in the process of developing such programs. As currently contemplated, the programs are to include systematic collection and filing of federal regulations, review and analysis of federal regulatory issues, and formulation of initiatives or actions at the federal level.

Mr. Newton Sue
Page 2
February 8, 1989

We have been also cognizant of the need to strengthen our administrative capabilities and improve our organizational and personnel management. In preparing our 1989-1991 biennium budget request, we requested a substantial increase in manpower and funding to correct the deficiencies in our programs and operation. Our request has been supported by the administration, and if funded, we will be able to implement the recommendations relating to the administration of the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Yukio Naito', written in a cursive style. The signature is positioned above the printed name and title.

Yukio Naito
Chairman

YN:HT:ac

ATTACHMENT 3

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
DIRECTOR
COMMISSIONER OF SECURITIES

SUSAN DOYLE
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

February 8, 1989

RECEIVED

FEB 8 11 46 AM '89

OFFICE OF THE AUDITOR
STATE OF HAWAII

Mr. Newton Sue
Office of the Legislative Auditor
465 South King Street, Suite 500
Honolulu, Hawaii 96813

RE: Management Audit of the Public Utilities Program of the
State of Hawaii

Dear Mr. Sue:

The Division of Consumer Advocacy appreciates the opportunity you have provided us to comment on your audit of the State's management of the utility regulatory program. As a participant in that program, your findings, analyses, and recommendations are especially valued by the Division.

We generally concur with the recommendations made in this audit. This Division's efforts in consumer education and complaint monitoring could be substantially improved. There have been shortcomings in the management of personnel, particularly in the grooming of experienced professionals and technicians to succeed to supervisory positions. Additionally, the reassignment and lack of training of deputy attorneys general representing this Division has hindered its effectiveness at times.

We note that certain improvements were commenced prior to, or simultaneously with, the legislative audit. The Division and the Attorney General's Office are working together to address the need for the services of three deputies on a full-time basis. The Division hopes that these measures will assure "a high level of continuity, coordination and competence in legal representation." Also, greater emphasis will be placed on consumer education through the newly-formed Communications Office of the Department of Commerce and Consumer Affairs. Along with the review of our organization, a continuing education/training committee is being formed within the Division to foster professional

Mr. Newton Sue
Page 2
February 8, 1989

growth and expertise. Finally, we will coordinate with the Commission to not only monitor complaints, but to derive critical statistics and conclusions from the complaint data.

The Division would like to clarify some of the points raised in the audit. First, given the complexity of monitoring federal regulatory matters and the extreme difficulties encountered in effecting change at the national level, the record will show that the Division has done a superior job in addressing federal regulatory issues that impact Hawaii, in particular at the Federal Maritime Commission and Federal Communications Commission. Because this often drains our budget and work force, we will be open to working with the Commission and the Attorney General's staff to continue effective representation of Hawaii consumers at the national level.

Second, we maintain that the handling of consumer complaints should remain exclusively the responsibility of the Hawaii Public Utilities Commission. The Commission is the most direct, efficient, and effective way for consumers to seek and obtain remedies for their grievances.

On another topic, the report comments that the historic role of the Division has been "passive" rather than "active." This conclusion appears to be premised in large part on the Division's failure to file complaints at the Commission. But it may be misleading to give undue weight to the fact that this agency participated in somewhat "less than 20 percent of the cases before the Public Utilities Commission." The majority of the dockets opened by the Commission are show cause orders where small limousine services and trucking companies have failed to file annual reports, to pay fees to tariff bureaus, etc. Such cases constitute a form of enforcement and involve virtually no consumer-related interest. The Division has elected not to participate in such proceedings, but rather to dedicate its limited resources to more significant cases. Finally, the Division has frequently requested show cause orders to be issued by the Commission because these orders place the burden of proof on the regulated utility. However, the Consumer Advocate's role in these cases has not been accounted for by the auditor.

Finally, although the Consumer Advocate should fully utilize its rulemaking power (and will do so), the rules that can be promulgated by the Division are qualitatively different from those which the Commission can generate. Under Sec. 269-54(b)(1), HRS, the Division may adopt rules to effectuate its duties and powers.

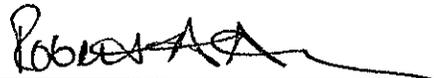
Mr. Newton Sue
Page 3
February 8, 1989

These do not include setting telecommunications standards for quality of service, for instance, for which only the Commission may promulgate rules. Thus, the great majority of substantive rules must be pursued under the Commission's jurisdiction.

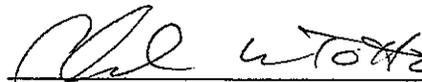
In conclusion, this office looks forward to working with the Legislature, its auditor, the Attorney General's office, and the Commission to further improve the regulatory program governing public utilities and regulated transport companies serving Hawaii.

Thank you again for requesting our comments.

Sincerely yours,



Robert A. Alm
Director



Charles W. Tutto
Executive Director

ATTACHMENT 4



JOHN WAIHEE
GOVERNOR

WARREN PRICE, III
ATTORNEY GENERAL

CORINNE K. A. WATANABE
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
HONOLULU, HAWAII 96813
(808) 548-4740

February 3, 1989

RECEIVED

FEB 7 3 24 PM '89

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Newton Sue
Acting Legislative Auditor
The Office of the Auditor
State of Hawaii
465 S. King Street, Rm. 500
Honolulu, Hawaii 96813

Dear Mr. Sue:

Thank you for the opportunity to comment on your preliminary report on the Management Audit of the Public Utilities Program of the State of Hawaii.

The preliminary report expresses two findings which pertain to the Department of Attorney General. First, the report states that the Department has not developed an adequate means of assuring high level of continuity, coordination and competence in legal representation of consumer interests before the Public Utilities Commission. Second, the report notes that this Department as well as the Public Utilities Commission and the Division of Consumer Advocacy have collectively failed to provide adequate attention towards assuring that a comprehensive and coordinated approach is undertaken to identifying, representing and protecting Hawaii's interest relative to the Federal regulation of public utility activities affecting this State.

As for the first finding, I concur that the history of the legal representation accorded to the Division of Consumer Advocacy is marked with a high degree of attorney turnover which has impacted upon the sufficiency of services afforded. However, the turnover problem has and is prevalent throughout the Department as whole. Accordingly, in the 1989 legislative session, the Department is pursuing a budgetary agenda which I believe will be very effective in reducing the high turnover rate.

Moreover, given the significance of utility services to the consumers of this State as well as the economic development of this State, I have requested the Legislature to authorize this Department to hire an additional attorney and support services

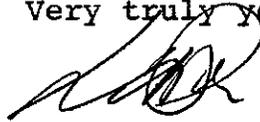
Mr. Newton Sue
February 3, 1989
Page 2

specifically for the purpose of providing additional legal representation to the Division of Consumer Advocacy. I have also authorized an internal reorganization which, coupled with the new positions requested, will provide for a complement of three attorneys plus support services to provide legal services to the Division of Consumer Advocacy.

As regards the second finding, I concur on the need to explore means of assuring that a comprehensive and coordinated approach is taken to identifying, representing and protecting Hawaii's interests on the Federal level. Please be advised that this Department is ready, willing and able to work closely with the Public Utilities Commission and the Division of Consumer Advocacy to explore and hopefully establish such an approach within the statutory and other legal parameters attendant.

Thank you for this opportunity to comment on your preliminary report.

Very truly yours,



Warren Price, III
Attorney General

WP/RK:jo

