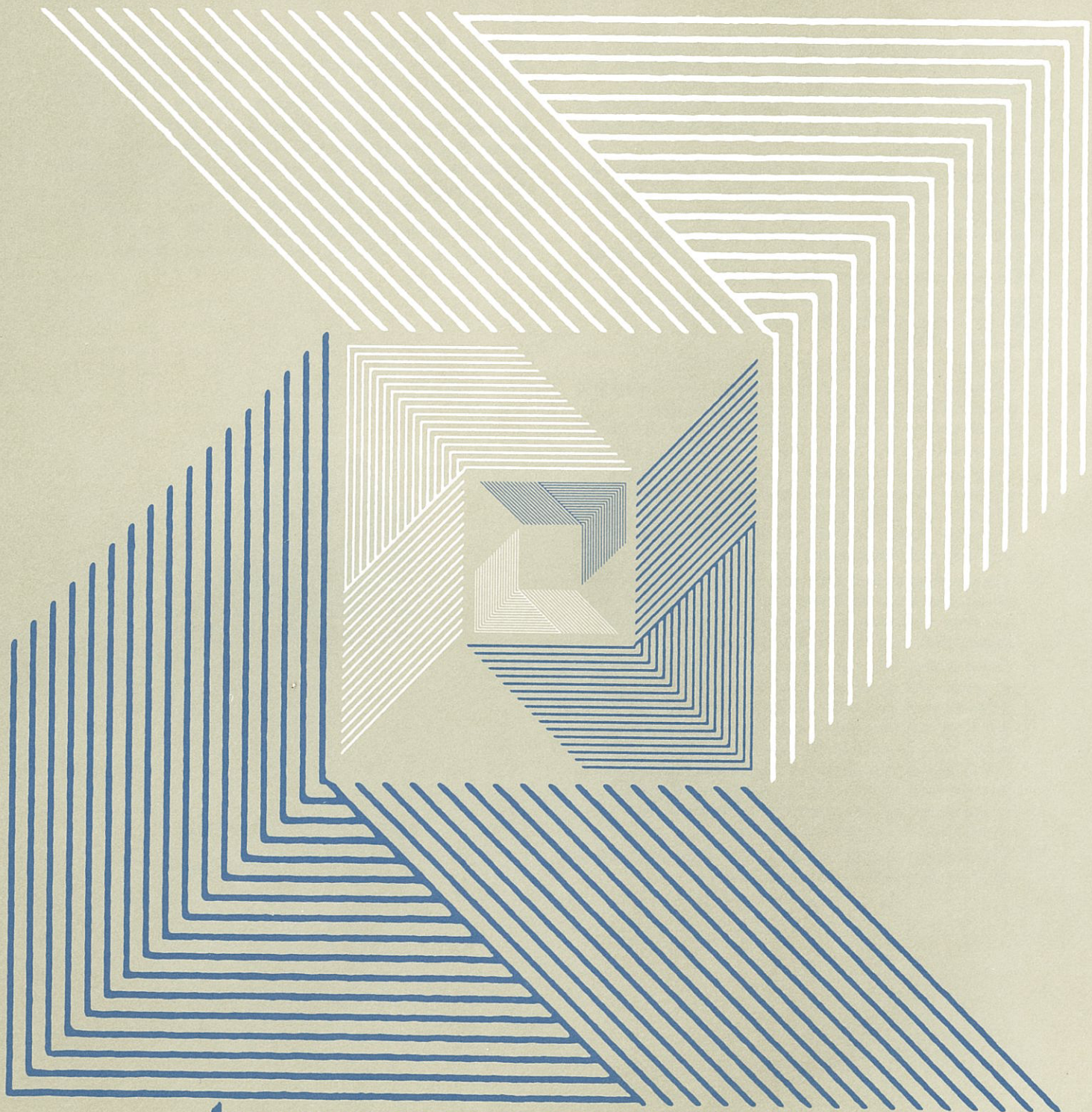
AUDIT REPORT NO. 75-3

MARCH 1975

MANAGEMENT AUDIT OF THE PUBLIC UTILITIES PROGRAM

VOLUME I THE ORGANIZATION FOR AND THE GENERAL MANAGEMENT OF THE PUBLIC UTILITIES PROGRAM

A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF HAWAII



SUBMITTED BY THE LEGISLATIVE AUDITOR OF THE STATE OF HAWAII

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 VI, Section 7, 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.
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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. The independent, objective, and impartial manner in which the legislative auditor is required to conduct his examinations provides the basis for placing reliance on his findings and recommendations.

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MANAGEMENT AUDIT OF THE PUBLIC UTILITIES PROGRAM

VOLUME I

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

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

The regulation of public utilities began in 1913 when the public utility laws were enacted. Since then, the basic laws governing public utilities have been amended on a piecemeal basis. With growing public concern expressed over the actions and activities of the public utilities commission, the senate of the Hawaii legislature at its regular session of 1972 adopted Senate Resolution No. 28 requesting the legislative auditor to examine: (1) the organizational structure of the public utilities commission, (2) the policies and procedures of the commission, and (3) the laws pertaining to the commission relative to their adequacy and current applicability (see appendix G for the full text of this resolution). This report has been prepared in response to Senate Resolution No. 28.

Assessing the public utilities program has proved to be a formidable task. Although the program is small in terms of personnel and annual expenditures, it has many widespread and significant implications for the State of Hawaii. This is partly due to the multiple and diverse objectives of the program. Due to the magnitude of the audit, it has been found necessary to submit the audit report in several volumes. This volume is the first in the series and deals with the overall organization of the public utilities program. Succeeding volumes cover in detail the regulation of the service utilities, the transportation carriers other than school buses, and school buses and student transportation services.

The body of this volume is divided into two parts. Part I includes an introduction, some background information on public utilities in Hawaii, and an explanation of the framework for the audit. Part II presents our findings and recommendations regarding the organization of the public utilities program and our overall assessment of policies, procedures, general management, and financial controls of the program. As is customary, we requested the agencies affected by the audit to comment in writing on the report. The responses of the agencies are included in part III of this volume.

In reading this report, it should be recognized that auditing by its very nature is a critical process. Thus, while the report does contain many criticisms, they are expressed for the purpose of bringing about corrections and improvements in the performance of the public utilities program. They are in no way intended to discredit or reflect adversely upon the many individuals who have been working diligently and within conditions which are frequently not amenable to their direct control. Hence, the focus should not be on what's wrong, but upon what needs to be done.

We wish to acknowledge the cooperation and assistance extended to our staff by the personnel of the various departments, agencies, and private organizations contacted during the conduct of this audit.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

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INTRODUCTION

This is a report of our management audit of the State's program of regulating public utilities. It was conducted pursuant to Senate Resolution No. 28, Regular Session of 1972. The resolution requested the legislative auditor to review, among other things, (1) the organizational structure of the public utilities commission and (2) the policies and procedures under which the commission is presently operating.

Objectives of the Audit

The objectives of the audit were:

1. To evaluate the effectiveness and efficiency of the organization, management, and processes of the public utilities program in attaining the program's objectives.

2. To recommend changes, if any, to the organization, management, and processes which would lead to greater effectiveness and efficiency in achieving the program's objectives.

Scope of the Audit

The audit covered generally the organization and management of the public utilities commission and the public utilities division of the department of regulatory agencies. Since both the public utilities commission and the public utilities division are physically situated within the department of regulatory agencies, to the extent necessary, the activities of the department other than those centered in the commission and division were also examined.

In this audit, our attention was primarily focused upon activities, situations, and events occurring during fiscal years 1972–73 and 1973–74. In many cases, however, events and actions had to be traced back to the mid-1960's so as to gain sufficient understanding and an adequate perspective on the matters being examined. The field work on the audit and the initial drafting of sections of the report stretched out for approximately 18 months, extending until mid-1974. Since then, certain events have also had to be taken into consideration in formulating our findings and recommendations.

Organization of the Report

Due to the extent of our examination, this report is being issued in several volumes. This constitutes the first volume. In this volume we cover the organization for the public utilities program. We also include some general observations regarding the management of the program and the procedures used in regulating public utilities. The volumes to follow will cover in detail the management and operations of the public utilities program with respect to specific industries (i.e., the service utilities; the transportation carriers other than school buses; and school buses and student transportation).

This Volume I is organized as follows:

Part I includes this introduction, some background of the Hawaii public utilities program, and an explanation of the framework within which our audit was conducted.

Part II presents our findings and recommendations regarding the organization for the public utilities program. It also contains an overall assessment of the policies and procedures of the program and some observations regarding management and fiscal controls.

Part III contains the responses of the agencies affected by our findings and recommendations contained in this volume. The agencies responding were the department of regulatory agencies, the public utilities commission, and the office of the attorney general. These agencies were asked to respond to our findings and recommendations contained in the preliminary draft of this volume.

Terminology

Throughout this report, we use the term "agency." It refers to both the public utilities commission and the public utilities division in the department of regulatory agencies. These are the two organizational entities most directly involved in public utilities regulation. Where our comments are applicable to only one of them, that agency is specifically referred to by name as the "PUC" or the "PUD."

As used in this report, the abbreviations "PUC," "PUD," and "DRA," refer to the public utilities commission, the public utilities division, and the department of regulatory agencies, respectively.

Chapter 2

BACKGROUND

Regulation of public utilities, rather than direct governmental ownership and operation, is to a very great extent an American phenomenon. In most other countries the prevailing social policy seems to dictate that government should be the exclusive or major supplier and purveyor of those basic services which are generally classified as public utilities. Even in the United States, government ownership and operation of public utility enterprises are by no means unusual (e.g., TVA and the many municipal water systems throughout the country). The general approach and predominant pattern in this country, however, have been to leave the ownership and management of public utilities in private hands and to rely upon governmental control and regulation of these enterprises as the means of protecting and promoting the public interest in the public utilities field. Public utility regulation in Hawaii is very much a part of this national approach and pattern.

This chapter describes briefly the nature of public utilities, the sources of legal authority for regulating public utilities, the general rights and obligations of public utilities, and the evolution of public utility regulation in the United States and Hawaii.

Nature and Definition of a Public Utility

There is no completely acceptable, brief, or concise definition of a public utility. However, there are two elements fundamental to any definition of a public utility. *First,* a public utility performs an essential public service, and *second,* its performance of such service is subject to regulation.

Regulation is imposed because the service is deemed essential. But the mere existence of regulation is not enough to set public utilities apart from other business enterprises, for in a broad sense all businesses are subject to some degree of regulation. The regulation that characterizes public utilities is one of degree, not kind. It is regulation in detail.

Many services in today's world may be deemed essential. But the services commonly performed by public utilities are of two major classes: (1) supply of continuous or repeated services through more or less permanent physical connections between the plant of the supplier and the premises of the consumer; and (2) transportation. In the first class are the supplying of energy, communication services, and water. In the second are the transportation of persons and cargo whether by air, water, rail, or on the nation's highways. The distinction between these two classes can be erased if we note that both classes involve physical distribution. Whether it be the transport of energy, messages, goods, or persons, a common element is the conveyance of something from one place to another.

Although the term, "public utilities," commonly refers to those industries performing either of these two classes of services in any

given jurisdiction, the list of public utilities is apt to include enterprises performing other kinds of services. It may include enterprises which perform services closely related to those performed by the first group (e.g., pipelines and radio and television broadcasting and transmission) and it may even include those enterprises whose services are not so closely or directly related (e.g., grain storage, warehousing, fire insurance underwriting, and milk production and distribution).[1]

Public utilities, particularly those which are traditionally considered to be public utilities, possess certain characteristics, although not all utilities necessarily possess all of them. They are as follows.

- Public utilities tend to be monopolies as compared with other industries. They tend to be monopolies because the nature of the services rendered makes it vastly more efficient to deliver such services under a monopolistic setting. This was clearly demonstrated in the early days of the electric and telephone industries when competing firms, serving the same area, resulted in wasteful duplications of resources with high costs and inadequate service to consumers. It is probably still being demonstrated today in the railroad and airline industries where it can well be argued that there are too many companies.

- Public utilities are capital-intensive. A large portion of their assets is in fixed investments; the ratio of assets to sales is high. Put another way, there is a low annual rate of capital turnover. Indeed, a large part of the investment of some public utilities is irrevocably sunk in highly specialized site improvements (e.g., a railroad roadbed) so that, if they got out of business, they couldn't take the improvements with them.

- The services provided by public utilities are generally urgent, essential, required, and continuously and constantly in demand. In economic terms, the demand for the services is relatively inelastic. During a recession consumers tend to defer purchases of other goods and services rather than cut back on these public utility services, such as electricity and the telephone. Demand for these services is also less apt to be affected by price changes. As the price of electricity or telephone services rises, the consumer is apt to cut back on vacation spending or some other area of his budget, rather than disconnect his refrigerator or telephone.

- Public utilities serve a large number of customers directly, most of whom have no alternative but to deal with them. There is usually a permanent hookup of some sort to the railway, gas main, or telephone line and the consumer is reluctant to incur the cost of disconnecting from one system and attaching to another. The consumer does not have the same flexibility in switching from one supplier to another as he does in the case of grocery shopping where there are usually several stores equally convenient and satisfactory to his needs.

Legal Basis for Regulating Public Utilities

The regulation of public utilities on the federal level is based on the interstate commerce clause of the U.S. Constitution. Article 1, section 8 of the Constitution gives Congress the power "to regulate Commerce . . . among the several States . . . ." The final clause of the same article implies additional powers when it authorizes Congress "To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States . . . ." These clauses have been broadly interpreted by the U.S. Supreme Court to cover not only commerce between states but also commerce within states which affects interstate

[1] See appendix A for a state-by-state listing of the variety of enterprises which are subject to regulation.

commerce.[2] Indeed, federal authority to regulate commerce is almost unlimited and "is as broad as the economic needs of the nation."[3] Thus, the commerce clause has been applied to controls over 40 acres of wheat, out of a total of 60 million acres planted in the nation, even though not a single bushel of wheat left the farm. The Court said that, though no wheat entered commerce, this did not prevent the farmer from influencing interstate commerce since in relying on his own production he fulfilled a demand that would otherwise have relied on interstate commerce.[4]

The states' power to regulate public utilities stems from their broad authority to legislate for the protection of the health, safety, and general welfare of their citizens. These police powers, while not explicitly stated, are implied from the Tenth Amendment to the U.S. Constitution which provides that those powers not delegated to the federal government and not specifically prohibited to them may be exercised by the states. The courts have given the states wide latitude in regulating business in the interest of the public health, safety, and welfare.

The powers given the federal and state governments to regulate public utilities are not without constitutional safeguards to protect corporate rights. The Fifth Amendment, U.S. Constitution, requires of the federal government that "No person shall . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." And the states are commanded in Article 1 that they shall not pass any law impairing the obligation of contracts, and in the Fourteenth Amendment that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In addition to these constitutional safeguards, there exists the institution of judicial review of administrative decisions.

[2]"The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate *which so affect interstate commerce,* or the exertion of the power of Congress over it, *as to make regulation of them appropriate means to the attainment of a legitimate end,* the effective execution of the granted power to regulate interstate commerce." [Emphasis added.] *United States v. Wrightwood Dairy Co.,* 315 U.S. 110, 119 (1942).

[3]*American Power & Light Co. v. Securities & Exchange Commission,* 329 U.S. 90, 104 (1946).

[4]*United States v. Haley, Jr.,* 358 U.S. 644 (1959).

Rights and Obligations of Public Utilities

Rights of public utilities. There are four rights held by public utilities in addition to the general right of legal protection of private property. *First,* public utilities have the right to collect a reasonable price for services rendered. They may not be forced to operate at an overall loss, though any one segment of their operation may be unprofitable. This right is not to be interpreted, however, to guarantee a reasonable rate of return.

Second, public utilities have the right to draw up reasonable rules and regulations governing their operations. Thus, a company may be required to provide service 24 hours a day, but need not keep its business office open around the clock, or continue to service a customer who is greatly in arrears in the payment of his bill.

Third, a public utility has a right to some protection from competition by virtue of a charter, franchise, or certificate of public convenience and necessity. This right is not usually a complete freedom from competition, but rather a limited freedom extending unevenly over a range of operations.

Fourth, certain public utilities have also the right of eminent domain. This enables them to condemn private property and take it for public use. Adequate compensation must be paid, of course, and the use must be within the proper conduct of their business.

Obligations of public utilities. Concomitant with the four rights, public utilities have four

major obligations or responsibilities imposed on them because of their special status. *First,* they are obligated to serve all who apply for service. Within their respective market areas and within the limits of their capacity, public utilities must be prepared to serve any customer who is willing and able to pay for the service. At times, this requirement may mean that a business must provide capital investment in rural areas where it is not profitable to do so, or to maintain an unprofitable type of service. In contrast, within constitutional proscriptions against discrimination on account of race, etc., other businesses may legally decline to serve a potential customer for any reason.

Second, public utilities are obligated to render safe and adequate service. Each service must be supplied by means of the safest equipment available to the industry involved and the service rendered must be adequate. For the energy and telecommunications industries, this means service must be provided 24 hours a day; for the transportation industries, service must be scheduled in the public interest. Public utilities must also be prepared to accommodate foreseeable increases in demand.

Third, public utilities have the obligation to serve all customers on equal terms. This does not forbid reasonable classification of customers for rate purposes, but does forbid unjust or undue discrimination.

Finally, due to removal from competitive forces that would otherwise regulate prices, public utilities are held to just and reasonable prices for their services. This is the least precisely determinable of the four obligations and the one that gives rise to most contentions.

Evolution of Public Utility Regulation in the United States

At the time of the American Revolution, certain occupations were considered by the English courts to be imbued with a public interest and subjected to special rights and duties. These occupations were known as "common callings" and shared the element of being conducted by people who sought public patronage. The special obligations attached to such callings were: reasonable prices, adequate service, and facilities available to all who sought them. While the American colonies had the same regulations as obtained in England, after the Revolution they were gradually repealed or left unenforced as being contrary to the laissez-faire attitudes predominating on this side of the Atlantic. But about a hundred years ago it became evident that the competitive forces of the marketplace were not always so beneficial. Furthermore, they were not always allowed to operate unfettered, but were being manipulated by the so-called "robber barons." And so a hue and cry went up for regulation, especially by farmers hurt by discriminatory pricing of the railroads.

State regulations. The first attempts at some regulation of the utilities were made by the states. Their early efforts were, however, generally ineffective. One of the earliest methods was through judicial regulation administered whenever an injured party brought a lawsuit for damages inflicted by those holding "common callings." This method of regulation was very ineffective as the courts were expensive to resort to, lacked the expertise required, and were simply not set up for the day-to-day administration that was required.

Another early method of regulating public utilities was by direct supervision of the legislature. This proved unworkable for about the same reasons that applied to judicial regulation. Legislatures were expensive to have around, had other things to concern themselves with, and were too inflexible for day-to-day administration. Indeed, they were not even in session during much of the year, and some legislatures did not even meet every year.

A third early method, and still of significant use in Texas and a few other states, was local regulation by franchise. Here, all regulatory provisions were attempted to be incorporated in a franchise under which a company was allowed to commence operations.

The disadvantages of this method were that local regulation was incompatible with the increasingly far-flung operations of public utilities, and franchises even when well-drawn were inflexible and poorly suited to changing conditions.

The ineffectiveness of these methods prompted the creation of commissions to regulate public utilities. This commission system first evolved among the states along the Atlantic seaboard. At first, these commissions were mainly fact-finding and advisory bodies. But in the early 1870's, in the midwest, these commissions were vested with effective powers. By 1920, more than two-thirds of the states had regulatory commissions, and with Alaska's creation of one in 1959, all states, as well as Puerto Rico, the Virgin Islands, and the District of Columbia, possessed public utility commissions under one name or another.

Most commissions are known as public utility or public service commissions, but they may also be known as railroad, commerce, or corporation commissions. Several states have divided the function between two or more commissions, such as Kentucky with its railroad commission, public service commission, and department of motor transportation.[5] The degree of regulation exercised by the various commissions is not uniform, but most commissions have authority over commencement of service, construction and abandonment of facilities, rates charged, and termination of service. It is also normal for commissions to prescribe uniform systems of accounts, require periodic reports, and regulate the issuance of securities.

The commission form marks a sharp departure from the traditional form of governmental organization in the United States. Whereas the executive department headed by a single executive and subject to the direction and control of the chief executive has been the prevalent pattern for administering governmental functions in the United States and whereas there has been much attention given to maintaining the separation of powers between executive, legislative, and judicial branches and functions, the so-called "independent regulatory agencies" have the following characteristics: (1) they are headed by a plural body rather than a single executive, (2) they enjoy a relatively high degree of independence from direct control and supervision by the chief executive, (3) they are supposed to be bipartisan or nonpartisan, and (4) they have been vested with quasi-legislative and quasi-judicial functions and powers in addition to their executive duties and authority.

The federal commissions. Following on the heels of the early state railroad commissions, the federal government entered into the regulation of railroads with the establishment of the Interstate Commerce Commission (ICC) in 1887. For many years, this was the only federal regulatory agency in the field of public utilities, but to a very significant degree it became the model of many of the state commissions and its approach to regulation set many precedents and established the pattern of regulatory procedures still followed in jurisdictions throughout the country. Much of the highly formal and legalistic manner of conducting regulatory business is attributed to the style set by the ICC. Over the years, the ICC's jurisdiction has been expanded until it now includes motor carriers and water carriers on inland waterways as well as railroads.

The years of the New Deal (i.e., the 1930's) saw a great proliferation in the number and variety of federal regulatory agencies so that today there are five such agencies, including the ICC, primarily engaged in regulating various types of public utilities. The other four are: (1) the Civil Aeronautics Board (CAB) which regulates air carriers; (2) the Federal Maritime Commission (FMC) which regulates water carriers engaged in foreign and domestic offshore commerce; (3) the Federal Power Commission (FPC) which regulates the interstate transmission of electricity and natural gas; and

[5] See appendix B for a list of the commissions of the various states.

(4) the Federal Communications Commission (FCC) which regulates telephone, telegraph, radio, and television transmission and broadcasting. In addition, there are numerous other federal agencies, commissions, departments, and boards which have peripheral concerns with activities of public utilities. Among the most important of these are the Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC), the National Labor Relations Board (NLRB), and the Atomic Energy Commission (AEC).[6]

Federal jurisdiction versus state jurisdiction. Although state regulation of public utilities predated federal regulation, the federal government has come on strongly with regard to certain industries and certain fields of activity and by virtue of its superior position has preempted a number of areas of jurisdiction. The growth and consolidation of private utility companies and the crossing over of state boundaries by these large enterprises have also contributed to the expansion and preeminence of the federal regulatory agencies because the state agencies have neither the legal authority nor the resources to exert effective control over these interstate activities.

As a consequence, the state commissions today find their spheres of activity greatly restricted or circumscribed by federal preemption and influence. The regulatory areas where federal power is exclusive or preeminent have grown over the years while the areas where state authority is exclusive or paramount have been contracting, or at least not expanding. There continue to be areas of concurrent jurisdiction, but these will likely diminish, of course, as federal jurisdiction expands. Where such areas of concurrent jurisdiction exist, there is, as might be expected, a constant but fluctuating process of defining roles and adjusting relationships.

Some states have recognized more clearly than others the need to coordinate regulatory activities at both the federal and state levels and have vested in their state regulatory bodies the responsibility for dealing with the federal regulatory agencies and representing the states' interests before the federal commissions.

Evolution of Public Utility Regulation in Hawaii

Public utility regulation in Hawaii has followed the national pattern. When utility companies were first established, their rights, privileges, duties, and responsibilities and their relationships to the government were all set forth and defined in franchises granted to the companies by the government. These franchises were legislative enactments and, as separate legislative acts considered at different times and under varying conditions, they contained many different provisions. The various utility companies that exist today trace their origins to these franchises, although over the years these franchises have been amended from time to time both by general legislation affecting all franchises and by specific legislation pertaining to particular franchises. The Hawaiian Telephone Company, for example, still operates under a charter granted by the Kingdom of Hawaii in 1883.[7]

At the time the initial franchises were granted, as was the case elsewhere in the United States, much of the emphasis was on regulating the use of public rights of way by the private utility companies and on securing appropriate payments to the government for the privileges granted rather than on matters relating to rates and services. However, following national trends, concern over obtaining acceptable services at reasonable rates and on a nondiscriminatory basis began to come to the forefront as

[6]The AEC as a separate agency has just recently been abolished, but its functions have been transferred to other federal agencies, including the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission.

[7]For a detailed discussion and compilation of Hawaiian franchises at the time of the transition to statehood, see: State of Hawaii, Attorney General, *Public Utility Franchises* (Honolulu: 1961). Since the issuance of this report, there have been several other laws enacted relating to franchises and amending various provisions contained in the franchises.

individuals and small groups found themselves pitted against large corporate entities which controlled essential services and at the same time enjoyed special privileges granted by the government with little or no effective control being exercised by the government over them. In 1913, the territorial legislature enacted Act 89 which created the Hawaii public utilities commission and set forth the basis for general and continuing regulation of utilities in Hawaii. This act has been amended a number of times since 1913, but it has remained basically unchanged and is still the fundamental law under which public utilities are regulated in Hawaii today.

Although Act 89, as amended over the years and codified in chapter 269 of the Hawaii Revised Statutes, is the basic law, there are other statutes concerned with the regulation of public utilities. In 1961, the state legislature enacted Act 121 (HRS, chapter 271), specifically relating to motor carriers. This act placed in the public utilities commission the duty to regulate the safety of motor carriers. Then, in 1970, the legislature enacted Act 112 (HRS, chapter 440–G), relating to cable television systems. In 1965, the attorney general had ruled that cable television systems constitute public utilities and thus subject to the jurisdiction of the public utility commission. However, due to the commission's heavy workload and because the many problems in this new area of regulation required concentrated attention, the legislature, through Act 112, assigned the authority and responsibility for regulating cable television systems to the director of regulatory agencies rather than the public utilities commission. It reserved for further study the eventual reassignment of the function to the public utilities commission. In 1974, legislation was enacted further expanding the scope of authority of the public utilities commission. Act 59 added private sewer companies and sewer operations to the list of industries subject to the commission's regulation under chapter 269. Act 94 enacted a new chapter in the Hawaii Revised Statutes (chapter 271G) setting forth the legal basis for the regulation of water carriers in a fashion similar to the regulation of motor carriers provided in chapter 271.

Chapter 3

AUDIT FRAMEWORK

The audit of the State's public utilities program was conducted within a framework which took into account the industries regulated, the functions of the public utilities commission and other agencies concerned with the regulation of public utilities, and the objectives of the public utilities program as they relate to the State's overall program objectives. This chapter briefly describes that framework.

The Industries Regulated

The various privately owned industries currently subject to regulation in Hawaii may be grouped into four categories: (1) energy supply, (2) communications, (3) transportation, and (4) water supply and sewage disposal services. Of these four, only the first three have been significant in terms of regulatory effort. Scant attention has been given to the fourth. This is because in Hawaii water supply and sewage disposal have generally been considered governmental functions and only a few relatively small private operations have been set up to provide these services. At present, the public utilities commission exercises formal jurisdiction over only three small water companies, and the amount of control exercised is quite negligible. As for private sewer companies and facilities, these were not legally defined as public utilities until the passage of legislation in 1974 (Act 59) which has finally placed them under the jurisdiction of the public utilities commission. Apparently the only major sewerage operation affected by this legislation is that serving the Hawaii Kai area on the island of Oahu. It is still too early to tell what effect this legislation will have on the public utilities program. In the three main categories, the industries and companies included are as follows.

1. **Energy.** Included in this category of industries are those which supply electric and gas services to consumers. There are three electric utilities and one gas company in Hawaii.

a. Electric. The three electric utilities are the Hawaiian Electric Company, the Molokai Electric Company, and the Kauai Electric Company. The Hawaiian Electric Company serves not only the island of Oahu but also the islands of Hawaii, Maui, and Lanai through its wholly owned subsidiaries, the Hilo Electric Light Company[1] and the Maui Electric Company. The Kauai Electric Company is owned by the mainland-based Citizens Utilities Company, which bought Kauai Electric Company from the sugar plantations which previously owned control of the utility. The Hawaiian Electric Company is by far the largest segment of the industry even without its subsidiaries on Hawaii and Maui. By almost any means of measurement, it is more than double the size of all the rest of the electric utility operations in the State combined.

[1]Renamed Hawaii Electric Light Company, Inc., effective January 1, 1975.

b. Gas. GASCO, Inc., is Hawaii's only gas company. It was formerly the Honolulu Gas Company, Ltd., but as a result of a reorganization, it is now a subsidiary of Pacific Resources, Inc. Its main operations are on the island of Oahu, but it is expanding its operations to the other islands. The company's separate Isle Gas Division handles the nonregulated aspects of its business (i.e., the distribution of liquefied petroleum or bottled gas). Pacific Resources, Inc., arose out of the development and establishment of a second major oil refinery on Oahu, the Hawaiian Independent Refinery, Inc., which is now another (and nonregulated) subsidiary of Pacific Resources, Inc. With the recent approval of a new synthetic natural gas (SNG) production facility on Oahu, still another regulated subsidiary of Pacific Resources, Inc., ENERCO, Inc., has been established to produce energy for GASCO. This, in effect, leaves GASCO with only the function of transmitting gas.[2]

2. **Communications.** Included in the communications category are the telephone, telegraph, radiocall, and cable television companies.

a. Telephone. Hawaii has a single, statewide telephone system which is owned and operated by the Hawaiian Telephone Company. The company dates its origin back to a charter granted by the Kingdom of Hawaii in 1883. It was formerly an independent corporation, but in May 1967 the company was acquired by the General Telephone and Electronics Corporation and is presently a wholly owned subsidiary of this large, mainland-based telecommunications and industrial complex. The merger is currently under attack as being in violation of the federal and state antitrust laws.[3] However, until a final decision is made in the matter, the company remains a subsidiary of the General Telephone and Electronics Corporation.

In addition to owning and operating the telephone system within the State, the Hawaiian Telephone Company is also involved in international communications by sharing in the ownership of the long distance submarine cables connecting Hawaii with the rest of the world and through direct participation in the satellite telecommunications network. Since activities and operations extending beyond Hawaii's boundaries are subject to regulation by the Federal Communications Commission (FCC) and not subject to control by the State, regulation of the company by the State is complicated by the necessity of separating the intrastate aspects of the business from the rest of the business and of coordinating adequately with the FCC. The need for such separation and coordination is by no means unique to the Hawaiian situation, but the factors of distance and isolation do distinguish Hawaii's position from that of most of the other states except perhaps Alaska.

The telephone company has almost two and a half times the number of employees as do all the electric companies combined. Thus, the company is a very significant factor in the State's economy and is probably the State's largest single private employer in terms of full-time employees.

b. Telegraph. Western Union–Hawaii, Inc., at its request, was placed under the jurisdiction of the public utilities commission on April 14, 1972.[4] Western Union–Hawaii, Inc.,

[2]Covered in the state public utilities commission's Decision and Order No. 3394 (Docket Nos. 2345 and 2399). (The state public utilities commission's decisions and orders are hereafter in this report sometimes referred to as "D&O.")

[3]The United States District Court for the District of Hawaii, in a suit brought by the International Telephone and Telegraph Corporation, has ruled that the merger is in violation of both federal and state statutes and ordered that General Telephone divest itself of Hawaiian Telephone and several other acquisitions. This order has been appealed.

[4]D&O No. 2940 (Docket No. 1937 filed on February 3, 1971).

was incorporated in Delaware on January 26, 1971, and is a wholly owned subsidiary of Western Union Corporation, a large, nationwide telegraph company (which is now completely separate from Western Union International). Western Union–Hawaii, Inc., is engaged in providing certain data transmission and related services.

c. Radiocall. Radiocall, Inc., applied on August 27, 1970[5] to be declared a public utility and placed under the jurisdiction of the public utilities commission. At its meeting on March 23, 1973, the commission voted to recognize Radiocall, Inc., as a public utility. The final decision and order effectuating this action was issued on September 14, 1973.[6] Radiocall, Inc., is a Hawaii corporation and was incorporated on January 1, 1969. It is engaged in providing telephone answering and radio paging services to subscribers.

d. Cable television. The licensing and regulation of cable television systems in the State came into being with the enactment of Act 112, SLH 1970. Cable television is the sole exception to the jurisdiction of the public utilities commission over the utilities described in this report. Jurisdiction over cable television has been lodged by Act 112, at least temporarily, in the director of regulatory agencies, rather than the public utilities commission.

For the purposes of licensing CATV companies, the State has been divided into separate geographic "service areas" with each area to be serviced by a single company. Since the enactment of Act 112 and as of the time of the audit, ten companies and systems have been licensed to service various areas of the State.[7] In addition, one application is currently pending to complete service to the entire island of Maui. The systems that have been licensed range in size from a low of 25 miles of cable and less than 1000 potential subscribers to a high of 572 miles of cable and 89,000 potential subscribers. The oldest of the licensed companies dates as far back as 1961 (the Kaiser-Teleprompter of Hawaii, Inc., and the Pacific Network, Inc.). All of the licensed companies were to have completed the installation of their systems by late 1973.

e. Interconnect industry. As a result of an FCC decision handed down in 1968,[8] telephone companies throughout the country have been forced to allow users and non-telephone companies to attach non-telephone-company equipment (i.e., instruments and switchboards) to telephone company lines. This has opened up competition in the field of interconnect equipment and has given rise to a whole new interconnect industry. The FCC and state regulatory commissions generally still have not decided how to deal with these interconnect companies. In Hawaii, the public utilities commission has issued an order[9] to the interconnect companies to show cause why they should not be regulated by the commission, but the matter is still pending on the commission's docket. At present, there are more than a half dozen interconnect companies operating in Hawaii. Although they have installed a number of sizeable private telephone systems, their operations are very small in comparison to those of the Hawaiian Telephone Company.

3. **Transportation.** The transportation category includes firms engaged in the business of transporting people and cargo over land, sea, and air.

a. Motor carriers. With the passage of the Hawaii Motor Carrier Act in 1961, the public

[5] Docket No. 1881.

[6] D&O No. 3301 (Docket No. 1881).

[7] See appendix C for a list of the companies currently licensed and the respective areas they are licensed to service.

[8] *Re Use of Carterfone in Toll Telephone Service,* 13FCC 2d 420.

[9] Show Cause Order No. 3129, February 5, 1973 (Docket No. 2187).

utilities commission assumed jurisdiction over various types of motor carriers as well as responsibility for the safety regulation of almost all types of trucks and buses used in Hawaii. Prior to that time, it had exercised control over several bus companies on Oahu (the Honolulu Rapid Transit being the most important), but with the city and county of Honolulu taking over the operation of municipal bus services on the island, this area of jurisdiction for the commission is rapidly diminishing.

Motor carriers subject to varying degrees of regulatory control fall into several classes: (1) common carriers of passengers (primarily tour bus companies), (2) common carriers of property (local trucking operations), (3) contract carriers of property (truckers who make specific contracts with shippers for trucking services and who are generally exempt from economic regulation), and (4) private carriers (companies or persons who do their own trucking but who are subject to safety regulation by the public utilities commission).

Although some of the companies are fairly large, the industry is characterized by a relatively large number of small companies. Many are owner-operator entities involving only one or two vehicles. The number of vehicles subject to regulation exceeds 15,000 and may be as high as 40,000. In the aggregate, the industry is quite significant in the State's overall economy and employment picture.

b. Water carriers. The only regular water carrier presently regulated by the public utilities commission is Young Brothers, Ltd., a subsidiary of the Dillingham Corporation, which provides barge service for the shipment of property between the islands. [10]

[10] There are also several contract carriers of property between the islands and points elsewhere throughout the Pacific Ocean, but these are not subject to the jurisdiction of the public utilities commission. The two main contract water carriers are the Isleways Division of Dole Company (which is primarily engaged in the hauling of pineapples from the islands of Lanai and Molokai to Oahu) and Hawaiian Tug & Barge Company (which is another subsidiary of the Dillingham Corporation and which performs contract services—e.g., tow boat services—for Young Brothers, Ltd.).

Although Young Brothers is currently the only regulated water carrier, there are at least two others contemplating entering into the business of public water transportation. They are the Hawaiian Inter-Island Ferry System, Ltd., and Kentron Hawaii, Ltd.

The Hawaiian Inter-Island Ferry System, Ltd., was organized several years ago under the leadership of State Senator John J. Hulten with the objective of putting into service one large oceangoing ferry suited to Hawaii's waters and capable of transporting large numbers of passengers, cars, and trucks between the islands. Prior to May 1974, the company had been operating on a conditional certificate issued by the public utilities commission. Decision and Order No. (D&O) 3503 of Docket No. 1849, issued on May 23, 1974, allows the company all the time necessary to complete financial transactions. So far, however, the many obstacles to the project have not yet been overcome and the proposed system has not become operative.

Kentron Hawaii, Ltd., a subsidiary of LTV Corporation, has displayed a continuing interest in the possibilities of developing some sort of hydrofoil operations in the islands. As a step in this direction, Pacific Sea Transportation, Ltd., has been organized and has been operating on an experimental basis a seatransit commuter service (passengers only) between Honolulu, Pearl Harbor, and Iroquois Point. This involves the operation of one craft capable of carrying up to 450 passengers and two other craft which are used occasionally for providing service during the rush hours in the mornings and afternoons during regular workdays, Monday through Friday. The initial six-month certificate of public convenience and necessity issued by the public utilities commission for this service has just been recently made permanent. Hydrofoil services are expected to begin in the spring of 1975 with three hydrofoils. At present, the company has received a conditional certificate from the commission.

c. Air carriers. There are two regular inter-island airlines providing air carrier service

within the State. These are Hawaiian Airlines and Aloha Airlines. Both airlines provide regularly scheduled service statewide and are highly competitive, but Hawaiian Airlines is the larger and older of the two and serves more points within the State. In addition, there are several small so-called "air taxi" services which operate light planes and provide passenger service between various points around the State, both on an as-needed basis and on a more or less regularly scheduled basis. They fly to private airports not served by the regularly scheduled airlines and also to the commercial airports operated by the airports division of the state department of transportation.

As a result of the assertion of authority by the Civil Aeronautics Board (CAB) over the international air areas between the islands, the public utilities commission has very limited jurisdiction over inter-island air services. At present, the commission exercises very restricted authority to approve certain financing actions of the two regularly scheduled airlines.

Hawaiian Airlines and Aloha Airlines, being competitors in a limited market, leapfrog each other in their schedules and otherwise duplicate efforts and services. As a consequence, they have frequently applied for subsidization from the federal government to offset operating deficits. As a means of avoiding the necessity for such subsidies, the CAB appears to have encouraged merger proposals between the two airlines, and actual merger negotiations have been held from time to time. However, up to the present, all such negotiations have not been fruitful. Thus, they continue to be competitors for the inter-island airline business in Hawaii.

Regulatory Functions

The state public utilities commission is the agency primarily responsible for regulating public utilities, except cable television. It derives its general authority over all public utilities from HRS, chapter 269, entitled, "Public Utilities Commission." It derives its specific authority over motor carriers from HRS, chapter 271, entitled, "Motor Carrier Law," and over water carriers from chapter 271G, entitled, "Hawaii Water Carrier Act." [11] The regulation of cable television companies and systems is the responsibility of the director of regulatory agencies, who exercises that responsibility through the cable television division in the department of regulatory agencies. The authority for regulating cable television stems from HRS, chapter 440G.

The various functions performed by the public utilities commission and the cable television division under chapters 269, 271, 271G, and 440G may be categorized as follows:

- Certification and licensing
- Rate-making
- Safety regulation
- Economic and business regulation
- Representation before federal agencies

Both the public utilities commission and the cable television division (through the director of regulatory agencies) are vested with rule-making and investigatory powers to assist them in the discharge of these functions. A brief description of these categories of functions follows.

[11] Although motor carriers and water carriers are accorded special treatment by chapters 271 and 271G, chapter 269 is also applicable to them. Chapter 269, in its definition of a "public utility," includes a person in business "for the [public] transportation of passengers or freight." However, except for some matters still under chapter 269, for virtually all purposes, chapter 271 is governing with respect to motor carriers and chapter 271G is governing with respect to water carriers. Indeed, in 1969, by Act 55, the legislature deleted several sections that were then in chapter 269 dealing specifically with motor carriers operating on the public highways. These sections were deleted on the grounds that the provisions of the deleted sections had been superseded by chapter 271.

There are other chapters in the Hawaii Revised Statutes which concern public utilities, but they deal with matters other than regulation by the public utilities commission. For example, chapters 270, 272, 273, 275, 277, and 279 relate respectively to public utilities employees, defrauding carriers of passengers, railway law, telecommunications offenses, energy corridors, and transportation control. Other than for motor carriers and water carriers, there are no chapters dealing with the regulation by the public utilities commission of any specific utility.

1. **Certification and licensing.** Certification and licensing mean governmental authorization for a business to operate as a specific kind of public utility. They are regulatory devices to accomplish one or both of the following purposes: (a) to control or limit entry into a market or into a particular kind of public utility business and (b) to ensure that only those who meet certain specified safety, financial, and other standards are allowed to operate as a public utility.

An authorization to operate as a public utility may take the form of (a) a franchise or charter, (b) a certificate of public convenience and necessity (CPCN), or (c) a license or permit. Although these forms are similar in many respects, a legal distinction is often made between and among them. A franchise or charter is a grant by government, through the legislature, of certain privileges to specifically named private individuals or corporations. The legislative act granting the privileges generally contains conditions and limitations on the privileges granted. A license or permit, on the other hand, is an authorization issued pursuant to the police power of the state to permit an individual or corporation to do what otherwise would not be legal. The license or permit is usually for a certain specified period. It does not confer exclusive privileges. A CPCN may be a limited franchise or a license. It is distinguished from a franchise or charter in that it is not issued directly by the legislature to a particular person or firm but, rather, is issued by a governmental agency pursuant to a general statute. It differs from a license or permit in that, unlike a license or a permit, it does not contain an expiration date or it is valid for a period considerably longer than in the case of a license or permit.

In Hawaii, the gas and electric utility companies operate under franchises which date back to pre-statehood. The Hawaiian Telephone Company operates under a charter which was originally granted by the Kingdom of Hawaii. Common carriers (or motor and water carriers which engage in the public transportation of people or cargo) are required to obtain CPCN's from the public utilities commission. However, contract motor carriers (or motor carriers which furnish transportation or services to one or a limited number of persons under specific, continuing contracts with the individual persons rather than to the public at large) must obtain permits. Similarly, cable television companies must secure permits from the director of regulatory agencies. Under chapter 269, common carriers by air are required to obtain CPCN's from the public utilities commission. However, the inter-island airlines are currently not so certificated because the federal CAB has asserted exclusive jurisdiction over inter-island air carriers.

2. **Rate-making.** Rate-making is concerned with establishing fair and reasonable rates which the public utilities may charge the public for the services rendered by the utilities. The public utilities commission has broad powers to fix the rates and fares of all public utilities, including motor carriers, but excluding cable television companies. The rates charged by cable television companies are determined by the director of regulatory agencies. Included within this function is the authority to prescribe the quality of services to be rendered by the public utilities to their customers.

3. **Safety regulation.** Safety regulation consists of activities to ensure the safety of the public whom the public utilities serve and the safety of the employees of public utility companies. Chapter 271 expressly prescribes as one of the duties of the public utilities commission the regulating of the safety of operations and equipment of motor carriers. With respect to other public utilities, a similar duty is implied in section 269–7 which empowers the public utilities commission to examine the manner in which each public utility is operated with reference to the safety or accommodation of the public and the safety of its employees. In the case of cable television (CATV) systems, the director of regulatory agencies' safety regulation function is implied in those sections of chapter 440G which (a) require that one of the conditions for the issuance of a CATV permit is an agreement of the applicant

to hold the State and county harmless from any and all claims for injury and damage to person or property caused by the installation, operation, or maintenance of the permittee's CATV system and (b) authorize the director to do all things which are necessary or convenient in the exercise of his powers and jurisdiction.

4. Economic and business regulation. Economic and business regulation includes activities relating to supervising, controlling, and regulating the internal business operations of public utilities. Chapters 269, 271, and 271G vest very broad powers in the public utilities commission. The public utilities commission is authorized to examine, supervise, and regulate such activities as the issuance of stocks, bonds, notes, and other evidences of indebtedness, the sale of assets, the wages paid the employees, the valuation of physical property, the merger or consolidation of a public utility with another, the system of accounting and bookkeeping, the construction, modification, or improvement of facilities, and the disposition of income. Under chapter 440G, the director of regulatory agencies is given broad duties and powers including the power and jurisdiction to "supervise and regulate every CATV company operating within [the] State . . . and to do all things which are necessary or convenient in the exercise of this power and jurisdiction."

5. Representation before federal agencies. Representation before federal agencies includes participation in the federal regulatory process. Chapter 269 specifically provides that the public utilities commission may examine into any matter related to the regulation of public utilities, "notwithstanding that the same may be within the jurisdiction of the Interstate Commerce Commission, or within the jurisdiction of any court or other body, and when after the examination the commission is of the opinion that the circumstances warrant, it shall effect the necessary relief or remedy by the institution and prosecution of appropriate proceedings or otherwise before the Interstate Commerce Commission, or such court or other body, in its own name or in the name of the State, or in the name or names of any complainant or complainants, as it may deem best."

Under this section, the commission has broad authority and responsibility to concern itself with federal regulatory matters affecting Hawaii and covering a wide variety of subjects. This authority of the public utilities commission is not exclusive. Both the attorney general and the consumer protector are also empowered to appear before federal regulatory agencies in behalf of the State and consumers.

Program Objectives

An evaluation of any program requires consideration of the objectives of the program. This is because programs exist and activities are performed for the sole purpose of achieving certain objectives and attaining specified goals. In this State, as a part of an effort to implement a planning, programming, and budgeting system, all of the State's programs have been grouped by common objectives into a program structure. The following notes this state structure and what it appears to say about the objectives of the public utilities program.

Placement of public utilities program within the state program structure. The state program structure, at its highest level, "Level I," consists of 11 major programs as follows:

1. Economic development
2. Employment
3. Transportation facilities
4. Environmental protection
5. Health
6. Social problems
7. Formal education
8. Culture and recreation
9. Public safety
10. Individual rights
11. Government-wide support

The State's public utilities program appears within the individual rights category. Just a year ago, the safety portion of the activities of the public utilities program also appeared under the

public safety category, but it is not now mentioned in that category.

Within the Level I individual rights program is a Level II program entitled "Protection of the Consumer." This Level II program includes a Level III program entitled "Regulation of Services." It is here that the public utilities program is placed. This Level III program includes four Level IV programs, one of which is designated as "Communication, Utilities, and Transportation Services." This Level IV program is almost exclusively concerned with public utilities. In essence, the state program structure views the public utilities program as having as its objective the protection of consumers, through regulation. The objectives of the programs at the various levels are stated as follows:

Level I – Individual Rights

> "[T]o ensure that the individual is provided with services and products meeting acceptable standards of quality, dependability and safety; is given equitable and responsive treatment by public agencies; and is afforded equal protection of his legal and civil rights and interest."

Level II – Protection of the Consumer

> "[T]o ensure that the individual is provided with services and products that meet acceptable standards of quality, dependability and safety by the adoption and enforcement of appropriate laws, rules and regulations and through educational programs."

Level III – Regulation of Services

> "To ensure that the individual is provided with services meeting acceptable standards of quality, dependability, and safety by establishing and enforcing appropriate service standards." [12]

[12] Extracted from *The Multi-Year Program and Financial Plan (Summary)* submitted in December 1973. Third level objectives are not stated in the plans submitted in December 1974.

Level IV – Communication, Utilities and Transportation Services

> "To ensure that the individual is provided with communication, utilities and transportation services meeting acceptable standards of quality, dependability and safety at fair rates by establishing and enforcing appropriate service standards."

Contribution toward other state objectives. Other than in individual rights, the public utilities program is not visible within any other major program area of the State's program structure. Yet, the program and its operation relate to and affect the objectives of programs in other major program areas. These other major program areas and the relationship of the public utilities program to the programs in the other areas are briefly as follows.

1. **Public safety.** By law, the public utilities commission is assigned the responsibility for ensuring the safe operation of most motor carriers on the public highways, including those carriers which are exempt from economic regulation by the commission. In addition to its responsibility to ensure the safety of motor carriers on the public highways, the commission is assigned safety responsibilities with regard to public utilities in general. For example, it is responsible for the safe operations of utility companies and for the safety of public utility employees. The placement of these safety aspects of the public utilities program in the state program structure is unclear.

With respect to the safety of motor carriers on the public highways, it was at one time included under "Highway Safety" in the "Public Safety" program category. But neither "Highway Safety" nor the safety aspect of the public utilities program is any longer visible in the public safety program category. In the "Transportation Facilities" program category, there is a Level IV program called, "Safety Administration of Land Transportation." This is one of the programs relating to "Land Transportation Facilities and Services Support." However, the highway safety of motor carriers

regulated by the public utilities commission does not appear here.

2. **Environmental protection.** As major users of space, as serious producers of pollutants, and as voracious consumers of fuels, the utility and transportation industries subject to regulation in Hawaii have a very significant impact upon Hawaii's environment and are inextricably involved with the State's program for environmental protection. Thus, while the state program structure does not formally recognize the public utilities program as being related to the environmental protection program, the relationship is real and cannot be ignored.

3. **Economic development.** Hawaii's regulated utility and transportation industries are significant economic entities in themselves, are among the major employers in the State, and provide basic services which are key to most other economic activities in the State. In view of this vital economic role which they play, they cannot be meaningfully excluded from state program objectives and activities relating to economic development. Likewise, the public utilities program cannot be divorced from the major program for economic development even though formal recognition of this fact is not clearly portrayed in the State's program structure.

4. **Transportation facilities and services.** Mentioned early in the preceding chapter is the fact that all of the classes of activities generally considered as public utilities involve the transportation or conveyance of something from one place to another, be it energy, messages, goods, or people. This being the case, it is inevitable and unavoidable for the public utilities program to be interrelated with the State's major program for transportation facilities and services whether or not this is officially and specifically recognized in the state program structure.

PART II

FINDINGS AND RECOMMENDATIONS ON THE ORGANIZATION FOR AND GENERAL MANAGEMENT OF THE PUBLIC UTILITIES PROGRAM

Chapter 4

THE ORGANIZATION FOR HAWAII'S PUBLIC UTILITIES PROGRAM

This chapter describes and assesses, on an overall basis, the organizational arrangements through which the various aspects of Hawaii's public utilities program are administered.

Although numerous government agencies interact with Hawaii's public utilities and play some role in the regulation and development of the State's public utility industries, most of the regulatory activities are concentrated in the public utilities commission, the public utilities division (the staff), the cable television division, and the office of the director of regulatory agencies. Accordingly, this chapter focuses primarily (although not exclusively) on these entities and on their interrelationships.

Summary of Findings

In general, our findings are as follows:

1. The program of regulating public utilities suffers from a confusion in the roles, functions, duties, and powers of various organizational units. The public utilities commission currently is, for all practical purposes, without an adequate staff.

2. A principal reason for the present confusion and inadequate staff for the commission has been the lack of a systematic approach in the modifications to the organization for the public utilities program that have been made since statehood in 1959.

3. Certain functions, the responsibility for which is now vested in the public utilities commission, are better performed by other governmental agencies or not performed at all.

4. The workload of the public utilities commission is such as to justify converting the commission from a part-time body to a full-time body.

Organizational History of Hawaii's Public Utilities Program

The organizational history of Hawaii's public utilities program falls into two fairly distinct phases—the pre-statehood period and the period since Hawaii's admission to statehood in 1959. Each of these is discussed below.

The pre-statehood period. Administrative regulation of public utilities in Hawaii dates back to 1913 when the first generalized public utilities law was enacted. The organizational arrangements called for in this legislation followed very much the general pattern for regulatory agencies throughout the United States at that time and remained largely unchanged until Hawaii was admitted as a state in 1959.

Thus, for almost half a century the Hawaii public utilities commission enjoyed the status of an independent agency within the territorial government. It had the sole general supervisory

and regulatory power over the public utilities. It was supported by a full-time staff which it appointed and over which it exercised direct and exclusive control. The commission defined the powers and duties of the staff and utilized the staff to provide it with objective investigatory and other support. Moreover, the commission was more or less self-sufficient financially by virtue of the fact that it was a special fund agency where the fees paid by the regulated utility companies were placed in a special fund which was set up to support the agency.[1]

The period since statehood. Statehood brought about changes in the organization of Hawaii's public utilities program. A major characteristic of these changes has been the rise in the power of the director of regulatory agencies over public utility matters. The changes that have occurred, particularly those that took place in the 1960's, also reflect in part a growing sensitivity to consumer protection issues. The following describes the major organizational changes that have occurred since statehood.

1. **The Reorganization Act of 1959.** Pursuant to the constitutional requirement that all administrative functions of the state government be grouped into not more than 20 executive departments, the legislature in 1959 enacted the Hawaii State Government Reorganization Act (Act 1, Second Special Session 1959). This act created a new department of treasury and regulation and charged it with the general duty to "protect the interests of consumers, depositors and investors throughout the state." It then placed the public utilities commission, together with a number of other occupational and professional licensing and regulatory boards, within the department of treasury and regulation for "administrative purposes." Due to the size and importance of the public utilities commission, consideration was given to making it a separate department. However, the ultimate decision was to place the commission in that department, the primary function of which was to regulate private businesses considered so affected with a public interest that governmental control was deemed appropriate.

The act contained a provision applicable in all cases where a board or commission was placed within a department for administrative purposes which sought to define the relationship between such board or commission and the department. Under this general provision, the director of the department of treasury and regulation became the representative of the public utilities commission in communications with the governor and the legislature and the medium for the transmission of the commission's budget to the governor and the legislature. The director was also vested with the power to approve all rules and regulations formulated, all employee actions taken, and all purchases made by the commission. However, the commission retained a great deal of the powers it formerly had.

Subject only to the limitation that the director's approval be secured, the commission retained the power to make all rules and regulations, to employ, appoint, promote, transfer, demote, and discharge its staff and to describe the jobs of the staff members, and to purchase all supplies, equipment, or furniture needed by the commission. In the exercise of its quasi-judicial function, however, the limitation of securing the director's approval was dispensed with. Indeed, the act specifically provided that, except as set forth in the act, "the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties and powers."[2]

[1]For a fairly full description of the organization and operations of the public utilities commission up to the time of its transfer to the department, of treasury and regulation under the Hawaii State Government Reorganization Act of 1959, see: Tom Dinell, *The Hawaii Public Utilities Commission,* Report No. 6, 1961, Legislative Reference Bureau, State of Hawaii (Honolulu: 1961).

[2]See section G, Act 1, Second Special Session 1959.

In short, the Reorganization Act brought to an end the independent status of the public utilities commission, but still left it in a semi-autonomous position within the department of treasury and regulation.

2. **Act 21, SLH 1963.** In 1963, the legislature redesignated the department of treasury and regulation as the department of regulatory agencies (Act 114). At the same session, it enacted Act 21. Act 21 transferred from the commission to the director of the department the power to employ, appoint, promote, transfer, demote, and discharge and to describe the jobs of the commission's staff.

It appears that the purpose of Act 21 was to promote efficiency within the department of regulatory agencies. The act was applicable not only to the public utilities staff but to the staffs of all boards and commissions assigned to the department of regulatory agencies for administrative purposes. Senate Standing Committee Report No. 171 (1963) in recommending passage of the act noted that the various boards and commissions assigned to the department for administrative purposes had staffs of varying sizes and that the workloads of the respective staffs were unequal, causing employee morale problems within the department. The report also noted that, since the staffs were under the control of the respective boards and commissions, the director could not make equitable distribution of the workloads without the consent of the various boards and commissions. It intimated that the act would remove this barrier, allow the director to reallocate the work among the various staffs, and thus make the department more efficient in its operations.

The act contemplated no changes in the duties and responsibilities of the various staffs. Efficiency in the utilization of the staffs was the sole focus. Thus, under the act, the staffs were still staffs of and to the various boards and commissions, except that now they could be used interchangeably in servicing the various boards and commissions within the department.

3. **DRA's implementation of Act 21.** Although Act 21 made no express change in the functional role of the public utilities staff, in fact, it triggered a change in the staff's function from that of providing impartial and objective support to the public utilities commission to that of representing the director as a consumer advocate in proceedings before the commission.

Signs of this change in function first became evident in the mid-1960's. *First,* the public utilities staff was reorganized as the public utilities division (PUD) within the department of regulatory agencies. This reorganization in and of itself revealed little of the functional changes that were in store, except that such formalized and specialized organizational structure seemed to belie the notion of flexibility and interchangeability of the staffs of the various boards and commissions as contemplated in the Senate committee report.

Second, on June 16, 1966, General Order No. 1 took effect. This general order issued by the PUC prohibited any party to an on-the-record proceeding before the commission from communicating ex parte (i.e., without the knowledge, consent, or presence of other parties in the case) with any commissioner or hearing officer involved in the decision-making process relating to the case. Although the general order was not explicit on the matter, the term, "any party to an on-the-record proceeding before the commission," was interpreted within the PUD to include the public utilities staff.

Although not readily apparent at the time, these two developments presaged a conversion of the functional role of the staff to that of representing the director of regulatory agencies in the discharge of his duties to "protect the interests of consumers." This functional change reached fruition in the 1970–71 telephone company case when the director of regulatory agencies used the public utilities staff to represent him before the PUC. The right of the director to use the staff to represent him before the PUC was sustained by the state supreme court in an opinion it rendered in the case. (When the commission decided contrary to the

staff's position, the director appealed the decision to the supreme court.) In its opinion issued in 1973,[3] the court noted that the department of regulatory agencies is statutorily charged with the responsibility to protect the interests of consumers and held that thus "by operation of law," the director, on behalf of the consumers, is a proper party to the proceedings of the commission (and has standing to appeal the decisions of the commission). The court further held that the director may appear before the commission (and appeal the commission's decisions) through the public utilities staff inasmuch as the 1963 amendment placed the staff under the administrative control of the director.

In short, the result of Act 21, SLH 1963, was to vest in the director of regulatory agencies the power not only to hire, fire, and assign the staff to the commission, but also to direct the staff as to the position and action it should take in public utilities regulation. It should be noted, however, that this fundamental change in the role of the staff and basic alteration in relationships between the PUC and the PUD were not the result of a conscious and clearcut policy decision on the part of the legislature. Rather, it took a period of ten years for the shift to become a fait accompli, and the process involved a legislative act (Act 21), a formal reorganization of the department of regulatory agencies, a rule change by the PUC (General Order No. 1), and a decision of the supreme court.

4. **The CATV Law of 1970.** A further gain in the authority of the director of regulatory agencies over public utility matters occurred in 1970 when the legislature placed regulatory control over cable television (CATV) companies in the director of regulatory agencies rather than the PUC.

[3]In *re Hawaiian Telephone Co.*, 54 Haw. 663 (1973).

As early as 1965, the PUC had requested and received from the attorney general a ruling concerning its jurisdiction over the CATV field. In his opinion (Opinion No. 65–12, dated April 20, 1965), the attorney general held that the PUC was empowered to act in this area. In 1969, in response to a request from the legislature, the attorney general confirmed this ruling and held that the PUC had sufficient authority under its general statute (HRS, chapter 269) to exercise jurisdiction over and to regulate CATV systems in Hawaii as public utilities (Opinion No. 69–29, dated December 2, 1969).

After having a special interim committee study the matter of regulating the CATV industry, however, the legislature decided on at least a temporary basis to transfer CATV regulation away from the PUC and to place it directly under the director of regulatory agencies. In a lengthy report (House Special Committee Report No. 9, dated March 6, 1970), the interim committee explained and justified this action primarily on the basis of efficiency and a desire to enable the industry to expand its services in Hawaii as rapidly as possible. Noting that such expansion had become bogged down in a regulatory entanglement, the legislature decided to circumvent the PUC's complicated regulatory process and to centralize regulatory control in the hands of a single executive, the director of regulatory agencies. Provision was made, however, for an advisory committee to work with the director, and the legislature reserved the right to reconsider at a later date whether or not CATV regulation should be placed once again under the PUC. These decisions of the legislature became embodied in the Hawaii Cable Television Systems Law of 1970 (Act 112).

To implement the CATV law, the director of regulatory agencies has created within the DRA a new division, the cable television division (CTD), which enjoys a coordinate status with the PUD.

5. **Act 118, SLH 1972.** In 1972, the legislature enacted Act 118 which made an additional legal change in the organization and

operation of the PUC. Before Act 118, the state attorney general had been specifically named by chapter 269 as the attorney for the commission and, under the general statute vesting in him the responsibility for rendering legal services to all state agencies, he had also acted as attorney for the staff. Act 118 amended chapter 269 and made the attorney general and his deputies the attorneys for the staff and empowered the PUC to appoint its own attorney.

So long as the staff served the commission exclusively and provided the commission with impartial and objective support in the discharge of the commission's duties, there was no difficulty in the attorney general's advising both the commission and the staff, for the commission and the staff were virtually one and the same. However, if indeed Act 21, SLH 1963, changed the function of the staff from that of providing impartial and objective support to the commission to that of assisting the director of regulatory agencies before the commission in the discharge of the director's duties to protect the interests of consumers, then Act 118 was a logical extension of Act 21. The advocacy function and the decision-making function are incompatible, and thus an attorney could not very well represent both the staff and the commission at the same time.

6. **Creation of the office of consumer protection.** One other development needs to be noted. In 1969, the legislature established the office of consumer protection within the office of the governor (Act 175, SLH 1969). Under this legislation, the director of the office of consumer protection was designated the consumer counsel for the State and given the responsibility to "represent and protect the State, the respective counties, and the general public as consumers" (HRS, section 487–5). Among the specific functions, powers, and duties given to this office was that of appearing "before governmental commissions, departments and agencies to represent and be heard on behalf of consumers' interest . . . ."

This 1969 act made no change to the charge given by the Reorganization Act of 1959 to the department of regulatory agencies to "protect the interests of consumers . . ." and the 1972 amendment which made the attorney general counsel for the public utilities staff made no reference to this 1969 act setting up the office of consumer protection. Thus, it might be said that the department of regulatory agencies and the office of consumer protection have concurrent jurisdiction in protecting the interests of consumers and that both the attorney general and the office of consumer protection have a responsibility to litigate consumer protection cases. In practice, the office of consumer protection has not as yet had any significant, direct impact on the regulation of public utilities.

Summary. In summary, then, the Hawaii public utilities program is currently being administered within an organizational setting which includes the public utilities division, the cable television division, the director of regulatory agencies, and the public utilities commission, which are all parts of the department of regulatory agencies, as well as the department of attorney general, and, on the periphery, the office of consumer protection. The following sections discuss some of the major issues raised by this current organizational setting.

Confusion in Roles, Functions, and Responsibilities

A major characteristic of the current organization is confusion in the roles and responsibilities of the various entities concerned with public utility regulation. Specifically, there is confusion as to:

- The respective roles of the director of regulatory agencies and the public utilities commission.
- The responsibility of the staff (PUD) to the commission.
- The relationship of the attorney general to the commission, the director, and the staff.

The functions of the office of consumer protection in public utility matters.

Director, DRA, vis-a-vis the PUC. On the surface, it would appear that the role of the director of regulatory agencies in public utility matters is limited to that of ensuring that the voice of the consumers is heard in the commission's decision-making process, and that the full substantive power to regulate public utilities, except cable television, rests entirely in the hands of the PUC. This is because, although Act 21, SLH 1963, transferred the power over the staff from the commission to the director, the basic public utilities laws have been left virtually untouched. Under these basic laws, the commission has the exclusive authority, duty, and power to decide and take actions on almost all public utility matters, including making policies for the regulation of public utilities, performing quasi-judicial functions such as rate-making, and administering the programs of public utilities by licensing, investigating, and ensuring safety. The shift in the control over the staff was not accompanied by any changes to this authority; no provision has been made for sharing any of this authority with the director of regulatory agencies. All decisions and actions on public utility matters thus still require the formal action of the commission.

However, a closer examination of the relationship between the director of regulatory agencies and the commission, particularly the relationship in practice, reveals that the respective responsibilities are not all that clear. The staff assigned to the commission by law to assist it in the discharge of its responsibilities is under the administrative control and direction of the director of regulatory agencies. The extent of the director's control of the staff is such that he can and does direct the performance of the staff in all aspects of public utilities regulation. Thus, although by law the commission is responsible for the State's policies in public utilities, the adjudication of cases, and the administration of the public utilities program, the director, through the staff, can and does influence what those policies ought to be, how contested cases should be resolved, and the manner in which the public utilities program should be administered. The commission cannot fully command the staff legally assigned to it or be fully assured that the staff will provide the kind, nature, and amount of service which it needs, and will implement its directives.

Some may view this situation with equanimity on the basis that it simply creates a system of checks and balances which fosters care and deliberation in the regulatory process. However, in practice, since the director has no final decision-making authority and since the commission is without assurance of administrative support in the decisions it makes and in the implementation of its directives, this situation provides fertile ground for conflict, misunderstanding, deadlock, buck-passing, and finger-pointing between the director and the commission. Instances abound where each of the parties has actually charged that the other has caused unnecessary delays, has taken actions that should not have been taken, or has not acted when it should have acted.

Exemplifying this situation is the confrontation which occurred between the director and the commission in the most recent telephone rate case already cited where the director used the staff to present the director's position before the commission and later appealed, through the staff, to the state supreme court the commission's decision which to a great extent accepted the telephone company's position in favor of a substantial rate increase rather than the staff's (and director's) position opposing the increase. In this case, while it was still before the commission, the staff complained that the commission was allowing it insufficient time to develop and present its position while the commission expressed the view that the staff was being unnecessarily dilatory in performing its work.

Under existing conditions, it is virtually impossible to fix clearly the responsibility for making and implementing decisions concerning the regulation of public utilities. Who is responsible, really responsible, for setting policies, adjudicating cases, and administering

the regulatory programs in the field of public utilites–the director or the commission? By law, it is the commission; but in practice both the director and commission are asserting authority.

The role of the staff (PUD). The public utilities commission is not the only element which finds itself in a difficult, tenuous, and ill-defined position as far as the organization and management of the public utilities program within the department of regulatory agencies is concerned. The public utilities division (the staff) is also caught in a very uncomfortable conflict situation. It is constantly facing the dilemma of whether it is the servant of the commission, a protagonist before the commission, or an opponent against the commission.

This ambiguity in the position of the staff did not exist prior to the reorganization of the state government. The commission was then clearly in charge of the entire agency and the staff worked directly and exclusively for the commission. To all intents and purposes, they were one and the same. This formal unity was reinforced by a fairly close, informal working relationship which developed over the years when many of the commissioners served very extended terms and when the staff was extremely small (never exceeding 15 in total during the decade prior to reorganization). The prevailing attitude on the part of both commission and staff was that the staff was to provide the commission with impartial and expert advice and assistance.

The formulation and implementation of commission policies during the territorial period were thus the result of an intimate process of interaction and consensus between and among the commissioners and members of the staff. There were close and frequent consultations between the commission and staff after the close of hearings and during the preparation of the commission's decision on a case. In many instances, the staff actually drafted the final decisions and orders that were issued by the commission with the commissioners resting assured their viewpoints and decisions would be properly reflected.

However, in the last decade and a half, much of this has changed. Since Act 21, SLH 1963, when the staff was placed under the direct supervision of the director of regulatory agencies, the intimate relationship that existed between the commission and staff has gradually dissolved. This is particularly true since 1966 when a new General Order No. 1 was issued by the PUC which prohibited ex parte communication with any commissioner by a party to a proceeding before the PUC. With the staff being considered a party before the PUC, this action cut the staff off from any direct contact with the commission during rate cases and similar proceedings. Officially at least, the staff is now treated equally with the regulated utilities as far as access to the commission is concerned.

Indeed, as a result of the combined effect of Act 21, General Order No. 1, the 1973 supreme court decision, and the 1972 act making the attorney general the attorney for the staff, the PUD has emerged as an entity in its own right with the duty of being, on behalf of the director of regulatory agencies, the consumer protector in the public utilities field and with the right of being represented by the attorney general in proceedings before the PUC and before the courts.

Despite these developments, however, the staff still has not completely escaped the embrace of the commission nor divested itself of duties and responsibilities to the commission. As pointed out above, the basic laws pertaining to the PUC have not been revised to reflect the separation that has occurred between the commission and the staff. The basic laws (HRS, chapters 269, 271, and 271G) still vest in the commission most of the authority concerning the regulation of utilities and still make the staff legally responsible for doing many things on behalf of the commission. The laws make no provision for the staff to act independently in these matters. On the contrary, the laws treat the commission and the staff as if they were one

and the same entity. Thus, a great deal of what the staff does must be done on behalf of the commission and in the name of the commission, and the staff itself cannot effectuate most final actions except upon concurrence of the commission.

The net effect is that the staff is accountable to at least two masters. On the one hand, it is answerable to the director of regulatory agencies and has an independent function of serving as the consumer protector in the public utilities field. On the other hand, it is still defined by law as the staff of the commission and is responsible to the commission for carrying out commission functions and is bound by commission decisions and policies with regard to such functions. Such conflicting functions and assignments inevitably pose difficult and delicate quandaries for the staff—e.g., how should priorities be set between commission objectives and directives and those of the director of regulatory agencies? how much weight should be given to commission needs and desires in the formulation and scheduling of staff activities and programs? what recourse does the staff have where it disagrees with or objects to commission policies and actions? what can the staff do when the commission rejects or fails to act on its recommendations and proposals? can the commission issue orders to the staff such as it does to other parties subject to its jurisdiction?

Existing laws, procedures, and policies provide no firm or clearcut answers to these and similar questions. Up to now, the parties involved on all sides have been content simply to leave things confused and ambiguous, and to muddle along as best they can from case to case and issue to issue. No one, for example, has come forth to propose seriously any legislation that would remedy this situation or clarify roles and relationships in this field of regulation.

One of the reasons for the slowness in dealing with this troublesome dilemma which the staff now faces is that the impact of Act 21, 1963, (which placed the staff under the direct control of the director of regulatory agencies) had not been fully comprehended and appreciated until the supreme court decision in 1973 in the Hawaiian Telephone Company case—not fully comprehended and appreciated, that is, by the commission and the staff. Even the adoption of General Order No. 1, which effectively isolated the staff from the commission on matters before the commission for decision-making, in and of itself made little impression on the commission and the staff. It was in its enforcement that it slowly came to be understood that the staff was to be treated as just another party in interest in proceedings before the commission.

In the absence of clarification of the staff's statutory role and in light of the increasing assumption by the staff of the advocacy function on behalf of consumers, the relationship between the staff and the commission has become seriously strained, misunderstandings abound throughout the regulatory process, lines of conflict have become sharply drawn, and much time, effort, and effectiveness are lost or wasted in a continuing jockeying for position between commission and staff.

The role of the attorney general. In consonance with the pattern that has developed throughout the country with regard to the regulation of public utilities, Hawaii's process is highly legalistic in nature and much of the action takes place in proceedings before the PUC which operates very much in a court-like manner. Although not as strict and formal as in regular judicial proceedings, nevertheless, a judicial-type atmosphere and outlook permeates the regulatory process. Indeed, the PUC enjoys a status comparable to the circuit courts as far as appeals to the state supreme court are concerned.

An integral part of this judicial-type approach to the regulation of public utilities is the concept of adversary proceedings. Under this concept, it is assumed that in virtually every case there will be at least two contending parties and that each will try to present its own position in the best possible light while at the same time it

will try to undermine or cast doubt upon the positions of others by testing, challenging, questioning, and refuting such opposing positions. Out of this clashing of contending ideas and this arguing of opposing positions, the truth is then supposed to emerge and be acted upon. To make the process function effectively, the expertise of the lawyers is required. This, in turn, means that attorneys are needed to handle much of the work in the regulatory process and thus play a key role in making the system function as intended. This is not to say, however, that such a highly legalistic approach is necessarily essential to the regulatory process. It simply means that this is the accustomed way of regulating public utilities in the United States. Thus, until this approach is changed, it must be recognized and provided for in whatever organizational arrangement that is made for regulating public utilities.

The advocacy function, however, is not the only legal service required by the various agencies involved in administering the public utilities program. In addition to this rather specialized area of legal expertise, more generalized services must be available, such as determining various points of law, providing legal advice and guidance, preparing legal documents, and drafting rules, regulations, and proposed legislation. These generalized types of legal services are required by all of the agencies involved in the regulatory process.

Prior to 1972, the state attorney general was by law required to provide legal representation and services to the director of regulatory agencies, the staff (PUD), and the commission itself. This responsibility arose from several sets of statutes, as follows:

- A general law (relating to the functions of the attorney general) requiring the attorney general to provide all legal services to all agencies of the state government (HRS, sections 26–7, 28–1, 28–3, and 28–4).

- A general law prohibiting any state agency (except those specifically enumerated) from engaging outside legal counsel without the approval of the governor (HRS, section 103–3).

- A specific statute providing that "The attorney general and his deputies shall act as attorneys for the [public utilities] commission." (HRS, section 269–3)

Thus, prior to 1972, the state attorney general in fact represented the director, the staff, and the commission in all matters relating to public utilities. This, despite the fact that, as a result of Act 21, SLH 1963 and General Order No. 1 issued in 1966, the function of the staff had changed from that of support to the commission to that of an advocate (in behalf of the director and consumers) before the commission.

So long as the staff's role was one of support to the commission, the attorney general had little difficulty in discharging his statutory responsibility, for the staff and the commission were virtually one and the same, and the director played only a minor role in public utility matters. However, as the staff became in effect an advocate of the director and consumers, the attorney general's representation of all three parties became questionable. The advocacy function of the staff is, after all, quite distinct from and to a large extent incompatible with the decision-making function of the commission. The impossibility of representing both the staff (and the director) and the commission became manifest in the recent telephone company case where at one point the attorney general found himself in the rather untenable position of having one of his deputies argue that the staff (PUD) had no standing before the PUC while having another deputy take the PUC to court to force the PUC to grant such standing.

Due in part to this experience in the telephone company case, the legislature in 1972 enacted Act 118. This act amended HRS, section 269–3, to read as follows:

"... The commission may appoint an attorney who shall be

> exempt from the provisions of chapter 76, Hawaii Revised Statutes, and who shall act as attorney for the commission. The attorney general and his deputies shall act as attorneys for the staff of the commission."

In conformity with this amendment of section 269-3, Act 118 also amended section 103-3 to include the public utilities commission as one of the state agencies excepted from the prohibition against engaging outside legal counsel.

Although somewhat belatedly, Act 118 gave recognition to the need to make a distinction between the commission and the staff, to accept the fact that their respective interests and legal positions may be in conflict with one another, and to afford them the opportunity to be represented by different legal counsels. In practice, however, there has been no clean and clearcut separation of the attorney general from the commission. *First,* the basic laws relating to the public utilities agency have not been reviewed and overhauled so as to clarify and define the respective roles of the commission and the staff. The confusion and ambiguity that persist regarding the interrelationships between the commission and the staff carries over, of course, into the interrelationships between the legal counsel and the commission and the staff. *Second,* Act 118 has left optional whether or not the commission will employ independent counsel, and the commission has interpreted the words, "may appoint," as not precluding its reliance upon the attorney general for legal services. The commission has hired independent legal counsel only on a very limited basis and still relies very heavily upon the attorney general's office for legal assistance. *Third,* the attorney general himself has not yet taken the ultimate step of aligning his office fully on the side of the staff. Instead, the attorney general has been assigning separate deputies to work with the commission and with the staff. This practice is being followed apparently in the belief that the attorney general represents a general public interest which overrides any particular interest of either the PUC or the PUD and that thus it is possible for him to represent both parties without any serious difficulty or irreconcilable conflict. Such belief, however, has been greatly undermined by the experience in the telephone company case, and the ethics of representing both the commission and the staff is very much in doubt.

The role of the office of consumer protection. The roles and functions of the director of regulatory agencies, the staff, and the attorney general are further complicated by the existence of the office of consumer protection. Prior to 1969, by specific statutes, both the director of regulatory agencies and the attorney general were vested with responsibility to protect the interests of consumers. HRS, section 26–9, provided that the department of regulatory agencies "shall protect the interests of consumers." Then in section 26–7, relating to the attorney general, the statute provided as follows:

> "The attorney general is designated the consumer counsel for the State and shall represent and protect the State, the respective counties, and the general public as consumers. The consumer counsel shall investigate reported or suspected violations of laws enacted, and rules and regulations promulgated, for the purpose of consumer protection and shall enforce such laws, rules, and regulations."

In 1969, by Act 175, the legislature created the office of consumer protection, designated the director of the office as the consumer counsel for the State, and charged him with the responsibility to "represent and protect the state, the respective counties, and the general public as consumers " (HRS, section 487–5). At the same time, the act deleted from section 26–7 all references to the attorney general being the consumer counsel for the State.

In effect, Act 175 seems to have carved out consumer protection matters from the jurisdiction of the attorney general. However, in

practice, this separation of the duty to represent the consumers from the office of the attorney general is incomplete. Although Act 175 amended that section of the statute relating to the duties of the attorney general, it made no similar changes to that section of the statute relating to the duties of the department of regulatory agencies. Thus the department is still charged with the responsibility of protecting the interests of consumers. Then, since the director of regulatory agencies may now act through the staff and since the attorney general is now assigned by statute to represent the staff, the attorney general is not entirely out of the picture of protecting the interests of consumers, at least in the public utilities area.

Given the above situation, one of two conclusions is possible: (1) the matter of public utilities is an exception to the jurisdiction of the office of consumer protection; or (2) the office of consumer protection, on the one hand, and the director of regulatory agencies, the public utilities staff, and the attorney general, collectively, on the other, have concurrent jurisdiction in representing the State, the counties, and the consuming public in public utility matters.

Since the statute on the office of consumer protection makes no exception with respect to public utility issues, it would appear that the second conclusion is the more reasonable one. However, if this is so, questions remain as to when, in what cases, as to what "public," and in what way the office of consumer protection should be involved in public utility litigations. Thus far, the office of consumer protection has played no part in such litigation.

Apparent solution. Given the existing substantive statute on public utilities regulation, the apparent solution to the confusion in roles and responsibilities seems fairly simple. Since the existing statutes place the responsibility of *protecting* consumer interests in the director of regulatory agencies, but vest in the commission the full panoply of powers to *regulate* public utilities, except CATV, it appears that both the director and the PUC require staff to assist them in carrying out their respective duties. The staff assigned to each ought to be under the direct control and supervision of the director or the commission, as the case may be, so that it may perform and carry out the will of each, unhampered by the will of the other. The number and kind of staff the director and the commission each will require need not and surely will not be the same as the number and kind the other needs.

Since the director's role in public utility matters is limited to representing the interests of consumers, his staff should be that which the director requires in representing consumers in proceedings before the commission. It may include professional and technical personnel, but it may well be that such personnel are available in other agencies of the state government on whom the director may call for assistance. The staff that he will not require are those who administer the rules, policies, and decisions of the commission, because the administration of such rules, policies, and decisions is not the statutory responsibility of the director.

The commission, because of its far wider range of functions,will probably require a more diversified staff. In addition to the professional and technical personnel to assist the commission in analyzing and interpreting data and providing the commission with information as to the areas where inquiry is appropriate, the commission will require personnel for the purposes of licensing, certification, and inspection.

In other words, given the present statutes on the substantive duties of the PUC and the director as they are, the reassignment of the bulk of the utility staff back to the commission may resolve much of the current difficulties between the commission and the director.

Insofar as the attorney general is concerned, so long as the director of regulatory agencies is a party to proceedings before the PUC, the attorney general may well continue to act as the director's counsel in such proceedings as the statute now prescribes. However, if such be the case, to avoid all potential conflicts of

interest, the attorney general should not advise the commission. This is so, not only with respect to any proceedings pending before the commission, but also with respect to all facets of the commission's work. Even such seemingly routine duties as licensing and inspection pose areas of possible litigation into which the director of regulatory agencies may feel compelled to enter to protect the interests of consumers. This being so, so long as the attorney general is assigned to counsel the director, the commission must retain counsel of its own.

Then, with regard to the office of consumer protection, it does not appear unreasonable for the office to leave public utility matters in the hands of the director of regulatory agencies, except in those cases where consumer interests are so fractionated, resulting in more than one consumer group with divergent points of view, that the director cannot possibly represent all of them. That is to say, although the office of consumer protection has concurrent jurisdiction with the director of regulatory agencies to represent consumers, he may well elect not to exercise that jurisdiction, particularly if the director is sufficiently staffed (and the office of consumer protection is not) to engage in representing consumers in the complex field of public utility regulation.

The solution outlined here may appear simple, but this is so only if it is assumed that, when control of the public utilities staff was shifted to the director, there was no intent to change the basic statute on public utility regulation and that the shift in the control of the staff had been made only for reasons of increasing the efficiency in the utilization of *all* staffs within the department of regulatory agencies. If this assumption is correct, it must then be acknowledged that the shift in the control of the staff has not worked out in the fashion contemplated.

However, it is not at all certain that such a simple solution is dispositive of the real issue in the regulation of public utilities. If this real issue was not evident when the shift in the control of the staff was initially made, it appears to be fairly evident now, particularly in light of the manner in which the director has sought to utilize the staff. This real, and larger, issue is examined in the subsequent sections.

The Larger Issue

As noted, the director of regulatory agencies has directed the staff transferred to his control in a manner which excludes the effective utilization of the staff by the commission. The staff assists the director in representing consumers before the commission and further assists the director in pressing the director's views in the formulation of public utilities policies and in administering the rules and regulations pertaining to licensing, certification, inspection, and other administrative aspects of public utility regulation. The transfer of control over the staff was thus the beginning of a movement to increase the power of the director over public utilities at the expense of the power of the PUC. This movement apparently stemmed from a belief, shared by many, that the public utilities commission has not always acted in the "public interest." This feeling is not confined to Hawaii. The belief that regulatory commissions are pro-industry, if not the "captive" of the industries they regulate, is common throughout the country. To "reverse" this situation, various proposals have been advanced in recent years. All of these proposals are intended to make the regulatory bodies "more responsive" to the public interest and they all involve the transfer of all or some of the regulatory powers from the commissions to another or several other executive agencies. The assertion of power by Hawaii's director of regulatory agencies is in line with these proposals.

The large question that is posed in this context is whether or not the existing statute should be amended by sorting out the various functions related to public utility regulation and regrouping and reassigning the responsibility for them in a manner different from what the statute now provides.

A framework for analysis. Before any sorting, regrouping, and reassignment of responsibilities is undertaken, the problem must be viewed in the context of the total system for regulation. Structure, while important as an element in the regulatory process, constitutes but the institutional boundaries within which regulation occurs. Tinkering with the institutional framework in a fragmented and piecemeal fashion results in confusion (as demonstrated by the structural realignments of Hawaii's organization of the recent past) or, even worse, in an institutional framework harmful to the purposes of regulation. We, then, offer here a system framework for the analysis of the structure for public utilities regulation.

The system framework for analysis of the structure consists of the following elements:

- objectives of regulation;
- the process to be employed in achieving the objectives; and
- the structure to accommodate that process.

"Objectives" means the end results being sought by regulation. These objectives constitute the starting point in any analysis and formulation of the process and structure. The process and structure must facilitate the attainment of the end results.

"Process" is concerned with the series of actions or operations which are followed to reach a result. It spells out how the various activities and functions are to be performed. In determining this process, the managerial theory, philosophy, and objectives to be followed must be identified. It is here that such things as the Hawaii Administrative Procedure Act and the objective of maximizing public participation in decision-making are pertinent.

"Structure" defines and shapes the form through which the various functions are performed to accomplish objectives. It describes the component units, their responsibilities, and their relationships with one another.

Since the structure is intended to facilitate the managerial process necessary to accomplish objectives, its design and changes in design must take into account these objectives and the process. In other words, structuring cannot occur unless the objectives and process are first determined. Of course, in the total scheme of things, the steps of objectives, process, and structure are iterative, that is, as one considers each of these steps, he may find it necessary to backtrack to the former steps taken or to anticipate what might be forthcoming in the subsequent steps. But serious thought on the structure cannot begin without some determination of the objectives and process. We thus examine first what the real objectives of regulation are.

Objectives of regulation. The recent movement toward a greater role of the director of regulatory agencies in public utilities matters has been attempted without a firm fix on the real objectives of public utility regulation. It was assumed that the public utilities commission in the discharge of its functions should act in the "public interest," and it was further assumed that "public interest" meant "consumer protection." Under such assumptions, there was nothing inconsistent about shifting the staff from the control of the PUC to the director and for the director to assert a more influential role in the whole of public utility regulation. After all, the director, too, has a statutory responsibility to protect consumers.

Such assumptions, however, were and are incorrect. Unfortunately, the current state program structure perpetuates these assumptions. Both the function of the director to protect consumers and the whole of public utilities regulation are placed in the same program category entitled "Consumer Protection."

That the assumptions were and are incorrect becomes apparent when one (1) examines more closely the use of the term "Consumer Protection," and (2) considers the

activities and specific functions that are required by statute to be performed in regulating public utilities.

1. The popular conception of "consumer protection." The term "consumer protection" is susceptible to different meanings. In a broad sense, it means promoting the general welfare of the State or the welfare of the public at large; the term "public" in this case meaning everyone, including the providers and consumers of utility services. In this sense, the terms "consumer protection" and "public interest" are interchangeable. However, "consumer protection" can also be defined in a narrow sense. In a narrow sense, the term "consumer" applies only to a particular segment of the general public or to the general public acting in a particular capacity—e.g., users and customers of goods and services—and the term "protection" takes on a rather specific meaning—i.e., to shield or save from potential or actual harm caused by the acts of the producers of goods and services.

A review of the performance by the director of his statutory duty to protect consumers appears to suggest that the term "consumer protection" is being applied by him in a narrow sense. Basically, the director has sought to present the consumers' or users' point of view in all aspects of public utility regulation—in proceedings before the PUC and in directing the staff with respect to regulatory policies and administration. Then, in areas other than public utilities, the director's focus has been on safeguarding the individual members of the general public from harmful acts of those engaged in business. This is not to say that this application of the term "consumer protection" is misplaced. To the contrary, a reading of the statutes indicates that this was precisely the role envisioned for the director of regulatory agencies.

This narrow view of "consumer protection" is also apparent with respect to the "Consumer Protection" program category in the state program structure. Most, if not all of the programs, other than the program of regulating public utilities, included in the "Consumer Protection" category are programs which focus on shielding the users and customers of goods and services from the potential or actual harmful acts of the producers of goods and services.[4]

2. Regulatory activities: the real objectives. This narrow view of "consumer protection" does not appear to have been intended for the program of public utilities regulation. To the contrary, an examination of the regulatory activities or specific functions required by law to be performed in regulating public utilities reveals that objectives much broader than "consumer protection" in its limited sense were meant for the program of public utilities regulation. The principal activities or specific functions required by law to be performed in utility regulation are:

- rate-making;
- certification and licensing;
- safety inspection;
- economic and business regulation ; and
- representation of state interests before federal agencies.

Taking into account these activities, the following appear to be the real objectives of regulation.

Objective No. 1. Of all the specific activities, perhaps the most important is rate-making. In this regard, one objective of regulation appears to be:

> "To approximate as closely as possible the normal market mechanism as a means of balancing the interest of the suppliers and the consumers of utility services."

It is evident that an objective of this sort is much broader than "consumer protection" as that term is used in the state program structure

[4]In the state program structure, "Consumer Protection" is a part of the larger program category called, "Individual Rights." The other subprograms in "Individual Rights" also focus on a segment of the general public—the individual members of the public.

and as defined by the director of regulatory agencies in carrying out his function of representing consumers.

That the regulation of public utilities, at least with respect to rate-making, was intended to protect both the suppliers and the consumers of utility services (and not just the consumers) is supported by the history of regulation.

Initially, public utilities were brought under regulation because of their monopolistic character—that is, the public utilities that were brought under regulation were those which provided essential services for which there were no suitable substitutes. They were brought under regulation to cause them to behave as any other industry in society's economic system.

It is the function of any economic system to ensure an optimum use of resources, both human and natural—that is, to bring about the use of society's resources in a way that society wants them used. Normally, what resources are used for what products or services, of what quality, in what quantity, and at what costs are decided by competition. In the usual public utility sector, however, such competition has not existed. What regulation attempts to do in the public utility sector is to supply a factor which acts in place of competition to foster social economizing—to provide the public with as much and as good a service as the public wants and is willing to pay for. The regulatory mechanism used to accomplish this is rate-making. Since public utilities must incur costs in utilizing resources and provide returns to investors (in amounts competitive with those paid by other industries competing for the same resources and equity capital), in producing the services of the quantity and quality desired by the public, the rate established must meet the costs of providing the total desired services. This means balancing the interests of both the consumers and the providers of utility services.

The objective as stated here is much closer to the objective for "Economic Development" as set forth in the state program structure. The objective for the Level I "Economic Development" program is stated as follows:

> "[T]o assist in maintaining the State's economy in a strong and competitive condition by providing policies, operations, facilities, services, advice, and information so as to achieve appropriate rates of growth, high levels of employment, reasonable returns on investments, and steady gains in real personal incomes in a balanced fashion in all sectors of the economy and areas of the State."

Then for the Level II program "Transportation, Communications, and Utility" within the "Economic Development" program, the objective is stated as follows:

> "[T]o assist in maintaining the transportation, communication, electric, gas, water, and sanitary services sector of the State's economy in a strong and competitive condition through the development of new services, by stimulating the use of both new and established services in existing markets, by developing new markets, and by improving distribution systems."

Objective No. 2. Certification and licensing involve authorizing a business to operate as a specific kind of public utility. This regulatory device appears to be aimed at accomplishing one or both of the following results:

(a) to control or limit entry into a market or into a particular kind of public utility business; and

(b) to ensure that only those who meet specified safety, financial, and other standards are allowed to operate as a public utility.

Where the industry is monopolistic in character, such as gas, electric, telephone, and cable television, certification and licensing are probably to accomplish the first of these

objectives. Here, the thought is that, because of the nature of the service rendered, competition would be disruptive to the flow of service to the general public. Viewed in this fashion, the objective of regulation, insofar as certification and licensing are concerned, seems closely allied, as in the case of rate-making, with the objectives of the State's economic development program.

On the other hand, where the industry is nonmonopolistic, certification and licensing appear to be aimed at ensuring that those who operate as public utilities meet specified safety, financial, and other standards. The thrust here is the protection of those other than the industry regulated from physical, financial, and other hazards that may otherwise result from the operation of the utility. Depending on what standards are imposed, those protected include the users of the utility (consumers), the nonusers who may otherwise be exposed to the potential hazard, and the employees of utility, and the objective of regulation may be in the nature of "consumer protection," "public safety," or "employee occupational safety" as those terms are used in the state program structure.

Objective No. 3. Safety inspection is apparently intended

(a) to ensure safe working conditions for the employees of the industry regulated; and

(b) to protect the public from the hazards of unsafe conditions and operations of industry facilities and equipment.

Statement (a) is closely allied with the objective stated in the state program structure for "Employee Occupational Safety." The second statement covers the specific regulatory activity of inspecting for and ensuring the safe operating condition of public utility facilities and motor carriers which ply the public highways. In this respect, the thrust of the second statement is similar in some ways to that of the objectives stated in the state program structure for "Transportation" and "Public Safety."

Objective No. 4. Economic and business regulation constitutes yet another group of activities in public utility regulation. It includes supervising, controlling, and regulating the internal business operations of public utilities. Some specific acts that are performed are investigating to determine the adequacy and efficiency of service, reviewing and passing upon applications for major financing, determining the reasonableness of the costs of industry projects, and auditing the books of the public utility. These activities are apparently conducted for the purpose of determining the quantity and quality of service being provided and the reasonableness of the costs being incurred by the industry which are ultimately reflected in the rates charged the consumers of the utility service.

Economic and business regulation is so closely tied to rate-making that the objectives of this aspect of regulation, like that of rate-making, are more appropriately classified with the State's "Economic Development" program.

*3. **Summary.*** To summarize, the objectives of public utility regulation as that program is currently carried out are several and divergent. These differences may, for convenience, be grouped as follows: (a) objectives which are largely economic in nature, the achievement of which benefits society as a whole, and (b) objectives which are essentially protective of specific individuals or classes of individuals.

The activities of rate-making, economic and business regulation, and so much of certification and licensing as concerns limiting competition are activities whose objectives are primarily economic in character. The activities of safety inspection and so much of certification and licensing as concerns the establishment and enforcement of minimum safety, financial, and other standards for entities engaging in businesses that are nonmonopolistic are activities whose objectives are primarily protective of individuals or classes of individuals (employees, consumers, and other individual

members of the public other than the industry regulated).

During the early stages of the State's planning-programming-budgeting system, some thought was given to stating the objectives of the program for public utilities regulation as follows:[5]

> "a. To provide a reasonable level of rates and non-discriminatory rate structure in order to assure a reasonable return to investors and at the same time, be commensurate with the type of services rendered to the consumers.
>
> "b. To provide a reasonably high level of service including a reasonable number of choice of services.
>
> "c. To provide reasonable safety of operations for employees and the general public.
>
> "d. To provide a healthy economic climate so that the beneficial sources of competition and the free enterprise system can assert themselves wherever possible without waste resulting from duplication of investment."

Stating the objectives in this fashion came close to recognizing that the utilities regulation program, under existing statutes, has both economic and noneconomic objectives. Unfortunately, this initial thought was not pursued. The inclusion of the public utilities regulation program in the "Consumer Protection" category and orienting the objective of the program along the lines of consumer protection were explained in this way:[6]

> ". . . [A] closer scrutiny of the intent of Chapter 269, Hawaii Revised Statutes, caused staff to consider the thought that the basic intent of the law was to ensure that the general public, i.e., the consumer, is provided adequate, safe and dependable services, whereas the four-point objectives listed above gave equal importance to the protection of the investment of the private citizen as the 'individual' offering the services to the public.
>
> . . . . . .
>
> "It is argued that the basic philosophy of utility regulation is founded upon services to the consumer. As to whether or not the purpose for the creation of the Commission is dual, i.e., to protect the consumer and the investor, it is believed that to look after the investor is a means to achieve an end result which is to provide services to the consumer. In other words, under this philosophical concept, the ensuring of the individual's rights and interests, in this instance the right to a reasonable return on and protection of his time and money, is the only way in which dependable, high quality services can be provided."

This reasoning, of course, is strained and muddled. What has in fact occurred is a squeezing of the program for public utilities regulation into the existing organizational mold. That is to say, in structuring the programs of the State, the focus was to place virtually all programs, administratively or otherwise lodged in the department of regulatory agencies, within

[5]Department of Regulatory Agencies, *Current Program Plan, Fiscal Year 1969–70 Through 1977–78, Budget Period 1971–73 (Second Half),* submitted to the State Legislature, January 18, 1972, p. 6.

[6]*Ibid,* pp. 6–7.

the same program category. A review of the program structure bears this out. All but two of the eight programs located in the department of regulatory agencies are in the "Consumer Protection" program category, and conversely all but four of the ten programs in the "Consumer Protection" category are programs physically lodged in the department of regulatory agencies. The two department of regulatory agencies' programs not included in "Consumer Protection" are the Hawaii public television and the fire marshal services. These two involve staffs which are completely separate and independent of the staffs of the other programs in the department. In other words, these two programs are organizationally pure. Apparently, the public utilities program was placed in the "Consumer Protection" category, despite its economic and some noneconomic objectives which have little to do with consumer protection, because the public utilities program is dependent upon the same staff which performs the director's consumer protection functions.

In brief, what has occurred is a perversion of the objectives of regulation to accommodate the existing organizational structure—a structure which was shaped without careful consideration of the true objectives of regulation. Although, from the existing organization's point of view,this placement of public utilities regulation in the "Consumer Protection" category was convenient and comfortable, the result has been to obscure the real purposes of regulation.

Process. In addition to the activities or specific functions of rate-making, certification and licensing, safety inspection, and economic and business regulation, the regulation of public utilities involves other functions which cut across the enumerated activities. These are:

- policy-making (or rule-making);
- adjudication; and
- administration.

These functions are procedurally oriented.

Policy-making is essentially legislative in character. Policy-making refers to the formulation of rules, standards, and criteria which govern or guide the performance of both the adjudicatory and administrative functions. These rules, standards, and criteria, for example, spell out how and when an industry may petition for a rate increase and the factors that must be considered in passing on any such petition; and they establish when and to whom a license may be granted and the specific kinds of maintenance and inspection that must be performed to ensure the safety of equipment. Decisions in policy-making apply generally to all within the industry.

Adjudication is that process of deciding contested or controverted cases. It is *judicial* in nature. It is characterized by the presence of two or more opposing points of view. Deciding whether a petition for a rate increase should be granted and deciding whether a particular firm is in violation of a rule, standard, or criterion are examples of adjudication. Adjudicatory decisions directly affect and bind the individual parties involved in the litigation.

Administration refers to the execution or implementation of rules, standards, and criteria and the decisions of an adjudicatory body. It is thus *executive* in nature. The application of any rule, standard, or criterion in a given situation or to a particular firm may be contested, in which event adjudication is required. However, short of such contest, administration simply enforces and applies the established rules, standards, and criteria in a rather routine fashion. Processing applications, issuing licenses, making safety inspections, and issuing citations for violations of rules are examples of administration.

Policy-making, adjudication, and administration occur or can occur in all of the specific activities of rate-making, certification and licensing, safety inspection, and economic and business regulation.

In addition to these, it is necessary to consider here what secondary, ancillary, or related procedural functions there might be in

utility regulation. By "secondary" we do not mean "less important." From an overall point of view, secondary functions may be just as important as the primary functions. They are "secondary" only in the context of regulation. In other contexts, they may well be primary. They are secondary or ancillary because they impact the primary functions.

Secondary or ancillary functions arise because of the State's other program and managerial objectives. "Consumer advocacy" or representation of consumers' interest by the director of regulatory agencies is one of these secondary or ancillary functions. A managerial (if not a program) objective of the State is to ensure that consumers' points of view and consumers' concerns are heard, and the director of regulatory agencies is, by statute and practice, the principal person to represent consumers. This means that, in formulating the procedures for policy-making, adjudication, and administration, room must be made so that such consumers' views may be received. One of the reasons for the current confused state of the regulatory structure is the failure to recognize the director's function of representing consumer interest as a secondary function of regulation (although an important one) and not a primary function which must be accommodated in policy-making (rule-making), adjudication, and administration.

Among the other program and managerial objectives which impact the regulatory process are the State's objectives in environmental protection and in energy conservation and resources. Environmental protection is relevant because public utilities from time to time engage in the construction and operation of major physical facilities which affect the environment. Energy objectives are relevant, for the public utilities are heavy users of energy resources. The process that is designed for or used in regulation must ensure that these other state program objectives are appropriately considered while in the act of regulating public utilities. Regulation must be effectuated in a manner consistent with these other state objectives. As pointed out in a later chapter, the process for regulation is currently deficient in several respects, one of which is the inability of the commission to consider these other state objectives.

Structure. With the objectives of regulation and the procedural necessities in mind, the question initially raised may now be addressed: Should the functions of regulation be sorted and reassigned to an agency or agencies in a manner other than that now provided by law? This question is relevant to both the specific regulatory activities (rate-making, certification and licensing, inspection, and economic and business regulation) and to the broader functional categories (policy-making, adjudication, and administration).

a. As to policy-making-adjudication-administration. As already stated, the procedural functions of policy-making (rule-making), adjudication, and administration are applicable to each specific regulatory activity of rate-making, certification and licensing, safety inspection, and economic and business regulation. However, the extent of policy-making, adjudication, and administration with respect to each may differ. Thus, for example, in rate-making, adjudication currently occurs much more intensely than policy-making or administration. On the other hand, policy-making is probably the predominant function in certification and licensing.

Traditionally in the public utility area, the prevailing form of organization has been to vest all of these procedural functions in a single agency, usually a commission. Hawaii's basic statutes on public utility regulation are in line with this tradition. Thus, HRS, chapters 269, 271, and 271G, vest in the public utilities commission the full power of policy-making, adjudication, and administration with respect to all public utilities, except cable television. Then, as to cable television, HRS, chapter 440G,consolidates the functions of policy-making, adjudication, and administration in the office of the director of regulatory agencies.

However, from time to time, because of some perceived faults with the single agency (particularly the commission) system of

regulation, it has been strongly urged that these functions be separated and vested in different agencies.[7] In Hawaii, the developments following the enactment of Act 21, SLH 1963, which placed the public utilities staff under the direct control of the director of regulatory agencies, seem to have been aimed at accomplishing such a separation. The director of regulatory agencies' efforts to direct the staff not only in representing the interests of consumers in adjudicatory proceedings before the commission but in the staff's relationship with the commission in establishing regulatory policies are particularly noted. The perceived faults with a single agency system of regulation are stated in various ways, but they may generally be capsulized as follows:

- Regulatory boards and commissions have become insensitive to the needs of consumers; they have become the "captives" of the industry they regulate.

- Regulation has become "overjudicialized"; there is excessive reliance on the "case-by-case" decision-making procedure and insufficient utilization of the policy or rule-making procedure, resulting in inefficiency and poor management.

- Consolidation of all functions in a single entity has resulted in the agency's judging its own cause and hence becoming biased. The agency sets policies, it investigates infractions of such policies, it prosecutes the cases resulting from its investigations, and judges the evidence, including those brought forward by it, at a hearing it itself initiates.

[7] See, for example, Report of the Hoover Commission on Organization of the Executive Branch, 1949; Report of the Federal Communications Bar Association Committee, 1963; Louis J. Hector's Memorandum to President Eisenhower, September 10, 1959, published as "Problems of the CAB and the Independent Regulatory Commissions," 69 *Yale Law Journal* 931 (1960); Newton N. Minow's letter to President Kennedy, dated May 31, 1963, published as "Suggestions for Improvement of the Administrative Process," 15 *Administrative Law Review* 146 (1963); President's Advisory Council on Executive Organization (commonly referred to as the "Ash Council" after its chairman, Roy L. Ash), *Report on Selected Independent Agencies,* released by the President on February 11, 1971.

Other faults are often ascribed to the system of regulation as it exists today, but most of them are offshoots of the three general ones enumerated above. For example, it is argued that regulation is characteristically lacking in "planning." By "planning" is meant determining where we want to go with regulation, ascertaining how we are to get there, and formulating policies, rules, and standards which are designed to get us there. The thought is that, by separating the policy-making function from the adjudicatory function, such planning will occur. It does not now occur because regulatory bodies devote too much time to adjudication. It is further thought that, by formulating policies and setting standards which guide future action by all concerned with public utilities, there would be less need for case-by-case adjudication. Arguments of these kinds all reflect frustration with the time-consuming and costly nature of the current adjudicatory process.

The arguments for separation at the extreme demand the establishment of an administrative court whose sole function would be to adjudicate contested cases. All other functions of regulation would be performed by a different or several different executive agencies.

The arguments for separation are persuasive. However, the counterarguments for retaining the functions of policy-making, adjudication, and administration in a single agency are equally persuasive. For example, it is argued that policy-making, adjudication, and administration are parts of a single package. Decisions in adjudication affect policies, and administration often results in adjudication. To separate these functions would increase the likelihood of diverse, rather than uniform, interpretation and policies in the regulation of utilities where uniformity is desirable.

The crux of the matter here is that there is no clear evidence to indicate that regulatory agencies will perform any better and in the way desired by assigning the various functions to different entities than by retaining the functions in a single agency. There is no evidence, for example, which proves that, if the function of

policy-making were assigned to an agency other than the entity concerned with adjudication, that agency would indeed engage in the kind of "planning" desired and establish clear rules and standards to guide future action or the public would be better able to participate in decision-making.

The reason for this inability to prove the case one way or the other regarding the separation or combination of the three functions is that policy-making, adjudicatory and administrative functions are essentially procedural in nature. Assurance that these functions will be carried out and carried out properly does not depend upon what organizational entity is charged with the responsibility to carry them out. Procedural problems can occur whether the three functions are consolidated in a single entity or are dispersed among several organizational units. Whatever the organization, the procedures must be such that these functions will be consciously and consistently performed. For example, the perceived fault of the current system that there is insufficient opportunity for public participation in the making of regulatory decisions is not cured simply by divorcing policy-making from adjudication. Whether the functions are separated or combined, a mechanism is needed to assure that such opportunity is given. To be sure, the Administrative Procedure Act and all its requirements for notice and hearing would apply in formalizing rules of general applicability and an agency assigned the policy-making function, divorced from the adjudicatory function, would be expected to comply with such requirements. However, even if the functions were combined in a single agency and the agency relied heavily on adjudication, some mechanism is possible to permit public participation—for example, the granting of the right of intervention by interested parties—in those cases in which decisions are likely to result in the enunciation of policies of general applicability.

Whether or not the functions of policy-making, adjudication, and administration ought to remain consolidated in a single agency or whether they should be separated and the responsibility for them lodged in separate organizational entities is a question which the legislature must decide. In our view, however, a separation is not necessary. Rather, attention should be placed on procedural improvements, given our system of regulation by the public utilities commission. A later chapter examines the procedures of the PUC and suggests improvements to assure that the policy-making, adjudicatory and administrative functions are properly and more efficiently performed.

b. As to specific activities. The specific activities of rate-making, certification and licensing, safety inspection, and economic and business regulations are functions of another kind. They are not procedurally oriented, but are rather activities producing specific, substantive results. As noted earlier, these activities may initially be grouped according to whether their objectives are economic or noneconomic in nature. Those with noneconomic objectives in turn may be categorized according to the individuals or classes of individuals whose protection is being sought (consumers or users of specific goods or services, employees of the industry regulated, and individual private citizens).

Viewing these activities in terms of their objectives leads to conclusions different from those observed with respect to the sorting of rule-making, adjudicatory, and administrative functions. The conclusions with respect to the specific activities are as follows:

- The regulation of activities with economic ends and the regulation of activities with noneconomic ends are better separated, with the PUC retaining jurisdiction over activities having objectives that are economic in character and with other executive agencies performing those functions having objectives that are noneconomic in nature.

- Some facets of regulation serve no useful economic ends and should therefore be deregulated.

Some subjects of economic regulation are more appropriately placed under the jurisdiction of the counties.

(1) Separating economic and noneconomic activities. As has already been noted, public utility regulation initially began with economic ends in mind. However, over the years, functions having noneconomic objectives have been added to the responsibilities of the public utility regulatory body. Regulatory activities in areas in form "seemingly" like a public utility were often vested in the public utility commission even though the ends sought had little or nothing to do with ensuring that the industry concerned behaved approximately in the same manner as industries in the competitive market. As more and more of these activities were added, the real objectives of utility regulation became increasingly obscure.

There are at least three reasons why it is preferable to stop this expansion of the role of the PUC and to sort out those activities designed to reach noneconomic results which are now in the PUC and assign the responsibility for them elsewhere. *First,* economic regulation is an important and complex governmental activity, requiring the full and undivided attention of the agency charged with regulating public utilities. The need for such regulation is as valid today as it was when it first began. Adding functions having noneconomic ends to those aimed at achieving economic purposes results in either the economic-oriented functions not receiving the attention they require or in a neglect of the noneconomic-related functions. Take the case of the Hawaii PUC. In the case of the Hawaii PUC, it has resulted in a neglect of the functions unrelated to economic ends. The PUC pays but scant attention to these functions. For example, as more fully reported elsewhere in this report, the commission has largely neglected the task of enforcing safety standards for motor carriers. Indeed, it appears that the PUC, under present conditions, is barely able to perform those functions having economic objectives, much less be concerned with activities producing results unrelated to economics.

Second, the economic and the noneconomic ends are at times at odds with each other. This is so because economic objectives are intended to benefit society as a whole, while noneconomic objectives are intended to benefit a segment of that society. Thus, vesting the responsibility for all activities, both those with economic and those with noneconomic objectives, in a single agency harbors potential conflict-of-interest problems. Such potential conflicts are illustrated by the following.

Under existing statutes, the commission establishes the safety standards for common carriers. The standards it establishes are required by law to be no less strict than those imposed by the state highway safety coordinator for all other vehicles operated on the public highways. Assuming that the commission could impose stricter standards than those imposed by the highway safety coordinator, it may not choose to do so because of supposed economic considerations affecting the motor carrier industry. Yet, from the general public's point of view, the higher standards are desirable. Should the commission act for the protection of the public or should it act for economic reasons? This is not to say that, if the safety of common carriers were the responsibility of the highway safety coordinator, he would always opt for the stricter standards; he needs to consider the total effect of the standards he chooses to impose. But, his obligation to promote highway safety would be the paramount consideration. Whose interest would be paramount would not be as clear if the commission had to decide, as it presently must. The clientele to be served by economic regulation is quite different from the intended beneficiaries of highway safety.

Third, several of the functions having noneconomic objectives now in the PUC are similar to those currently performed by other state agencies. For example, the certification and licensing of professionals and technical people and businesses (other than those included in "public utilities") constitute a large portion of the work of the director of regulatory agencies. Then the department of labor engages

in activities aimed at ensuring the safe working conditions and environment of employees, and the state highway safety coordinator and the county police departments are engaged in motor vehicle safety activities. The end result being sought by these agencies in performing these functions and the end result of the public utility functions of certification and licensing of nonmonopolistic industries and the safety inspection of industry facilities and equipment are similar—to protect specified individuals or classes of individuals within the society. Since these other agencies are currently carrying out similar activities, there appears to be no good reason why they could not also carry out those noneconomic-oriented functions now vested in the PUC. Indeed, these agencies are probably better staffed and equipped to perform these functions, and placing the noneconomic-oriented functions in these agencies avoids a duplication of efforts.

It is true, of course, that the manner of performing functions having noneconomic objectives may affect the results reached in performing functions having economic ends. For example, the standards of safety applicable to public utility facilities and equipment may bear upon the costs of utility operations, which in turn may affect the utility rates. But the effect here would be no different from the effects such standards would have on nonutility industries.

For the reasons noted, those functions having noneconomic objectives should be separated from those functions having economic objectives and performed by other existing state agencies which are already performing similar functions. This separation of activities having noneconomic objectives from those having economic objectives would not alter the full panoply of procedural powers now vested in the PUC. The PUC would still retain the policy-making, adjudicatory, and administrative powers with respect to those activities with economic ends.

(2) Deregulation. If, as we submit it is, the principal objective of public utilities regulation is economic in nature, then there are some areas now subject to PUC regulation which ought not to be regulated. There appear to be at least two such areas: (a) telephone interconnect systems and (b) motor carriers.

By "telephone interconnect systems," we mean such things as color telephone sets, telephone rotary systems, and intercommunication systems which can be plugged into the basic telephone lines installed by the Hawaiian Telephone Company. Although the statute is unclear as to the jurisdiction of the PUC on the sale, lease, installation, and maintenance of such systems, the PUC currently has under consideration the establishment of rules and regulations regarding these interconnect systems.

It would seem that telephone interconnect systems should be excluded from the regulation of the PUC for two reasons. *First,* the sale, lease, installation, and maintenance of these systems constitute a highly competitive business. There are a number of firms, including the Hawaiian Telephone Company, offering these systems. One of the elements making governmental regulation of public utilities necessary is that the utilities operate generally under monopolistic conditions. Regulation is necessary as a substitute for competition—to provide that element, present in the competitive arena but missing under noncompetitive conditions, which would ensure the production of goods and services in the quantity and of the quality the public wants and is willing to pay for. Since the sale, lease, installation, and maintenance of interconnect systems are not conducted under monopolistic conditions, competition would supply the needed ingredient to assure this quantity, quality, and price.

Second, these interconnect systems are to a great extent luxuries. Beyond the basic instruments required to use the telephone lines, interconnect devices can hardly be classified as necessities or essentials. Governmental regulation is justified where goods and services are produced not only under monopolistic conditions but where the goods and services are essential.

Since the two elements generally present to justify governmental regulation is missing, it is entirely reasonable to allow all firms, including the Hawaiian Telephone Company, to compete for the business of these interconnect systems and permit the competitive market conditions to determine the quantity and quality of the services the public wants and is willing to pay for.

Such deregulation may, of course, entail some problems because it will necessitate some sort of separation of the telephone company's regulated business from its nonregulated business with an allocation of costs and income between the two. Coping with these problems, however, appears to be preferable to the alternative of placing all interconnect operations under PUC control. Where competitive conditions exist, the bias should be in favor of less or no regulation rather than for more and more regulation. Hence, our feeling is that deregulation should be the course to follow if at all feasible.

There may, of course, be abuses in the sale, lease, installation, and maintenance of interconnect systems, but such abuses, if any, are likely to be those from which consumers or other segments of the general society ought to be protected. If such be the case, the regulation that is necessary is not economic but protective, and is better performed by an agency other than the PUC whose sole function should be directed towards the economy of the State.

The other area which is now subject to PUC regulation which probably ought to be deregulated is the motor carrier industry. It has already been noted that regulating to ensure the safe conditions of motor carriers for operation on the public highways is intended to achieve some noneconomic objective and is readily transferrable to other agencies performing vehicle safety inspection of all other vehicles. With the safety inspection of motor carriers transferred to other agencies, there is very little left for the PUC to regulate—that is, regulate for the purpose of achieving some economic ends.

It is recognized that the statute provides for motor carriers to file their rates with the PUC and for any person desiring to engage in business as a motor carrier to secure first either a permit or a certificate of public convenience and necessity (CPCN) from the PUC. Filing rates and securing a permit or CPCN before engaging in business as a motor carrier seem, at first glance, to be activities similar to those performed in the case of other industries regulated by the PUC and thus intended to achieve results that are economic in nature. However, a closer examination of these activities as performed in the motor carrier industry reveals that this is not so.

The motor carrier industry is a competitive industry. It does not operate under monopolistic conditions. There are literally hundreds of licensed motor carriers in the State competing against each other. Under such conditions, the filing by the carriers and the approval by the PUC of motor carrier rates are no different from the filing of rates by insurance companies and the approval of such rates by the insurance commissioner (the director of regulatory agencies). The rates filed are generally rates resulting from the forces of competition. Indeed, the commission rarely, if ever, disapproves rates filed by the various motor carriers. In this sense, motor carrier rate filing and approval, as in the case of rate filing and approval in insurance, are at most for the protection of the consuming public rather than for social economizing.

Then, with respect to permits and CPCN's, although the commission on occasions has denied applications for such permits and CPCN's (particularly in the tour bus field) and thus limited entry into the motor carrier business, the act of issuing or not issuing permits and CPCN's has not been performed to create or preserve a noncompetitive condition. At most, the nonissuance has accorded a preferred status to those already in business. If the motor carrier industry is a competitive one, as it seems to be, then giving such preferred status to some borders on discrimination.

The Hawaii Motor Carrier Law was initially adopted to prevent the exercise of jurisdiction by the federal Interstate Commerce Commission over motor carriers in Hawaii engaged in interstate commerce. Since the enactment of the law, the federal government has nonetheless taken over jurisdiction of several aspects of regulating motor carriers in Hawaii engaged in interstate commerce. The safety aspect of these carriers is now regulated by the U.S. Department of Transportation, Bureau of Motor Carrier Safety, and rate approval and other related aspects of movers of household goods are now under the jurisdiction of the Interstate Commerce Commission.

A possible third area where deregulation might well be given serious consideration, or at least be made subject to continuing review, is that of interisland water and air transportation. In the case of water transportation, a monopolistic situation exists at present in the form of the single barge firm operating between the islands and the service is essential to the well-being of the State and its citizens. Hence, regulation appears appropriate for now. However, several different private interests have taken steps to enter into the interisland water transportation business or have expressed intentions to do so. It is possible, therefore, that competitive conditions may be created at some time in the future where regulation of an economic character may no longer be necessary or desirable. Another possibility in this regard is that the State itself may take over directly the provision of interisland water transportation services, in which case the matter of regulation might well be rendered moot.

With regard to interisland air transportation, there are two competing major airlines plus several other competing "air taxi" operations. At present, the federal government has preempted most areas of jurisdiction over the two airlines while the "air taxis" are left largely unregulated. Considering the competitive conditions and the very limited authority the PUC enjoys at present in this field, the State might well wish to abandon all economic regulation over interisland air transportation. Relative to this point, it should be noted that serious discussion and consideration is taking place at the national level regarding the possible deregulation of the CAB's economic control over airlines generally. If truly competitive conditions can be introduced and sustained in this field, then economic regulation does not seem to be necessary or appropriate.

Although only the interconnect systems, the motor carriers, and interisland transportation services have been discussed in this section, we note that chapter 269 in its definition of a "public utility" also includes those engaged in the business of storage and warehousing of goods, except that the chapter provides that the business of storage and warehousing of goods shall be regulated by the PUC only if the commission finds that its regulation is necessary in the public interest. To date, no such finding has been made. It would appear that, for the reasons stated for the telephone interconnect systems and the motor carriers, there would be very little reason for the regulation of the business of storage and warehousing of goods, except in the noneconomic sense.

(3) County jurisdiction. There are two industries which are currently under the jurisdiction of the PUC for regulation which are probably better transferred to the counties for regulation. The transfer is suggested here not because the regulation of these industries does not serve economic ends but because the industries are generally of the kind normally operated by the county governments. These two industries are privately owned water supply and privately owned sewage disposal systems.

With respect to water supply systems, HRS, chapter 269, refers to the regulation of private water companies in three sections. Section 269–1 is the general section on definitions and includes the furnishing of water within the definition of "public utilities" subject to regulation by the PUC. Section 269–26 provides:

"The public utilities commission shall investigate charges made by all persons for water supplied to consumers for domestic uses and purposes, where the water supplied is secured by virtue of a lease from the State, requiring rates to be fixed by the licensee with the approval of the department of land and natural resources. If it appears upon investigation that the water supplied to consumers for domestic uses and purposes is by virtue of a lease requiring rates to be fixed by the licensee, with the approval of the department, then the public utilities commission shall report to the department the result of the investigation, and whether the rates charged to consumers are reasonable or not."

Then section 269–27 provides:

"In the event the public utilities commission, investigating as provided in section 269–26, reports that in its judgment the rates charged to consumers for water supplied to them for domestic uses and purposes, are not reasonable, the attorney general shall take appropriate action to secure for the consumers reasonable rates for such water, or, if he is so advised, proceed to cancel the licenses and leases of the persons charging the unreasonable rates."

With respect to sewage disposal systems, HRS, section 269–1, includes private sewage disposal systems within the meaning of a "public utility." The statutory duty of the PUC to regulate privately owned water supply systems is one of long standing. However, the inclusion of privately owned sewage disposal systems within the meaning of "public utility" is of recent origin. Section 269–1 was amended to include private sewage disposal systems in 1974, as a result of concerns expressed by the users of the privately owned system in Hawaii-Kai. At that time, Kaiser-Aetna, the developer of Hawaii-Kai, had indicated its intention to raise the rate for the use of its sewage disposal system by an amount considered by the users to be exorbitant.

Private ownership of water supply and sewage disposal systems is the exception rather than the rule. Generally, both the water supply and sewage disposal systems are owned, operated, and maintained by the respective counties. In the case of sewage disposal systems, developers of land normally include the construction of such a system in their development plans where the area to be developed has no existing county system, but upon construction, they almost invariably turn over or dedicate the system to the county concerned, and the county thereafter owns and maintains the system. In the Hawaii-Kai situation, mutually acceptable conditions for such a turnover apparently could not be reached.

Both the supply of water and the disposal of sewage are basic necessities and are provided under monopolistic conditions. As such, they are proper subjects of regulation by the PUC. However, inasmuch as the counties generally own and operate both water supply and sewage disposal systems, it does not seem unreasonable for the regulation of private water supply and sewage disposal systems to be placed in the counties. The counties, rather than the commission, have the required expertise in these areas. Such a transfer to the counties will cause no undue loss or hardship to either the PUC or the public, since the PUC has thus far done very little, if anything, to regulate either of these privately owned systems.

(4) Postscript. One important implication of the conclusions reached above must be noted. Except as to those specific activities and areas that are to be taken from the jurisdiction of the PUC, the PUC will, under the conclusions, continue to be vested with the full powers of policy-making, adjudication, and administration of public utility regulation. This means that the solution offered earlier in this report as an

"apparent solution" with respect to staffing and legal counsel is no longer simply apparent. The commission must have a staff of its own which it can control and direct in the performance of its duties unhampered by the director of regulatory agencies, and the director of regulatory agencies must have a staff of his own to assist him in the discharge of his consumer protection duties. Further, the commission must secure its own legal counsel, if the attorney general is to continue to represent the director of regulatory agencies in the discharge of his consumer protection functions.

Recommendations. *We recommend:*

1. That the basic public utility laws be overhauled. HRS, chapter 269, and any other related parts of the Hawaii Revised Statutes should be amended by:

a. Sorting out the activities now performed in the name of public utility regulation and reassigning responsibility for the various activities as follows:

(1) The public utilities commission be vested with full authority (policy-making, adjudicatory, and administrative) over those activities with economic objectives; and

(2) Other state agencies performing similar functions be assigned those activities having noneconomic objectives. Specifically, the function of ensuring the safe operable condition of motor carriers should be assigned to the highway safety coordinator for standards and to the county police departments for enforcement; the activity to ensure the safe working conditions for employees should be assigned to the department of labor; and certification and licensing of the kind necessary to protect consumers should be assigned to the director of regulatory agencies. Activities relating to ensuring the safety of the general public with regard to public utility operations should also be transferred to the department of labor. This latter action will require an expansion of the labor department's authority and responsibility, however, but a precedent has already been set in this respect relative to construction sites and amusement rides.

b. Excluding the sale, lease, installation, and maintenance of telephone interconnect systems from regulation by the public utilities commission.

c. Deregulating motor carriers, except as to their safety aspect, the responsibility for which should be assigned as recommended above.

d. Assigning the responsibility for the regulation of privately owned water supply and sewage disposal systems to the counties.

e. Placing the staff for the public utilities commission directly under the supervision and control of the commission rather than the director of regulatory agencies and providing the director with such staff as necessary to assist him in the discharge of his functions to represent consumer interests in proceedings before the commission.

2. That the public utilities commission engage its own counsel and the attorney general represent only the director of regulatory agencies.

3. That the state department of budget and finance, together with the department of regulatory agencies, amend the state program structure to reflect the economic objectives of utility regulation and place the regulation of public utilities in a category which is in harmony with such objectives.

Other Issues

There are a few other organizational issues that remain to be discussed. These issues are in some ways related to the sorting and reassignment of functions discussed above. They are issues which have been raised from time to time by students and observers of public utility regulation. These additional issues, which are discussed below, are:

- Organizational placement of CATV;
- Full-time v. part-time commission; and
- The number, qualifications, and tenure of public utility commission members.
- Organizational placement of the PUC within the overall state organizational structure.

Organizational placement of CATV. The cable television program is currently administered by the cable television division (CTD) under the direct supervision of the director of regulatory agencies, rather than of the public utilities commission. This is an anomaly. The cable television industry is a monopolistic business of a sort. The State of Hawaii is divided into geographic areas and within each area one and only one cable television company is allowed to operate. Thus, the objectives of regulating the cable television industry are similar to the objectives of regulating other utilities which are monopolistic in character, and these objectives are economic in nature.

The legislature's establishment of CATV under the director rather than under PUC was rationalized and justified almost exclusively on the grounds of efficiency and the need to expedite action so as to facilitate the rapid expansion of CATV services throughout the State. No claim was made that regulation in this field was inherently different from regulation in other fields or that CATV was completely separate from and unrelated to all other areas of public utility services. As events have turned out, it may be that the placement of CATV directly under the director of regulatory agencies indeed expedited CATV services more than would have been the case if the jurisdiction over CATV had been left with the PUC.

However, from a functional point of view and considering the relatively small size of the CTD, there seems to be little reason why the regulation of CATV services could not be combined with the regulation of other utility services and why the CTD could not be merged into the framework of the PUC. In fact, there are indications that better coordination of regulatory activities is necessary, but is presently being hindered by the existence of separate regulatory agencies. For example, the consummation of joint pole and joint underground duct agreements between CATV companies and utility companies regulated by the PUC has been a long-standing problem which probably could have been dealt with more effectively if there had been a single regulatory authority exercising jurisdiction over all the involved parties.

Recommendation. *We recommend that cable television be placed under the jurisdiction of the public utilities commission.*

Full-time v. part-time commission. The public utilities commission is currently a part-time body. Over the years, suggestions have been made that the commission should be a full-time commission. Various reasons have been given to justify a full-time body. Among the reasons given are (1) a full-time commission will result in more policy- or rule-making than is the case at present; (2) a full-time body will be better able to direct the staff than a part-time body and will result in the commission, rather than the staff, directing the course of regulation; and (3) the workload necessitates a full-time body.

Of all the reasons given, workload is probably most determinative of whether a commission should be a full-time or a part-time body. Our examination of the work performed by the public utilities commission revealed that the commission does indeed lack sufficient time to devote to all of the tasks expected of it. In part, this is due to the fact that the cases it hears are often lengthy and protracted. Some procedural reforms may reduce to some extent the time expended in hearing cases. But when one views the multitude of things that the commission neglects to do because of its almost full immersion in the task of hearing cases, it appears that procedural reforms will not necessarily provide the commission with the

time it needs to do the job it is assigned. Further, while some of the procedural reforms suggested in other chapters of this report may reduce the time required to hear cases, the nature of the suggested reform will require the commission to do other things, resulting in little or no saving in terms of the time the commission is required to spend in fulfilling its regulatory function as a whole.

The statistics gathered in this audit revealed that the commission members spend over 100 of the approximately 220 working days in a year on the business of regulating public utilities. The statistics further show that almost all of the 100-plus days are spent on adjudicatory cases before the commission. Little, if any, time is spent on policy-making, planning, industry surveillance, analyzing issues, and giving directions to the staff. Indeed, the 100-plus days that the commission members devote to adjudicatory cases leave little time for the members to digest and analyze the multitude of documents submitted in the pending cases.

In view of the workload and the functions that the commission is currently not performing but should be performing, a full-time commission is justified.

Number, qualification, and tenure of commission members. The questions regarding the number, qualifications, and tenure of commission members may be stated as follows: (1) what should the nature and character of the body be—i.e., should it be a "representative" body, or should it be a body of "experts," or should it be some combination of representativeness and expertise? (2) how large should the body be? (3) how long should the individual members be allowed to serve?

These organizational issues are not confined to the Hawaii public utilities program. They have received considerable attention and have been widely discussed nationwide, especially at the federal level where repeated studies have been made and reports issued concerning the federal regulatory agencies—the so-called "headless fourth branch of government"—and how they should be organized and placed within the structure of the federal government. Despite much effort and rhetoric, however, no conclusive and generally satisfactory solution has been developed for these issues. There continue to exist side by side in the United States, with mixed results, regulatory agencies differently composed, serving for a variety of terms.

1. The nature and character of the PUC. Of the three questions posed above, probably the most important is what the nature and qualities of the commission ought to be. The nature and qualities which the commission is supposed to bring to the regulatory process in Hawaii are currently by no means clear or well-understood. In other words, is it the community's intent to entrust the regulation of public utilities in a group of experts and specialists in this field or does the community desire to make the regulatory process representative of a broad range of views and interests? Or, is some combination or alternative course preferable?

If the PUC is to be considered and treated as a body of experts or specialists in the field of public utility regulation, then qualifications for appointment to the commission would need to be specified. Issues that would have to be resolved would include determining what those qualifications ought to be and what incentives would be required to obtain the types of qualifications needed. If, on the other hand, the commission is thought to be a representative body, then other types of considerations come into play. These would include such things as: what types of interests should be represented? how can representation of these interests be assured? how are technical and specialized matters to be handled and acted upon by nonexperts?

In the case of the Hawaii PUC, during the territorial period and up to the time of the reorganization of state government in 1961, it evidenced strong tendencies toward being a body of experts and specialists. This was the result of practice and not of legal requirements.

The situation prevailing up to that time is described as follows in the 1961 report of the legislative reference bureau on the public utilities commission:

> "Commissioners, for the most part, have served for relatively long periods . . . . The present commissioners have rendered a total of over 60 years of service. There has been a tendency for commissioners to rely on certain members for advice in particular areas. Thus, for example, each neighbor island commissioner is considered to have special knowledge with respect to utilities on his island, while each of the five commissioners is considered to be an expert in finance, engineering, transportation, accounting, or utility management. There appears to have developed, as a matter of habit and convenience rather than law, some tendency for division of labor within the commission.
>
> "Commissioners appear to be selected from a very limited group of occupations, businesses, and professions . . . . Except for the appointment of two commissioners from Kauai, who served for relatively short periods, all the commissioners since 1946 have been businessmen, financiers, or bankers (13), attorneys (2), or engineers (2). There has not been one college professor, labor union official, social service agency director, physician, or company employee other than a member of top-management. The theory appears to be that those acquainted with business are best qualified to regulate business. It may also be that people in only these types of occupations, businesses, and professions from which commissioners have been selected can afford and are willing to give up the amount of time necessary to serve as part-time commissioners."[8]

During the past 12 or more years, however, the situation has changed relative to the tenure, backgrounds, and degree of specialization among the members of the commission. This is indicated in appendix D which brings up-to-date the table included in the 1961 report of the legislative reference bureau on the terms and composition of the commission membership (i.e., table 3 contained on pages 27 and 28 of that report). As appendix D indicates, there has been a more rapid turnover in personnel on the commission, and the members of the commission have been drawn from a somewhat broadened spectrum of the community. The increased turnover is partially attributable to the present law which restricts service on most boards and commissions to two terms (eight years), but this is not the entire explanation because there have been several resignations during the past 12 years. Neighbor island members are still viewed as being the specialists on matters pertaining to their respective islands, but there is no longer any other recognized areas of specialization among the members.

If it can be said that the public utilities commission has now lost all character of being a body of experts or specialists, it cannot be said by the same token that it has automatically become a representative body. Indeed, the commission is very unrepresentative according to the present usual meanings of the term "representation." One generally accepted sense of the term "representation" is that the membership of a plural body bears a direct relationship to population or the numbers of persons "represented" by each member of the body—i.e., each person should carry equal weight as far as representation on the body is concerned. This concept is expressed in the "one man, one vote" principle. Another widely accepted meaning of the term is that all

[8]Legislative Reference Bureau, *The Hawaii Public Utilities Commission,* Report No. 6, 1961, pp. 26–29.

identifiable interests affected by the activities of the agency be represented. In neither sense is the public utilities commission currently representative.

Both law and practice prevent and inhibit the public utilities commission from being a representative body. For one thing, the law governing the membership of the commission (HRS, section 269–2) continues to give obeisance to the geopolitical traditions of the territorial days of Hawaii by requiring that each of the three neighbor island counties be represented on the commission and restricting Honolulu's representation to two members. The result is that 60 percent of the membership of the commission (i.e., three out of five members) represents only 18 percent of the State's population, while the other 40 percent (i.e., the two Oahu members) represents 82 percent of the State's population. Thus, an individual on one of the neighbor islands carries almost five times the weight of an individual on Oahu so far as representation on the public utilities commission is concerned.

Other legal restrictions or inhibitions on representation contained in section 269–2 include (a) the prohibition against any salaried officer or employee of the State serving on the commission and (b) the prohibition against anyone "owning any stock or bonds of any public utility corporation, or having any interest in, or deriving any remuneration from, any public utility" serving on the commission. The first prohibition denies representation to some 35,000 persons who are presently on the payroll of the State, or almost 5 percent of the population. Similarly, the second prohibition eliminates many thousands more from being represented on the commission even though this may be justifiable in terms of the need to avoid conflict of interest situations.

In addition to these legal restrictions on representation, common practice has further limited the commission's representativeness. For example, no woman has ever been appointed to the commission. With 48 percent of the State's population being women, this practice excludes a very large proportion of Hawaii's people from any representation on the commission. If one thinks in terms of other interest groups which may have a stake in the actions of the public utilities commission (e.g., consumers, environmentalists, welfare recipients, students, farmers, ethnic groups, many professional groups), one will find that many of them have never been represented on the commission and that membership of the commission is still drawn from fairly narrowly restricted elements of the community.

Another inhibiting factor restricting the representativeness of the commission is the fact that a large portion of the population has been unwilling or unable to devote the amount of time required for commission business. Currently, positions on the commission are only part-time jobs. Yet, for the past several years, participation in commission activities has required most members to spend part or all of more than 100 days per year on commission business. Considering the average person only works about 220 days a year (excluding vacations, holidays, weekends, leaves, etc.), being a commissioner virtually amounts to a half-time job or more. There are not too many people who can sacrifice this much time out of their normal routines to serve on a government commission—even at $50 per day plus expenses, which is the level of compensation put into effect in 1972 (up from the prior $10 per day with a maximum of $1000 per year).

In summary, the nature and character of the PUC have shifted over the years from a body of experts to a body of nonexperts. But the shift has not necessarily resulted in a "representative" body. Some decision is required to be made whether the PUC should be composed of experts or of lay persons representing the community at large or of a combination of experts and lay persons. How this question is answered will influence the answers to the questions, how large a body and for what term.

*2. **The number.*** At present, the PUC consists of five members, one from each of the neighbor islands and two from Oahu. In

considering whether this number should be retained or whether the number should be increased or decreased can reasonably be answered only when the question of the nature and quality of the commission has been determined. If it is determined that the commission should be composed of experts, the number may well be reduced. However, if the determination is that the body should be fairly representative of the community, the number may well need to be increased, subject only to the limitation that the number not be so large as to deleteriously affect the efficiency and effectiveness of the operations of the commission.

In this connection, it is pertinent to note that some have urged in the name of efficiency that public utilities regulation should be vested in an agency headed by a single executive rather than by a plural body. But those who so argue generally assume that all decisions and actions in the field of public utility are essentially the same in nature and quality. An examination of what goes on in the field of public utility regulation quickly reveals, however, that this is not necessarily the case and that there may be significant differences in the types of decisions made and actions taken in the regulatory process.

For instance, there are some areas of activity where no hard and fast rules apply, where alternative courses of action are many and varied, and where there is wide latitude for exercising judgment and discretion. Examples of such areas include the general rule-making process, the system for setting standards, and the rate-making procedures for regulated utilities. In each of these areas a good case can be made that a collective action or decision is preferable to an action or decision of a single individual. This is on the basis that a variety of views can be brought to bear on matters which are highly subjective and for which there are no clearly "correct" answers or solutions.

On the other hand, there are many other areas of activity where parameters are fairly clearly and definitely fixed, where actions are cut-and-dried, and where there is really very little room for the exercise of judgment and discretion. Examples of these areas include the enforcement of safety requirements, the application of various standards, and the examination of financial and operating records. In these cases, collective action promises little in terms of improving the quality of decisions or of enhancing the efficiency and effectiveness of the actions to be taken. Indeed, if anything, it might well be contended that the need for collective action would tend to hinder decision-making and to undermine efficiency and effectiveness.

In light of these dual kinds of decisions that are required in public utility regulation, the placement of utility regulation in a single executive is not necessarily the organizational pattern that should be pursued. It appears preferable to retain a plural body, but for those areas of regulation which are better suited for administration by a single executive, other alternatives should be explored. One of these alternatives is the recommendation made in an earlier section of this report to divorce those activities having noneconomic objectives from those having economic objectives and placing the former in other existing agencies (which are headed by single executives) for administration or to eliminate the activities altogether. For those activities having economic objectives but which are better performed by a single person (e.g., collecting and examining financial data) the commission may well delegate the performance of those tasks, within prescribed limits and standards, to its staff.

3. The term. The commissioners currently by statute serve for no more than two four-year terms. As in the case of the number of commissioners, the question of for what term each commissioner should be appointed can best be answered after it is determined what the nature and character of the PUC ought to be. If it is determined that the commission should consist of experts, it may be necessary to provide for a fairly long term of office in order to attract persons of the caliber desired. On the other hand, should the decision be that the commission should consist of lay persons,

representative of the community at large, shorter terms of office may suffice, subject to overlapping of the terms of the various members to ensure some stability and consistency in policies.

Recommendation. *We recommend that the public utilities commission be made a full-time body and the number of members and their terms of office be determined on the basis of whether a body of experts or a representation of the populace is desired.*

Organizational placement of the PUC. With the reallocation and reassignment of functions as suggested above, the question naturally arises as to whether the PUC should continue to be assigned to the department of regulatory agencies or whether it should be relocated to a more appropriate placement within the State's overall organizational structure. As previously noted, the DRA is presently primarily concerned with and involved in activities which are related to the consumer protection subprogram under the major program of individual rights. Hence, the original placement of the PUC within the DRA and within the consumer protection subprogram created a serious anomaly because it failed to recognize and distinguish between the various economic and noneconomic objectives of the public utilities program. If the various functions are sorted out as suggested above and if the PUC becomes an agency with almost purely economic objectives relating to the State's major objective of economic development, then the PUC's placement within the DRA becomes even more open to question.

This is not to say, of course, that the PUC can no longer be left within the DRA or that it cannot function effectively within its present organizational framework. Many of the other major state programs are spread out through two or more departments. In fact, the transportation facilities and services program is the only major state program which does not cross departmental lines. Thus, the PUC can remain attached to the DRA for administrative purposes so long as it is able to act independently of the director of regulatory agencies insofar as carrying out its regulatory functions is concerned. Indeed, there are some very good arguments which can be advanced in favor of such an arrangement. For example, this would be the least disruptive course of action to take in terms of personnel, space assignment, intraagency working relationships, etc. Moreover, as long as the director of regulatory agencies remains as the consumer protector in the public utilities field, it will be necessary for the DRA and the PUC to interact with each other. Therefore, why not leave them housed together in the same organization?

On the other hand, there are also persuasive arguments supporting the relocation of the PUC out of the DRA and lodging it with other more closely related activities. One potential place where the PUC might logically be relocated is in the department of transportation. As previously noted and as discussed more fully elsewhere in this report, almost all of the activities subject to regulation by the PUC involve some form of transportation. Hence, relocation of the PUC to the department of transportation might be considered as a logical possibility. However, there appear to be compelling factors militating against such a move under existing conditions. *First,* the department of transportation is already a very large and unwieldy department confronted with many huge and expensive jobs to perform. *Second,* the department of transportation is primarily oriented toward the construction and operation of transportation facilities rather than performing transportation services and developing integrated transportation systems. Thus, trying to merge the PUC into the department at the present time would more than likely confuse and compound the existing situation rather than facilitate and enhance the respective duties and functions of the PUC and the department of transportation. However, when and if the department of transportation evolves toward becoming an agency concerned primarily with the broad issues of physical distribution, integrated transportation systems, and energy utilization, then it would probably make eminently good sense to have the PUC embraced within its scope of concern and action.

Under present conditions, however, and taking into consideration the new role envisaged for the PUC relative to the State's objectives in the area of economic development, the most logical home for the PUC would seem to be the department of planning and economic development. This is because such a relocation would bring together into closer working relationship with each other activities which are commonly oriented to the State's economic objectives and which have similar implications in terms of environmental protection for Hawaii. Thus, we find that the department of planning and economic development is deeply involved in matters relating to economic projections, land use planning, energy utilization and development, capital improvements programming, economic research and analysis, statistical gathering and coordination, science and technology, and transportation planning, all of which relate directly or indirectly to the projected new role for the PUC. Such a realignment should prove beneficial not only to the PUC but also to the department of planning and economic development. Despite the vital place which utilities fill in Hawaii's economy, during the course of this audit of the public utilities program we found there was very little contact or interaction between the department of planning and economic development and the PUC and PUD.

Another consideration favoring the separation of the PUC from the DRA is the problem raised by trying to house together two essentially incompatible functions. As long as he serves as the advocate of the consumers, it does not appear appropriate to place the director of regulatory agencies in the position where he can exert any sort of pressure upon the PUC so as to influence its decision-making. So long as the PUC remains subject to the administrative control of the director of regulatory agencies, suspicion and possibility of undue pressure and influence are quite likely to persist. A clear separation of authority and responsibility would be one way to dispel such a cloud of doubt and uncertainty.

All things considered, relocation of the PUC to the department of planning and economic development appears to offer the most advantages and the least disadvantages under existing conditions.

Recommendation. *We recommend that the public utilities commission be transferred out of the department of regulatory agencies and be assigned for administrative purposes to the department of planning and economic development.*

Chapter 5

POLICIES AND PROCEDURES OF HAWAII'S PUBLIC UTILITIES PROGRAM: A GENERAL ASSESSMENT

Formal policies and procedures (or rules) are an essential feature of most governmental functions and play a significant role in the operation of most governmental organizations. In the regulatory fields, however, they loom even larger and more significant. This is especially true in the regulation of public utilities where many important interests are involved, where proceedings tend to be highly legalistic because they are conducted within the court-like framework of a regulatory commission, and where the decisions of the commission are directly appealable to the state supreme court.

In our review of the public utilities program, we detected a number of serious shortcomings and deficiencies in the present regulatory policies and procedures of the PUC and the PUD. Elsewhere in this report, we discuss the specific deficiencies as they relate to rate-making and other particular areas of regulation. Here we describe some of the more general shortcomings, or shortcomings of an overall nature.

Summary of Findings

The deficiencies in the policies and procedures for the regulation of public utilities are as follows:

1. The current formal policies and procedures are outdated and in several respects contrary to statute.

2. There are serious gaps in the formal policies and procedures.

3. The PUC and the PUD completely lack a system for the development and maintenance of policies and procedures.

4. The consequences of the present state of the policies and procedures are serious and many, including delays in actions by the commission and staff, the lack of forward planning, the commission of illegal acts, and the use of questionable procedures.

The Procedural Framework of the Public Utilities Program

To provide some general perspective for our findings, in this section we describe the procedural framework within which the public utilities program operates, or is supposed to operate.

Statutory provisions relating to the regulatory process. There are two basic statutes relating to or affecting the regulatory process in the public utilities field:

1. PUC statutes. Chapters 269, 271, and 271G of the Hawaii Revised Statutes contain numerous provisions which spell out in considerable detail the substance and procedures which the PUC is supposed to follow in carrying out its various functions. Such provisions are especially specific in the areas pertaining to the

fixing of rates and to the granting and revoking of operating authority to engage in certain fields of regulated activity. In other areas, the PUC is authorized to adopt its own rules and regulations setting forth substantive and procedural requirements which must be met by regulated parties. Under HRS, section 269–16(c), the PUC is one of the few agencies having a status comparable to that of the circuit courts wherein appeals are made directly to the supreme court.[1]

2. Hawaii Administrative Procedure Act (APA). In 1961, the legislature enacted the Hawaii Administrative Procedure Act (HRS, chapter 91), which established for the first time the general requirements for the formulation and adoption of rules and the conduct of administrative hearings throughout the state and county governments in Hawaii. Being a law of general application, it applies to the PUC, the PUD, and the DRA as well as all the other executive departments and agencies of the state government.

The APA, among other things, requires that all policies, procedures, and practices affecting private rights of the public must be established by formal (written) rules. It specifies how such rules are to be adopted, amended, and repealed. It also sets forth the procedures to be followed in contested cases involving the application of administrative rules and regulations. These procedures cover such matters as public notices, public hearings, rules of evidence, the examination of evidence, and the rendering of formal decisions and orders.

Agency rules and regulations: general orders of the PUC. The bulk of the formal policies and procedures by which public utilities are regulated in Hawaii is contained in the rules and regulations which the PUC has adopted. These rules and regulations are contained in documents which the PUC refers to as "general orders." As of February 20, 1974, there were ten separate general orders in effect. Several additional orders were in various stages of being adopted. Appendix E summarizes the status of the general orders of the PUC as of February 20, 1974. Some of these general orders have general application to broad areas of concern while others deal with quite specific aspects of the agency's jurisdiction. From a procedural point of view, the most important of the general orders is General Order No. 1, dated June 16, 1966, which sets forth the rules of practice and procedure before the PUC. Appendix F outlines in detail the steps involved in a rate proceeding before the PUC and illustrates the general procedures which must be followed under General Order No. 1. While rate proceedings are generally the most complex and drawn-out of all the cases handled before the PUC, all other matters must be handled in essentially the same manner.

External v. internal policies and procedures. The APA is applicable in the case of policies and procedures which affect parties outside of the agency. Internal management regulations not affecting private rights of or procedures available to the public, are excluded from its requirements. HRS, chapters 269, 271, and 271G, however, contain provisions relating not only to external matters but they also contain provisions concerning the internal affairs of the PUC and PUD. The PUC's general orders in the main cover matters of external concern.

In this chapter we focus on both external and internal rules and regulations. We do so because, *first,* the distinction between external and internal policies and procedures is not

[1]HRS, section 269–16(c), reads as follows:

> "From every order made by the commission under the provisions of this chapter which is final, or if preliminary is of the nature defined by section 91–14(a), an appeal shall lie to the supreme court in the manner and within the time provided by the rules of court for an appeal from a judgment of a circuit court. The appeal shall not of itself stay the operation of the order appealed from, but the supreme court may stay the order after a hearing upon a motion therefor, and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise in order to secure a restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, reversed, or modified in whole or in part."

always easy to make. One person may view a particular statement of a policy or procedure as being purely internal in its application, while another may view it as having a direct impact upon private rights. *Second,* policies and procedures, although strictly internal, affect the efficiency and effectiveness of the agencies concerned with public utility matters.

Formal v. informal policies and procedures. Formal policies and procedures are those which are written down for all to see. They constitute the official policies and procedures of the agency concerned. Informal policies and procedures are those which are not the official policies and procedures but are nevertheless followed in practice. The provisions of HRS, chapters 269, 271, and 271G, are a part of the formal policies and procedures. The contents of the PUC's general orders are also a part of the formal policies and procedures of that agency. In this chapter, we focus on the formal policies and procedures of the PUC and PUD, although, as pertinent, the informal practices and procedures are also examined.

"Policies" and "procedures" defined. The terms "policies" and "procedures" are sometimes used interchangeably. However, in the strict sense, "procedure" means the particular steps to be followed in accomplishing something. A good example of the meaning of "procedure" in this strict sense is PUC's General Order No. 1, which outlines the steps in sequential order in getting a decision on changes in rates.[2] The term "policy" is much broader in definition. It includes procedure, but it also includes matters of substance. Thus, the fee to be charged for filing an application is a policy. The objectives to be sought by the PUC is also a policy. So also is the requirement for the filing of specified information with the PUC. Sometimes it is difficult to distinguish procedure from matters of substance. What evidence may be introduced at a hearing is an example. In part, it is a part of procedure, but it is also a statement of substantive policy.

[2]See appendix F.

Here we are concerned with both substantive (policy) and procedural matters. Thus, when we use the term "procedure" in the sections that follow, we do not necessarily mean to confine "procedure" to its strict definition.

Outdated and Illegal Procedures

The formal policies and procedures (general orders) of the PUC and PUD are considerably dated in many respects. Since they were first put together, there has been insufficient attention paid to keeping the formal policies and procedures current with changing methodology and legislation. Thus, the present formal policies and procedures contain outmoded methods and provisions which are contrary to statute. Examples follow.

Motor carrier safety. Matters relating to motor carrier safety are included in General Order No. 2. This document in all of its essential features dates back to 1962. Since then, however, there has been much development nationally in traffic and vehicle safety. The U.S. Department of Transportation and its national highway traffic safety administration have been created, and the federal government has moved in a massive way into the field of highway safety. Yet, General Order No. 2 has been left virtually untouched. When one compares this order with the current motor carrier safety regulations of the U.S. Department of Transportation or with the 18 different sets of standards relating to highway traffic safety that have been adopted by the federal government, it becomes readily apparent that General Order No. 2 is now hopelessly deficient and outdated.

Measures for assessing adequacy of telephone service. General Order No. 8 setting forth the PUC's rules governing the telephone company is one area of standards of service where some attempt has been made to utilize quantifiable measures. However, the measures contained at present are now out-of-date and woefully inadequate. They are so inadequate that the commission decided to use measures which the California public utilities commission

has developed (not those contained in General Order No. 8) when it wanted to assess the quality of service being provided by the Hawaiian Telephone Company during the most recent rate proceeding involving that company. A docket has been opened to determine whether or not the California standards should be incorporated into General Order No. 8, but in the meantime the existing inadequate measures constitute the formal procedures still in effect. So far, very little action has been taken on this docket.

Inspection of commercial vehicles. General Order No. 2 currently specifies that motor vehicles must be inspected for safety annually. Since the general order was put into effect, the legislature has required semiannual inspections in most cases. However, no change has been made in the general order and only annual inspections are still being conducted for most vehicles.

Records of gross truck weights. An example similar to the one above relates to the problem of maximum weight limitations on trucks. The law on this subject has been revised so as to make the public utilities agency responsible for keeping a record of the designed gross vehicle weight of trucks and thus help ensure that actual weights are kept within the limits of allowable weights. However, no change has been made in General Order No. 2 to enable the agency to carry out this responsibility, and nothing is being done to enforce this law.

Motor vehicle gross weight fee. One other example might be cited. The example here is not so much the failure to change the formal rules in light of statutory changes but the failure to conform the rules to the strict provisions of the law. This example involves the annual gross weight fee that is supposed to be paid on all vehicles owned and operated by common and contract motor carriers pursuant to HRS, section 271–36. Contrary to the statutory provisions, section 10.14(c)1(b) of General Order No. 2 differentiates passenger carriers from property carriers and imposes a seating capacity fee on passenger carriers in lieu of the required gross weight fee. In addition, under General Order No. 2, the gross weight fees of the property carriers are allowed to be prorated but the seating capacity fees of the passenger carriers are not.

Voids in Policies and Procedures

Not only are the formal policies and procedures outdated and illegal in some respects, but, more importantly, they also contain many gaping holes and voids. The voids in the existing rules are almost everywhere. They exist both with respect to policies and procedures affecting parties external to the PUC and PUD and those affecting the internal operations of these agencies. Indeed, the gaps are so many that the existing rules cannot be said to be comprehensive in any real sense. Many of the ills in the regulatory process are traceable to these voids.

No guidelines. The present rules establish no guidelines or criteria to be used by the commission in reaching decisions on matters coming before it. While the commission does have some general guides which it purports to follow in reaching decisions, these guides have no official status, and it is made quite clear that the commission at its discretion may disregard, modify, or discard these guides at any time. Thus, for example, there is a great deal of uncertainty as to what the commission will consider as the appropriate components of its rate-making decisions, what types of justification will be deemed adequate to support or refute rate change requests, how much weight will be given to various factors, etc.

Policies sometimes emerge on a case-by-case basis, but there is no assurance that the commission will be consistent in its actions. The tendency has been to introduce new concepts and variations in individual cases and to apply them in specific situations. Thus, in recent rate cases there have been disputes over such things

as: (1) what, if any, advertising and promotion expenses will be recognized or allowed for rate-making purposes; (2) whether or not charitable donations and business memberships will be permitted as allowable expense deductions; and (3) whether the rate payers, the stockholders, or both, should bear the company's costs incurred as a result of the rate-making procedure itself.

No time restrictions. Another weakness in the rules is the fact that they are quite open-ended as far as time limitations on actions by the commission and staff are concerned. Thus, there is no discipline imposed upon the commission and staff to ensure timely consideration of and action on requests filed with the commission. As a consequence, matters may, and frequently do, drag on interminably.

For example, of seven recent major rate cases examined, only one was disposed of in less than a year and one of them is still not completely settled after having been filed more than four and a half years ago. The average time required to dispose of these cases from the time of filing to the time the final decisions and orders have been issued amounts to more than 28 months per case. There are a number of other dockets where the elapsed time must be calculated in terms of years. The earliest of these dates back to 1964.

Rate cases are not the only ones where there is an unreasonably long regulatory lag. A great many other dockets drag on for years and many important issues remain pending before the agency for long periods of time without being resolved.

To obtain some picture of the problem of regulatory lag as it relates to all dockets, rather than to just rate proceedings, we have prepared two tables to show the number of pending dockets awaiting disposition by the agency at a given point in time and how long they have been pending and to indicate the rate at which dockets are opened and closed over a period of a year. Table 5.1 summarizes all of the dockets which we were able to identify as being open and still pending before the agency as of December 31, 1972, and shows the preceding periods in which the dockets were opened. As this table shows, 39 of the pending dockets, or 32 percent, were more than one year old. The oldest pending docket dated back nine years. The dockets which were more than three years old included the following orders of investigation initiated by the agency itself: (1) Docket 1581 – Utilities Promotional Practices (1964); (2) Docket 1673 – Public Utility Status of Wholesale Power Supply Companies (1965); (3) Docket 1749 – Issuance of Securities – Negotiations Versus Competitive Bidding (1967); (4) Docket 1805 – Utilities Purchasing Practices (1968); and (5) Docket 1835 – Purchase Power Practices (Kauai Electric Company) (1969). Another docket which was more than three years old at that time was Docket 1817, Kauai Electric Company's application for a rate increase originally filed in 1968. This case was supposedly finalized in August 1973, but it apparently is still pending in view of the fact that only an interim decision and order was issued at that time.

Table 5.2 summarizes in overall numbers the agency's handling of dockets during calendar year 1973. It indicates the number of dockets which we were able to identify as pending at the beginning of the year broken down by: (1) those more than one year old, (2) those six to 12 months old, and (3) those less than six months old. Indicated also are the numbers of dockets opened and closed during the year. Finally, there is shown the number of dockets pending at the end of the year, again broken down in the same manner as the pending dockets at the beginning of the year. As this table shows, the agency entered the year with 122 pending dockets, of which 39 were more than one year old. During the year it opened 222 new dockets and disposed of 90 dockets, or 41 percent of the dockets. At the end of the year, the commission carried 195 dockets over into 1974, of which 94

Table 5.1

Pending Dockets (1964 Through 1972) of the Hawaii Public Utilities Commission as of December 31, 1972 by Type of Company and Type of Docket

Year	Total Pending as of 12/31/72	Communications		Power		Transportation			Water	Matters of General Application[b]
		Telephone	Others[a]	Electric	Gas	Airlines	Barge	Motor		
1964 through 1967	3	–	–	1	–	–	–	–	–	2
1968	8	2	–	4	–	–	–	1	–	1
1969	5	–	–	2	–	–	–	1	2	–
1970	8	1	1	–	–	–	1	4	1	–
1971	15	1	–	2	2	–	1	8	1	–
1972	83	11	3	9	3	–	2	53	–	2
Total	122[c]	15	4	18	5	–	4	67[c]	4	5
Summary by type of application/assignment										
CPCN	48[c]	–	–	–	–	–	1	45[c]	2	–
PUC-initiated[d]	28	3	2	3	–	–	–	14	1	5
Rate cases	11	4	–	3	2	–	2	–	–	–
Formal complaints	11	5	–	–	–	–	1	5	–	–
Finance matters	6	–	–	3	–	–	–	2	1	–
Tariffs	5	1	1	–	2	–	–	1	–	–
Purchase power agreement	4	–	–	4	–	–	–	–	–	–
Rule clarifications and changes	2	1	–	1	–	–	–	–	–	–
Property condemnations	2	–	–	2	–	–	–	–	–	–
Easement grants	2	1	–	–	1	–	–	–	–	–
Property rental	1	–	–	1	–	–	–	–	–	–
Property disposal	1	–	–	1	–	–	–	–	–	–
Public utility status	1	–	1	–	–	–	–	–	–	–
Total	122	15	4	18	5	–	4	67	4	5

[a]Others include interconnect companies, Western Union of Hawaii, Inc., and Radiocall, Inc.

[b]Matters of general application include such dockets as purchasing practices, environmental control clause, general temporary order (price freeze), etc.

[c]These totals include two dockets which are pending at the request of the applicants and 22 dockets (CPCN applications) which have been given temporary approval by the commission to operate in the 1–7 passenger category as common carriers of passengers.

[d]PUC-initiated matters include show cause orders, orders of investigation and suspension, new rules and amendments.

Sources: Chief clerk files, dockets, commission minutes, commission calendars of the public utilities division, department of regulatory agencies, State of Hawaii.

Table 5.2
Summary of Docket Actions of the Hawaii Public Utilities Commission
During Calendar Year 1973

	Total	Distribution of pending dockets		
		More than a yr old	6–12 mos old	Less than 6 mos old
Pending dockets as of January 1, 1973	122	39	21	62
No. closed as of December 31, 1973	59	11	11	37
No. pending as of January 1, 1974	63[a]	28	10	25
Total dockets opened in 1973	222	N/A	N/A	N/A
No. closed as of January 1, 1974	90	N/A	N/A	N/A
No. pending as of January 1, 1974	132[b]	N/A	38	94
Total pending as of January 1, 1974	195	63	38	94

N/A = Not applicable.

[a]This total includes two dockets which are pending at the request of the applicants and 19 dockets (CPCN applications, 1–7 passenger category) where temporary operating authority as common carriers of passengers has been granted to the applicants. Six applicants have been granted permanent authority, but final decisions and orders had not been issued as of December 31, 1973.

[b]This total includes 22 dockets (CPCN applications, 1–7 passenger category) where temporary operating authority has been granted to motor carriers. An additional 11 applications have been granted temporary authority but no decisions and orders had been issued as of December 31, 1973. Within this same category 11 other applications were not scheduled for hearing as of December 31, 1973.

Sources: Docket files, commission minutes, and commission calendar from the public utilities division, department of regulatory agencies, State of Hawaii.

were less than six months old while 63 were more than one year old.[3]

[3]Included in our definition of pending cases used for the preparation of tables 5.1 and 5.2 were the following types of dockets: (1) those for which no final order or decision and order has been issued, (2) those relating to general orders where the final rules and regulations have not yet been filed with the lieutenant governor's office, (3) those involving cases on appeal to the state supreme court (including those remanded to the agency and those still on appeal), and (4) those where temporary approval has been granted by the commission and further action is required to grant permanent approval. Considerable difficulty was encountered in preparing these tables, and one of the factors contributing to this problem is the fact that the agency has no real definition of a pending docket. Hence, we had to devise our own definition and then try to identify which cases fell into each particular category.

Of course, all delays are not the fault of the commission and the staff. In some instances, it is the regulated companies' failure to comply with agency requirements which causes delays and postponements. In a majority of cases, however, most of the blame for delay and inaction lies with the agency. Some of the cases which have been left open the longest represent dockets which the agency initiated itself and involve major investigations which the agency has not pursued to a conclusion.

It is also recognized that not all of the delays by the PUC and PUD are the results of a lack of time constraints but are the results also

of the nonexistence of appropriate guidelines, inadequate staff resources, and the adequacy of the job done by the staff. However, much of the time lag can be attributed to the lack of formal time constraints. Thus, more definite deadlines should be established by the rules, not only for the commission and the staff, but also for applicants and other parties to the extent they may be responsible for causing the delays that have occurred in the past.

To avoid protracted proceedings, many jurisdictions have imposed legal limits upon the length of time a regulatory agency can suspend the effect of proposed rate changes pending investigation and action on the proposals. Under such limitations, the proposed rates would take effect at the end of the suspension period if the agency had not completed its action by that time. At the present time, some 34 federal, territorial, and state regulatory agencies appear to operate under such limitations, which range in length from 30 days (the Virgin Islands) to 12 months (Iowa, New Mexico, and Virginia). A summary of these limitations is shown in table 5.3. It would appear that a 12-month limitation should provide sufficient time to act on utility rate matters, particularly as the evidence shows that during much of the time involved in rate cases in Hawaii the staff takes no active action on the cases. To lessen the burden on the agency, this limitation might be combined with a restriction on the frequency with which utility companies can file for rate changes.

No provision for consideration of other state objectives. We noted in an earlier chapter that the objectives of public utilities regulation are interrelated with the objectives of other state programs. We observed that utility regulation and state activities in other areas, such as transportation, environment, energy, and safety, to name a few, affect or should affect one another. Yet, the formal rules of the PUC and PUD make no mention of how the objectives of the State in these areas are to be accommodated, or indeed considered, in regulating the utilities. There is no mechanism established as to how the PUC and PUD are to relate to other state agencies which have responsibility over these related areas. It is thus not unexpected that, in regulating public utilities, these other state objectives are often ignored.

Lack of access to proceedings. Still another criticism which might be made of the existing rules concerns access by all interested parties to the regulatory process. There are at least two areas where such public accessibility is poor.

*1. **In the PUC's contested case proceedings.*** As the rules now stand, the commission has reserved to itself wide discretionary authority to decide who may intervene or participate in a case before it and under what conditions and limitations participation may be allowed. Efficiency of operations is the justification given for the present rules regarding intervention and participation, and if this were the only basis of evaluation the rules could probably be defended. However, equity and fair treatment of all parties affected by the decisions in these cases are of equal importance. It follows, therefore, that the rules should give consideration to enhancing and promoting equitable access to and participation in the regulatory process. Clear standards should also be established by the PUC regarding the right to intervene and participate.

*2. **In the PUC's uncontested proceedings.*** Sometimes action is taken by the PUC without a quasi-judicial proceeding. This occurs even in such important areas as rate-making. For example, the formal proceeding is not the only way in which matters affecting utility rates are determined.

Under HRS, section 269–16, a distinction is made between rate or tariff *increases* and other types of tariff changes.[4] The commission's procedural discretion is much more limited with regard to proposed rate or tariff increases than

[4]The term "tariff" is a technical term, meaning essentially the result of government approval. Rates once approved become embodied in a document known as a "tariff." Tariffs are published by the utilities and are filed for approval with the PUC.

Table 5.3

Summary of Limitations Imposed upon Regulatory Commissions On the Length of Time Proposed Rate Changes Can Be Suspended Pending Investigation and Action

Federal Power Commission	5 mos.
Federal Communications Commission	3 mos.
Alabama	6 mos.
Alaska	–
Arizona	–
Arkansas	90 days
California	–
Colorado	210 days
Connecticut	–
Delaware	6 mos.
District of Columbia	–
Florida	–
Georgia	None
Hawaii	Indefinite
Idaho	–
Illinois	11 mos.
Indiana	–
Iowa	12 mos.
Kansas	Indefinite
Kentucky	5 mos.
Louisiana	No limit
Maine	8 mos.
Maryland	180 days
Massachusetts	10 mos.
Michigan	*
Minnesota	–
Mississippi	6 mos.
Missouri	10 mos.
Montana	*
Nebraska	6 mos.
Nevada	150 days
New Hampshire	6 mos.
New Jersey	8 mos.
New Mexico	12 mos.
New York	10 mos.
North Carolina	9 mos.
North Dakota	11 mos.
Ohio	Indefinite
Oklahoma	No limit
Oregon	10 mos.
Pennsylvania	9 mos.
Puerto Rico	–
Rhode Island	9 mos.
South Carolina	6 mos.
South Dakota	None
Tennessee	90 days
Texas	–
Utah	10 mos.
Vermont	6 mos.
Virginia	12 mos.
Virgin Islands	30 days
Washington	10 mos.
West Virginia	120 days
Wisconsin	4 mos.
Wyoming	None
Jamaica	–

*Rate changes do not take effect until agency approves.

Source: South Dakota State Legislative Research Council, "Electric and Gas Utility Regulation" (December 1, 1973) based upon a draft copy of a study being conducted by the National Association of Regulatory Utilities Commissioners entitled, *Federal State Commission Jurisdiction and Regulation: Electric, Gas, and Telephone Utilities.*

with regard to other proposed rate and tariff changes. No increases can be legally effectuated without going through the hearings procedures prescribed in section 269–16 and in the Administrative Procedure Act and being specifically approved beforehand by the commission. However, in the case of changes, under section 269–16, the commission has the discretion to: (a) allow the proposed changes to take effect after receiving 30 days' notice from the utility by simply taking no action at all on the matter; (b) allow the proposed changes to take effect on less than 30 days' notice "for good cause shown" (which would appear to require the commission to make a positive finding that less notice is justified); or (c) suspend the taking effect of the proposed changes until, in accordance with the APA, a hearing has been held, a proper determination has been made regarding the proposed changes, and an order has been issued embodying the commission's decision. Our examination of the 86 tariff changes submitted by the telephone, electric, and gas utilities in the years 1970 to 1972 indicated that a substantial portion of these submissions (73) has been allowed to go into effect without action by the commission.

It is not always a simple matter to make a practical distinction between an increase and a non-increase tariff change. For example, a reduction in service without a commensurate change in price results in an actual rate increase. Because of the complicated nature of many tariffs, careful scrutiny and analysis of a proposed change is required to determine whether it will result in an increase. Even if a proposed change does not have the effect of increasing rates, nevertheless, it can raise substantial questions on the rate structure and how consumers are to be charged. Yet, the commission permits proposals to go into effect without any action on its part, and it is virtually impossible for those affected to know when tariff changes are occurring. This is not important, of course, when only minor corrections in text are involved. However, when significant issues may be at stake, the practice of permitting tariff changes to occur without specific action by the commission is hardly adequate. It would appear that one of the main purposes of requiring the filing of a 30-day notice is to provide an opportunity to direct public attention to changes being proposed so that those interested may have a chance to voice their views on the changes. Thus, it would seem that the procedural machinery should be designed to spotlight such actions, not to allow them to slip through unnoticed. It should be possible to do this without slowing down significantly the handling of minor and noncontroversial changes.

Another example of changes being made without adequate opportunity for public input is the area of adjustments in rates because of fuel oil costs. Along with many other jurisdictions, the Hawaii PUC has long observed the practice of including in the approved rate structures of the gas and electric utilities an escalator clause under which rate adjustments can be made in accordance with fluctuations in the price of fuel oil. This fuel oil adjustment concept recognizes that fuel oil constitutes a major cost item for such utilities and that fuel oil is subject to fairly frequent and sometimes quite wide fluctuations in price. Thus, rather than forcing a rate proceeding every time there is a significant change in the price of fuel oil, the practice has developed of authorizing utility companies to adjust the charges to their customers in accordance with a set formula whenever the price of fuel oil changes.

Other parts of this report discuss the legal basis for this concept, the design problems in the establishment of the formulas for such automatic rate adjustments, and the implementation of this fuel adjustment concept. Our focus here is on the fact that adjustments in rates under this fuel oil adjustment concept occur without adequate notice to the general public. *First,* the actual time period for the utility companies giving notice to the PUC and the PUD of a change in rates and customer billings ranges from about a month ahead of the effective date of the change to sometimes *after* a change has already taken effect, with one week being the usual time. *Second,* neither the PUC nor the utility companies generally have any

established public information program designed to alert the public to impending changes or to explain the impact of the changes to the users who will be affected. As for the notice itself that goes to the PUC and PUD, it can hardly be termed a public notice. None of the notices is ever placed on the agenda of the PUC or acted upon in any official way by the PUC.

It would appear desirable for the PUC to establish a procedure by which the public might be given notice of all proposed rate adjustments sufficiently ahead of the effective date of such adjustments. Such notice requirement is particularly important where, as described elsewhere in this report, the fuel oil adjustment formula, mechanism, and surveillance by the PUC and PUD are improper, inadequate, and poor. The case of the island of Kauai graphically demonstrates this. In 1973 and 1974, the Kauai Electric Company invoked the fuel adjustment clause in response to changes in the company's fuel oil costs. The 1973 adjustment amounted to a $4.90 increase for a typical utility bill based on 1000 kilowatt hours of usage for a two-month period. The 1974 adjustment, however, increased such a bill by another $28.35, nearly doubling the total of such a bill from $46.10 in 1973 to $74.45 in 1974. A later investigation by the PUD, based on a citizen's complaint, revealed that the amount of the fuel adjustment was improper. For one thing, the formula on which the adjustment was based was outdated. The company in the end conceded that its fuel adjustments were excessive.

Nonconformance to the APA. An important and serious void in the current rules is its failure to contain matters which are mandated by the State's Administrative Procedure Act. In recent years, the state supreme court has felt impelled to voice criticism in the cases appealed to it from the PUC on the failure of the PUC to follow the provisions of the APA. Between 1970 and 1974, the supreme court has had to remand four cases to the PUC largely on the grounds that it had failed to comply with the requirements of the Hawaii Administrative Procedure Act. Three of these cases related to motor carrier matters and the fourth involved the PUC's decision on a general telephone rate increase request.

In the first motor carrier case, *In re Oahu Terminal Services, Inc.*, 52 Haw. 221 (1970), the court ruled that the PUC had erred in not affording the party to the case an opportunity to review and comment on a proposed decision before it was issued as required by HRS, section 91–11, and had also erred in not conforming its order to the decision it had made as reflected in the agency's minutes.

In the second motor carrier case, *In re Western Motor Tariff Bureau, Inc.*, 53 Haw. 14 (1971), the court held that the PUC had erred by denying a hearing on a proposed tariff change as required by the Hawaii Motor Carrier Law.

In the third motor carrier case, *In re Terminal Transportation, Inc.*, 54 Haw. 134 (1972), the court again had to overrule the PUC on the basis of procedural errors. In this case, the court ruled that the PUC had failed to comply with two sections of the Hawaii Administrative Procedure Act (i.e., sections 91–11 and 91–12), including a repetition of the error cited in the 1970 motor carrier case. The second error involved the failure to rule clearly on all of the proposed findings submitted by the parties to the case. In this case, the court felt it necessary to comment as follows:

> "We are dismayed by the Commission's failure to comply with the provisions of the Hawaii Administrative Procedure Act both in this case and in two other recent cases, see *In re Western Motor Tariff Bureau, Inc., supra; In re Oahu Terminal Services, Inc., supra.* These provisions may not be disregarded. A fundamental reason for the enactment of the Hawaii Administrative Procedure Act was to insure fairness and impartiality in administrative proceedings. Fairness and impartiality cannot be insured when an administrative agency such as the Public Utilities Commission

consistently refuses to abide the clear mandates of the statute."

Even this criticism by the supreme court seems to have fallen upon deaf ears within the PUC and the PUD, because at least one of the same issues involved in the prior cases was back before the court in the telephone rate case. In this case, *In re Hawaiian Telephone Company,* 54 Haw. 663 (1973), the court ruled that the agency had erred again by failing to comply with the requirements of HRS, section 91–12, that its findings be reasonably clear. In obvious exasperation, the court quoted its criticism of the agency made in the prior case, and then went on to state:

> "We are of the opinion that the PUC has again failed to abide with the clear mandate of the Administrative Procedure Act. Its Decision and Order No. 2853 and No. 2862 fail to meet the requirements of HRS section 91–12. PUC has failed to make its findings reasonably clear and we are left with the dilemma of guessing the precise findings of PUC on the material questions of fact involved herein.
>
> "Because of PUC's failure to make the necessary findings of fact we are unable to determine the validity of the conclusions or lack of conclusions of the PUC in the herein decisions and orders."

Thus, from the supreme court's point of view, the administrative procedures of the PUC and the PUD are seriously deficient and need to be corrected to bring them into conformance with the requirements of the APA. One way, of course, to ensure conformance with the APA is for the PUC's rules to spell out clearly the procedure that must be followed to be in compliance with the APA. Its presence in the agency's own rules would serve as a reminder to the PUC and PUD of the important requirements of the APA.

Lack of internal procedures. In addition to the foregoing, there currently are voids in the internal procedures of the PUD. There are presently no formalized or clearly defined procedures for handling various matters in the PUD. There are no general procedures manuals. Even for specific types of actions or activities, there are no written outlines or directions as to how matters will be handled or as to who should do what and when.

In areas such as rate-making, the lack of written procedures is defended on the ground that everyone knows what his job is and really does not have to be told. Yet, on looking at recent rate cases, there does not appear to be any usual or customary way of handling these cases, and each seems to be handled somewhat differently. Various pieces of each case are parceled out among the various branches in the PUD and each branch seems to work independently of the others with no overall guidelines as to the approach being taken on the case, the timetable that is expected to be followed, or the roles particular groups of individuals will be given in the case. Staff meetings of all persons involved in a particular case appear to be extremely rare.

In the recent telephone rate case, largely as the result of no adequately developed internal procedures and no general operational plans or formulated methods for handling major rate cases of this sort, the following undesirable and unwarranted events, problems, and difficulties occurred: (1) staff action on the matter was unnecessarily delayed and prolonged; (2) important staff studies which could have and should have been made were never even initiated; (3) many of the other staff studies that were made were either deficient or not used in the case; (4) there were serious deficiencies in control over consultant contracts (i.e., four separate consultants were hired with almost identical job specifications and most of the work of the consultants ended up being of little value to the case); and (5) no adequate case for the public or the consumers was ever prepared and presented throughout the whole proceedings.

As a consequence of the foregoing, a wide credibility gap was apparently created between the commission and the staff and, seemingly by default on the part of the staff, the commission appears to have felt compelled to accept almost in toto the company's position in the case. This, in turn, caused the staff (through the director of regulatory agencies and the attorney general) to appeal the case to the state supreme court, which led to the dispute over the status of the staff in commission proceedings. The net effect is that hundreds of thousands of dollars were spent by the telephone company and the State on this case with very much less than satisfactory results for all parties concerned.

Even in the more routine areas of the work of the PUD, there is a complete lack of any organized, formalized, or written body of management procedures covering the internal administration and operation of the PUD. Despite the flow of literally thousands of forms into and out of the agency each year and the handling of a multitude of diverse and frequently quite complicated matters, there are no written instructions or documentation as to how these forms are to be processed or how these matters are to be handled. Moreover, there is no one in the agency who can explain in a precise step-by-step manner what, how, and why the agency is doing the many things it does.

That the PUD requires an operating or procedures manual is by no means a new revelation. The need for one was called to the attention of the department of regulatory agencies as far back as 1967. In a financial audit of the department of regulatory agencies for the fiscal year ended June 30, 1967, at the direction of the office of the legislative auditor, the following comments and recommendations were made by the accounting firm which made the audit:

> "All functions and activities of the Department describing approved practices need to be incorporated in the organizational structure and documented in an operating manual. While the Department has an organization chart for managerial personnel and general job descriptions for its employees, there is no documentation of specific lines of authority and segregation of responsibilities knitting individual positions together in a compact whole.
>
> . . . . . .
>
> "We recommend that an operating manual be prepared, possibly by the State systems accounting personnel, to avoid confusion within the Department and to prevent variations in accounting methods. This manual should be in a loose leaf form to allow ease in revision. It should define accounting procedures and policies, describe the various funds and their purposes, and include a chart of accounts with appropriate descriptions, purpose, authorized usage, and content of each account. . . . . It should also include step-by-step instructions, diagrams of paper flow, and instructions on office routines."

Although directed at the DRA in general, the above comments and recommendations apply with equal force to subordinate units within the department, including the PUD. Apparently at neither administrative level, however, has any serious consideration been given to the need for or the value of developing workable and clearly understandable operating procedures for the PUD because the agency is still without any formalized procedures manual.

Other voids. There are other voids in policies and procedures, both of the external and internal kinds, which might be enumerated as follows.

1. External.

- There are no general orders covering water companies although the agency is responsible for regulating private water companies;

- There are no firm and consistent policies and procedures for handling complaints coming into the agency;

- There are no policies and procedures for letting and administering consultant contracts;

- There are virtually no meaningful, quantifiable measures by which the quality of performance by the public utilities might be measured;

- There are no standards which can be used as objective bases for rejecting vehicles undergoing safety inspections or disqualifying drivers being given physical examinations; and

- There are virtually no standards in the physical examinations of truck and bus drivers which have meaningful relevance to determining the physical fitness of those drivers to operate the vehicles they will be driving or of keeping unfit drivers off the road.

2. Internal.

- There are no procedures for handling accident reports;

- There are no follow-up procedures on cases of noncompliance with agency rules and regulations;

- There are no procedures for coordinating the PUD's motor vehicle registrations with those of the counties; and

- There are no policies or procedures spelling out why thousands of vehicle inspection reports and accident reports are being required to be filed with the agency or what is supposed to be done with the reports.

Consequences

Illegal process. An obvious consequence of the failure to maintain a body of current, comprehensive, and integrated formal rules is that it permits the PUC and PUD to administer the public utilities program in a manner contrary to law. This has been amply illustrated above.

Diversity rather than uniformity in decisions. Another important consequence is that rules are made informally from case to case. The policies followed and the procedures used in one case can and do frequently differ from the policies followed and procedures used in a previous case or in a case which subsequently arises. While some flexibility is required in dealing with the peculiarities of each case, the current state of the formal rules is such that the PUC and PUD use wide discretion in determining the policies and procedures to be followed in each case. Such freedom gives little notice to the parties concerned, both within and without the state agency, as to what the ground rules will be, what preparation is required, what might be expected at a hearing, what performance is anticipated, and what can or cannot be done. Further, the lack of formal policies and procedures can lead to diversity rather than uniformity in the results of the cases.

Delays. A third consequence is that the absence of current, comprehensive, and integrated formal rules encourages rather than discourages delays in the actions to be taken by the PUC and PUD. The delays occur not only because of the absence of time constraints in the rules as earlier illustrated, but also because in the absence of formal policies and procedures, each case that comes before the PUC and PUD must be adjudicated and in such adjudication the PUC and PUD must go over the same grounds they had previously covered in prior cases. These are time-consuming tasks. Note, what happened in recent cases where the commission had to decide

what expenses would be allowed to be considered in passing upon requests for rate increases.

Questionable procedures. A fourth consequence is that the absence of updated, comprehensive, formal rules can lead to questionable procedures. Note the following: The commission in issuing its formal orders and decisions follows a series of steps. The first step is the adoption of a final decision or policy position by the commission. This is done at a so-called "quorum meeting" of the commission, usually following the conclusion of the hearings and other proceedings relating to the matter at hand. This action is reflected in the minutes of the meeting, and is generally stated in fairly brief and broad terms and with an indication that a formal order will follow.

The next step is to prepare the formal order, which is frequently done by the staff. The staff prepares a draft order and circulates it to the chairman of the commission and to the deputy attorney general. Once the staff, the chairman, and the deputy attorney general agree on the draft, it is then put into final form by the clerical staff of the PUD and "issued" (i.e., mailed out to the parties involved). This then becomes the formal issuance date of the order. However, at this point it has not been signed by any of the commissioners and probably has not even been seen by any of them except the chairman.

Subsequent to the "issuance" of an order, an undated "ratification sheet" is attached to the original of the order. Then, the ratification sheet is made available to the commissioners for their signature, usually when they gather at the PUD's offices for their next meeting. Due to absences and other reasons, all the commissioners do not necessarily sign a ratification sheet on the same date. However, this makes no difference because the date appearing on the face of each order is the "issuance" date and not the "ratification" date. Orders are subsequently officially received into the records of the commission, but this is strictly a formality, the fact being simply noted in the minutes.

Oddly enough, however, the following wording is used at the end of each formal order: "Done at Honolulu, City and County of Honolulu, State of Hawaii, this day of , 19 , per motion passed by the Commission at its quorum meeting held ,19 ." The impression given by this wording is that the commissioners in question had formally acted on the indicated date to signify their approval of the order. In fact, however, it is usually an interval of a month or more between the issuance date and the time the ratification sheet is signed by all the commissioners involved. Frequently, it is a much longer period. In some instances, the elapsed time exceeds a year.

This sort of procedure, even if it were not illegal, can lead to all sorts of problems. In at least one case, an order had to be recalled and revised after it was issued because a majority of the commissioners disagreed with the form in which it was issued. Departures from the commission by death, resignation, or other reason, can also create problems. In one example we came across, only three commissioners heard the case so that all three had to approve the decision and order before it could become effective (a majority vote of the full commission being required for all such final actions). Nevertheless, when we became aware of the case more than a year and a half after the indicated issuance date, we found that one of the commissioners still had not signed the ratification sheet although he had long since left the commission. This case related to the adoption of two new general orders by the PUC—General Order Nos. 4—A and 5—A, pertaining to accounting procedures to be followed by water carriers subject to regulation by the PUC. In February 1974 the staff informed us that the third signature had been obtained and that the decision and order was ready for filing with the lieutenant governor's office. This was more than two years after the indicated issuance date of January 24, 1972. As a matter of fact, the decision and order still has

not been filed with the lieutenant governor's office. It probably never will be because in the meantime a new water carrier act has been enacted into law (Act 94 which became effective on May 31, 1974) which the deputy attorney general assigned to the case says renders the whole previous rule-making effort moot. Apparently, therefore, the whole process must begin all over again under the new law.[5]

It appears to us that the only proper time for a formal order to be issued is when it has been fully reviewed and officially signed by all the commissioners involved. No problems can then arise or questions be raised as to whether or not the commissioners have all acted on the matter at the time indicated. We have noted that in orders issued by other regulatory agencies (both federal and those of other states), the signatures of the participating commissioners are indicated on all copies of the order made available for distribution.

Lack of Systematic Review of Formal Procedural Rules

What lies at the core of the deficiencies listed above is the fact that the PUC and PUD totally lack any means or system by which they can or do formally review procedural problems and develop solutions to those problems. There is no mechanism for a comprehensive and systematic appraisal of the regulatory objectives and procedural needs of the PUC and PUD such as would enable the PUC and PUD to develop and maintain a formal set of current, relevant, integrated, complete, and coordinated rules for the PUC and PUD. This is true despite the fact that the Hawaii Administrative Procedure Act contains the following requirement (HRS, section 91–5(a)):

> "Sec. 91–5 Publication of rules. (a) Each agency shall, as soon as practicable after January 2, 1962, compile, index, and publish all rules adopted by the agency and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years."

There was a flurry of activity in the mid-1960's, when the agency was undergoing a reorganization, to review and revise some of the general orders, but this can hardly be termed a comprehensive, integrated, and systematic overhaul of administrative rules. The various general orders were reviewed and revised on a piecemeal basis, and most of the changes made were minor and patchwork in nature. This is illustrated in General Order No. 2. There, references are made to sections in the general order that no longer exist, there are inconsistencies between sections, and some sections are completely missing as a result of being inadvertently dropped out.

Since this effort in the mid-1960's, the agency has made virtually no effort systematically to review and update its rules. Most of the amendments that have been made in the general orders in recent years have been at the initiative of people outside the agency (i.e., primarily the regulated companies) and not at the instigation of the agency, and they have been spotty at best.

Criticisms about regulatory boards and commissions nationwide are directed primarily at the lack of rule-making and the consequent emphasis on case-by-case adjudication and the delays experienced in such adjudication. The experience of the Hawaii PUC is no exception. The PUC pays insufficient attention to rule-making.

Advantages of Rule-Making

We might note here some advantages in rule-making, other than those outlined above but

[5]The same sort of delay occurred with regard to the decision and order for Docket No. 1886 (opened on October 8, 1970) regarding the adoption of a new General Order No. 5, which deals with a uniform chart of accounts for motor carriers, except that the decision and order was finally filed with the lieutenant governor's office on June 14, 1974.

related to removing some of the consequences of insufficient rule-making.

Public participation. There has been much said about the lack of opportunity for the interested general public to participate in the proceedings before the PUC. This is particularly true in the adjudicatory process of the PUC. While steps might be taken to increase the ability of interested parties to submit briefs and memoranda and to intervene in these quasi-judicial proceedings, the public finds its greatest opportunity to make its feelings and desires known in the rule-making aspect of the work of the PUC. Under the APA, all rules affecting private rights are required to be adopted only after public hearings. Public participation can thus be best encouraged if the PUC would consciously engage in rule-making to an extent greater than it has in the past.

Forward planning. Another advantage to rule-making is that in the conscious effort to prescribe the policies and procedures for the regulation of public utilities the PUC and PUD could look ahead and take a more active, rather than a passive, role in regulation.

The general approach of the PUC and PUD presently can probably be best characterized as being passive and reactive. The best indicator of the passive-reactive approach to public utility regulation in Hawaii is the origin of, or impetus for, the opening of dockets by the public utilities commission. Although no precise statistical analysis has been made, a review of commission dockets opened during the past decade reveals very few dockets have been opened on the motion of the staff or the commission itself as compared to those initiated by outside parties filing actions with the commission. Even where such motions have been made by the staff or by the commission, in most cases they have been in response to the initiatives of others (e.g., legislative resolutions, complaints) rather than to any internally originated efforts. Moreover, where the commission or staff has been the formal initiator of the action, the tendency has been not to follow through on the matter and bring it to a conclusion. For example, some of the oldest pending dockets still before the commission are ones which the commission opened on its own motion. All of this strongly suggests that motivation from the outside is necessary, first, to get attention to a matter and, second, to secure action on it.

The PUC and PUD should systematically order priorities and plan their activities on a long-range basis. But today no one takes a long-range view of what the public utilities program is doing or should be doing. No one is formulating objectives which might be used as joint guide-posts for both the commission and the staff. Budgets and PPB documents are viewed as being purely administrative matters to be handled by the staff through the department of regulatory agencies, and the commission is neither consulted before the fact nor advised after the fact in any meaningful sense as to what goes into these documents.

Considering the limited number of companies involved and Hawaii's intimacy as a community, there should be no real problem of anticipating when major matters, such as rate requests, are likely to be filed. Moreover, through both formal and informal means, it should be possible to work with the companies so as to space out cases, even workload, and provide for more orderly and timely handling of cases. As it is, all of the recent rate requests were known well in advance of the formal filings that were made, but yet virtually no anticipatory actions were taken or even planned.

In the process of rule-making, policies and procedures might be set in light of the agency's objectives and priorities. The policies and procedures could reflect initiation of actions by the PUC and PUD, as well as by the industries regulated. They could provide for what is commonly referred to as "continuous surveillance," that is, a system of constant review, interpretation, and analysis of utility operations by means of appropriately designed accounting, financial, and other records and the taking of agency action based on such review and analysis. They could further provide for the

setting of levels of development in industry technology and services at specified points in the future. Such forward planning and agency initiative in utility regulation are possible if the PUC and PUD would consciously direct their attention to the field of rule-making.

Recommendations

We recommend:

1. That the PUC establish a system for the development and maintenance of current comprehensive and integrated rules;

2. That rules be established for the various facets of its regulatory responsibilities, including rules on the internal operations of the PUD, so as to enable the PUC and the PUD to perform effectively and efficiently; and

3. That the PUC give its rule-making function the attention it deserves.

Chapter 6

INTERNAL ORGANIZATION FOR REGULATING PUBLIC UTILITIES

The public utilities division (PUD) of the department of regulatory agencies (DRA) occupies the central organizational focal point within the public utilities program. It is the full-time, professionally staffed agency through which the functions and responsibilities for the regulation of public utilities are carried out. In view of the important position which it occupies, we examined the PUD to assess its organizational effectiveness.

Summary of Findings

In general, our findings are as follows.

1. The PUD is currently operating under an unapproved, and therefore invalid, organizational plan.

2. The organization within which the PUD staff currently operates is overly fragmented and its unapproved status presents personnel administrative problems of serious proportions.

3. There is a lack of cohesion, unity of purpose, and coordination among the several units within the PUD.

4. The job descriptions of the positions in the PUD are outdated and obsolete and require modifications.

5. The PUD lacks qualified personnel to administer the regulatory program.

Invalid Organization

Although the administrative control of the staff was transferred from the PUC to the director of regulatory agencies in 1963, it was not until 1966 that the PUD as a division within the DRA came into existence. Before 1966, the organization for the public utilities program still showed the agency being headed administratively by the public utilities commission and the staff organized into an office services unit and three major branches. The branches were:

1. engineering,
2. finance and accounts, and
3. motor carrier.

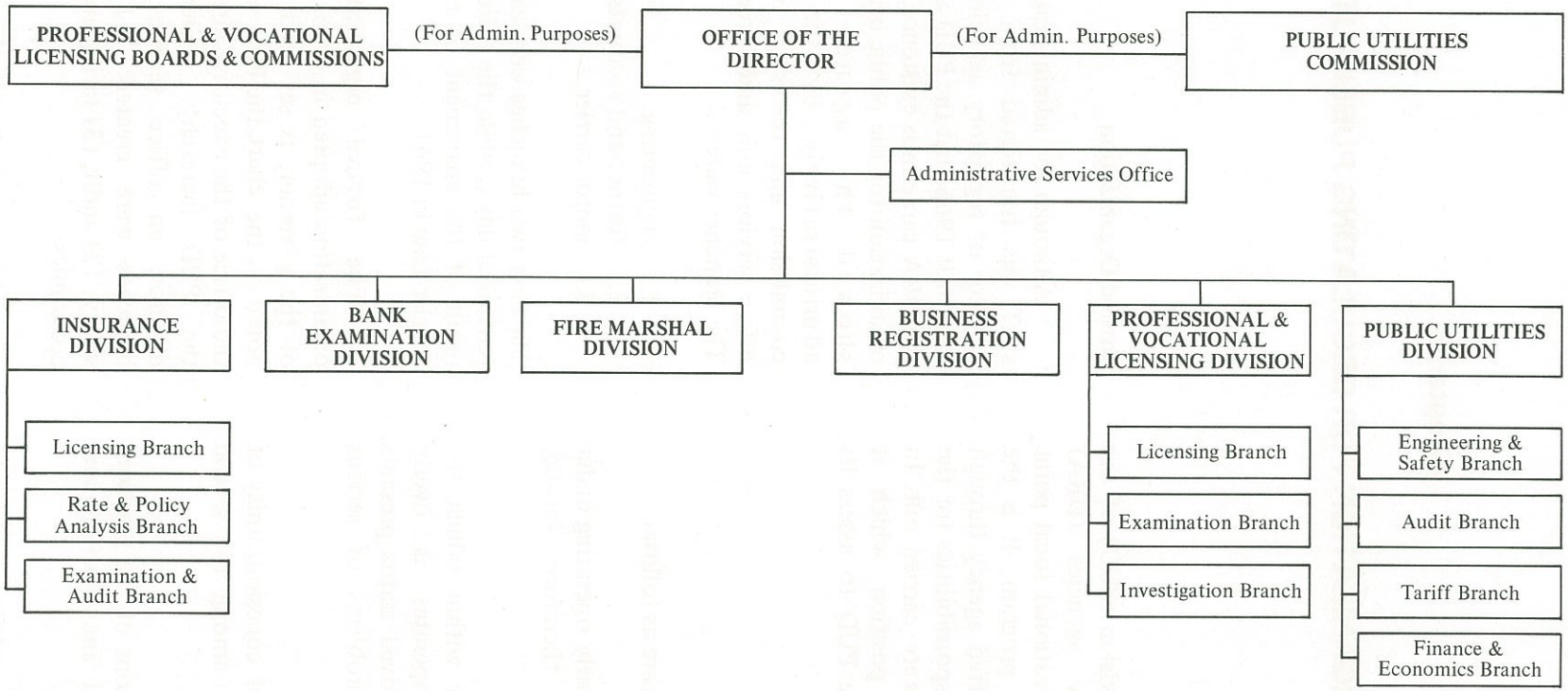
The first two branches were carryovers from the territorial days, while the third was created as a result of the enactment of the Hawaii Motor Carrier Law in 1961.

The formal organization. The PUD organization adopted in 1966, with the approval of the governor, is set forth in chart 6.1. As noted on the chart, the PUD was organized with the office of the executive director at the top of the PUD hierarchy. Under the executive director, an office services unit and four branches were created: (1) engineering and safety, (2) audit, (3) tariff, and (4) finance and economics.

This organizational plan was approved by the governor on March 21, 1966, pursuant to his

Chart 6.1

Organization Plan Approved by the Governor, State of Hawaii, on March 21, 1966,
Indicating the Location of the Public Utilities Division Within the Department of Regulatory Agencies

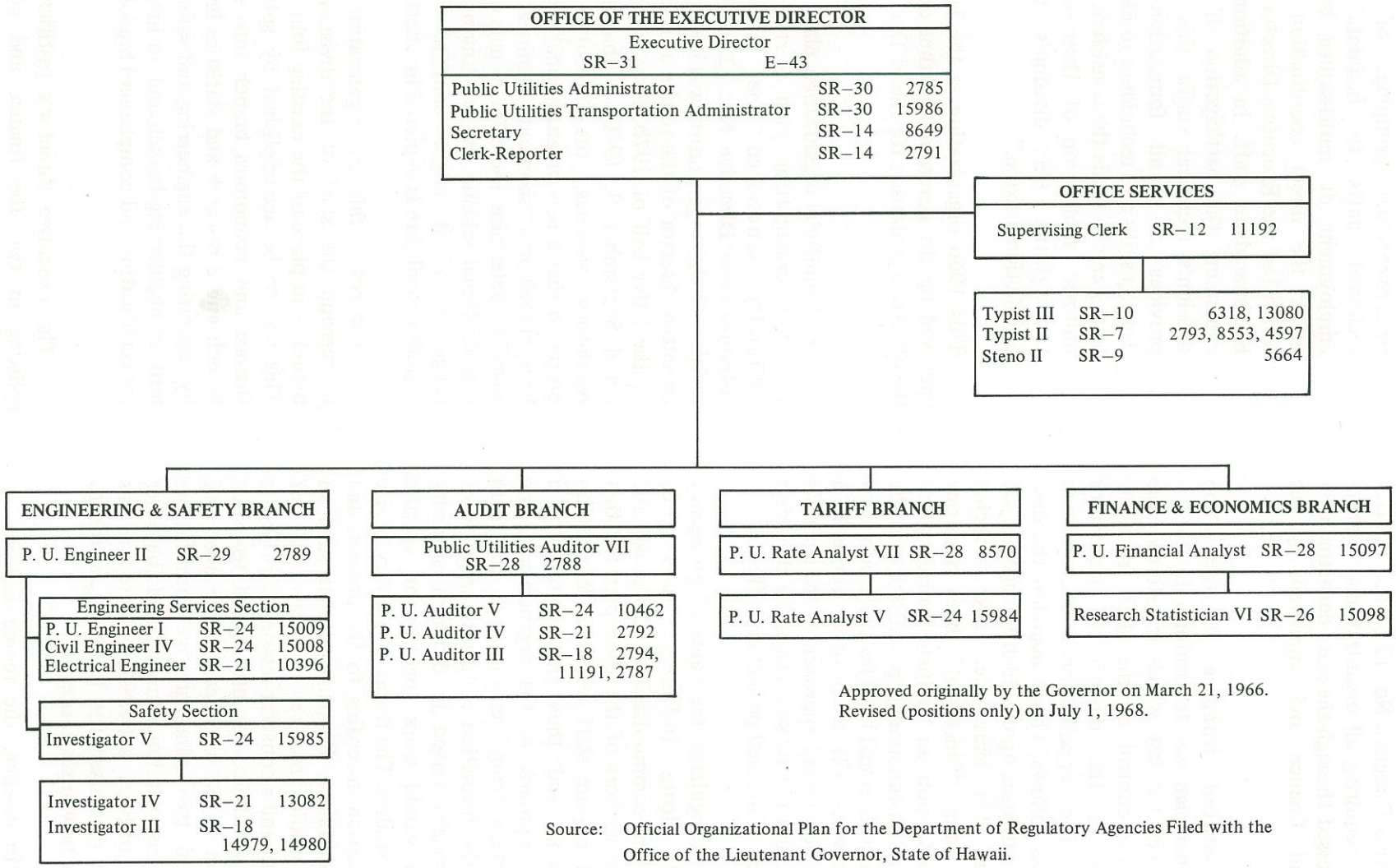


Professional & Vocational Licensing Boards and Commissions

Abstract Makers
Accountants
Barbers
Boxing
Chiropractic
Collection Agencies
Contractors
Cosmetology
Dental
Engineers, Architects & Surveyors
Massage
Medical
Naturopathy
Nurses
Optical Dispensers
Optometry
Osteopathy
Private Detectives & Guards
Real Estate
Veterinary

Chart 6.1 (continued)

Position Distribution
Public Utilities Division
(30 positions)



Approved originally by the Governor on March 21, 1966.
Revised (positions only) on July 1, 1968.

Source: Official Organizational Plan for the Department of Regulatory Agencies Filed with the Office of the Lieutenant Governor, State of Hawaii.

Administrative Directive No. 12 (dated January 25, 1965), requiring all organizational changes to be processed through the state department of budget and finance and approved by the governor.

The stated purpose of the 1966 organizational plan was to conform to Act 21, SLH 1963, i.e., the law which transferred the administrative control of the staff from the commission to the director of regulatory agencies. The organizational theory was explained as follows: (1) to abandon the dual organizational bases upon which the agency was founded at that time (i.e., two branches organized along "functional" lines and one branch based upon an "industry" orientation) and to establish functional specialization as the principal organizational basis for the grouping of program services, (2) to institute formally a "multi-function team" approach to the agency's operations, and (3) to strengthen the division's coordination of internal project activities.

While recognizing the value of an agency organized along industry lines (i.e., transportation, communications, and power and energy), the authors of the 1966 plan felt that this would require staff resources larger than were available and thus they opted for a functional approach to the organization. The "multi-function team" espoused in this plan called for the formation of teams composed of staff technicians versed in different specialty fields who would work together on specific projects or studies. The teams would vary in size and composition according to the projects and studies undertaken. Recognizing that such an approach would require a great deal of coordination and a constant revising of priorities and work schedules, the plan called for such coordination to be provided by the executive director and two administrative coordinators (one for transportation activities and the other for public utilities activities) situated in his office. The plan used the following words to describe the new organization:

> "In essence, the reorganization plan proposes to restructure the organizational groupings of the technical staffs to facilitate the employment of multi-skilled teams under the direct coordination and control of the Executive Director and his immediate staff. In addition to expanding the participation of the division's technical staffs, this plan provides a sound foundation to develop skills and techniques to higher levels, and to guide the consistent and uniform application of these skills throughout the division's total jurisdictional scope."

This 1966 organization is the latest plan approved by the governor and thus constitutes the official organization for the PUD.

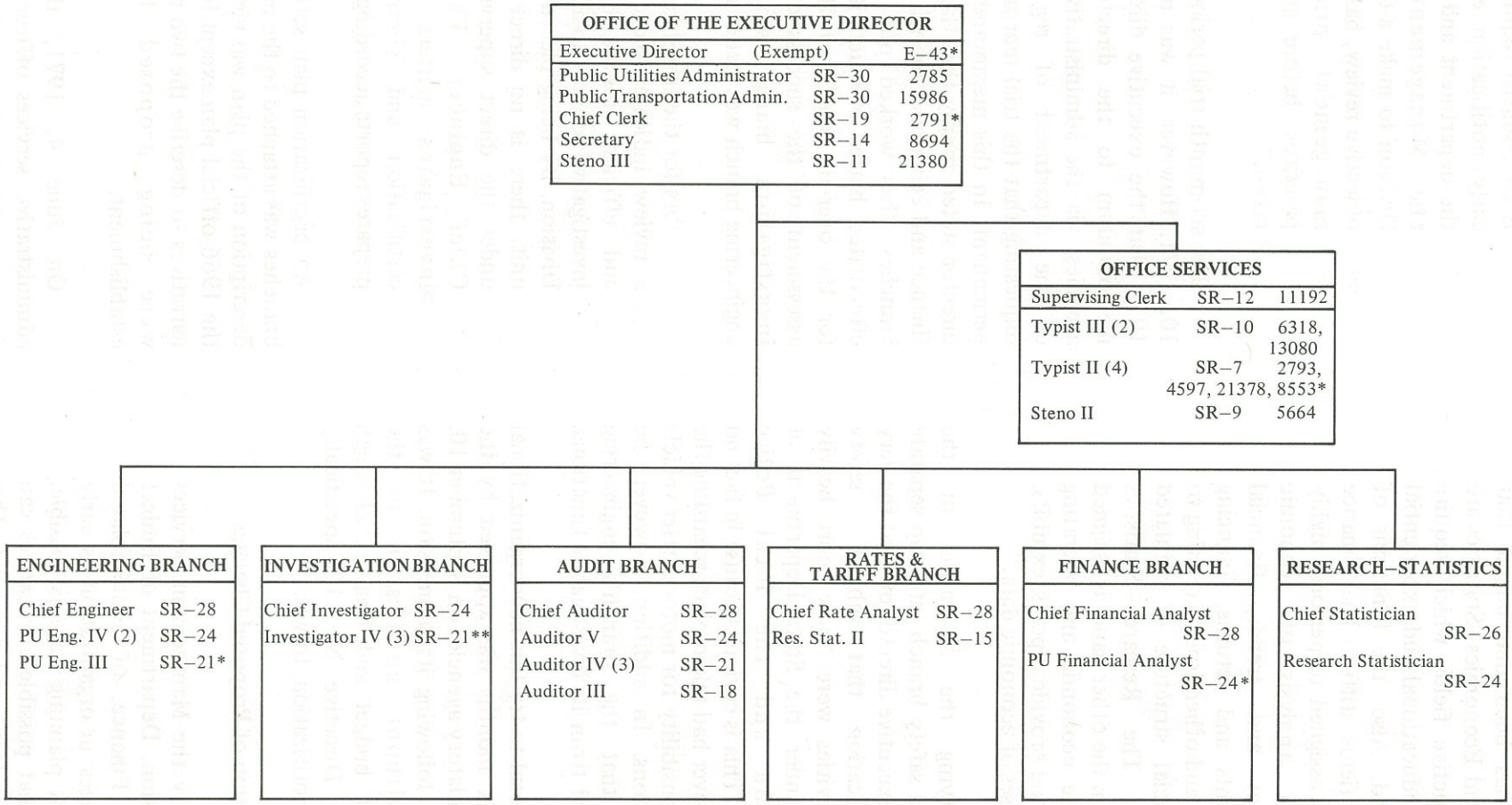
The unofficial organization plan. Although the 1966 organization plan is still the only officially sanctioned one in terms of Administrative Directive No. 12, an unofficial revision of this organization was initiated by the executive director of the public utilities division in the latter half of 1970. By a memorandum dated September 9, 1970 to the director of regulatory agencies, the executive director proposed that a new organizational arrangement be approved on a "six-month administrative trial basis" to determine the effectiveness of the new organizational scheme and to "smooth out the rough spots" it might contain. This new organizational plan is depicted in chart 6.2.

The gist of this new organization plan was to regroup the staff of the division into six branches in place of the existing four branches. This was to be accomplished by splitting the finance and economics branch into a finance branch and a research and statistics branch and by separating the engineering and safety branch into an engineering branch and an investigation (or certification and compliance) branch.

The executive director's justification for splitting in two the finance and economics branch was stated as follows:

Chart 6.2

1970–1971 Actual, But Unofficial, Position Organization Plan of the Public Utilities Division, Department of Regulatory Agencies, State of Hawaii



Source: Public Utilities Division, Department of Regulatory Agencies, State of Hawaii

*Vacant positions as of 1/31/74.

**One of these three positions vacant as of 1/31/74.

"It has been determined that Finance and Economics–Statistics are two distinctive fields which require different educational and experiential background. Also, the functions of the two fields differ. The Finance Section is assigned to perform highly technical analysis of economic conditions and trends, financial requirements and returns, financing practices, and other aspects relating to the financial structure of regulated industries. The Research–Statistics Section, on the other hand, is assigned to compile economic and operating statistics and provide reports, exhibits, and analyses of economic data."

In justifying the separation of the engineering and safety branch into two separate branches, the executive director offered the very curious justification that vehicle safety inspection activities were "now more heavily consolidated under the State Department of Transportation and the local Police Departments." This is curious because in fact no change whatsoever had taken place regarding the division's responsibility for motor carrier vehicle safety inspections. In addition, however, he pointed out that the branch's engineering functions varied from its investigative functions.

The proposal to try this new organizational scheme for six months was approved by the director of regulatory agencies on September 10, 1970, the day following its submission. It was approved without notification to the department of budget and finance, although Administrative Directive No. 12 specifically required such notification, to-wit:

"Notification of Proposed Changes

1. Notify the Management Services Division, Department of Budget and Finance, of contemplated changes in organization as early in the planning stage as possible, so that possible alternatives can be explored and discussed. This is an essential requirement since early notification enables both the department and the staff of the Management Services Division to make a thorough and objective review, based on sound management principles and practices, before any action is taken."

The six-month trial period ended on March 10, 1971. However, it was not until May 28, 1971 that the executive director addressed a memorandum to the director of regulatory agencies, via the administrative services officer of the department of regulatory agencies, requesting that the trial reorganization be made permanent. In this memorandum the executive director stated simply that the separation of the finance and economics branch into two distinct branches "has worked out well and it has effectuated better productivity and efficiency for the over-all benefit of the Division." His assessment of the success of establishing an investigation branch separate from the engineering branch was stated as follows:

"As for the Investigation Branch, a review indicates more meaningful and efficient results by providing investigative services to all areas in the Division. By being placed as a distinct unit, there is no direct need to be under the direct supervision of the Chief Engineer. This Branch investigates matters relating to certification and compliance and prepares reports accordingly."

An organization plan setting forth the six branches was attached to the memorandum. The description of the plan was virtually the same as the 1966 official plan except for the addition of narratives to describe the two new branches that were being proposed for permanent establishment.

On June 4, 1971, the department's administrative services officer returned to the executive director his memorandum and the

organization plan with a rather lengthy statement of her comments on the proposal. The thrust of her reaction is contained in the following concluding remarks set forth in her statement:

> "'The submission as it now stands is contradictory in that we say that we had tried a reorganization plan while at the same time the submission shows that the functions of each section are the same as prior to reorganization."

Subsequently, the executive director made one additional attempt to secure permanent approval of the proposed reorganization plan. On June 17, 1971, he submitted to the administrative services officer (who was acting director of regulatory agencies at that time) a revised plan and indicated the staff of the division was developing supporting exhibits, reports, and statistics for the plan. The main changes made in this revised plan from the preceding draft were: (1) the inclusion of some justification for the establishment of the two new branches, (2) the provision of new functional descriptions for the office services section and the investigation branch, and (3) the deletion from the functional descriptions of other branches those functions purportedly transferred to the two new branches or to the office services section.

The justification included in this new submission for the creation of two additional branches was to a great extent a rehash of the justification originally provided to the director of regulatory agencies in September 1970. For example, the executive director still made reference invalidly to a purported transfer of responsibility for motor carrier vehicle inspections from the PUD to the office of the highway safety coordinator.

On June 19, 1971, the administrative services officer returned the memorandum to the executive director with the following comment scribbled on the bottom of the memorandum: "Pending receipt of exhibits, job descriptions & other data, this material is an improvement." There the matter has stood for the past few years. The executive director has made no further effort to secure approval for this proposed reorganization of the agency.

However, in actual practice, this unofficial organization plan has been effectuated and, at the present time, the division operates as if it actually contains the six branches as set forth in the unofficial plan of 1970–1971, rather than in accordance with the four branches specified in the official 1966 organization plan. This is openly acknowledged and accepted by everyone in the division. This is, of course, contrary to the requirements of Administrative Directive No. 12.

Undesirable personnel consequences. There are serious personnel consequences flowing from the PUD operating in practice under the unofficial organization plan. Organizational structure and personnel administration are interrelated. The structure describes the functions, duties, and responsibilities and the salary grade of each position; it delineates the relationship of one position to another; and it outlines the promotional ladder within the organization.

In the PUD, operating under an organizational plan different from the official plan has caused some employees to perform functions at one level but be paid at another; it has placed some employees in a supervisory capacity over others when officially they are all supposed to work at the same level; and it has presented a false picture to all employees of the promotional opportunities available in the organization. The result that might be anticipated from this situation is obvious. There is bound to be confusion, uncertainty, uneasiness, and conflict among the employees.

It is noted here that audit interviews with personnel in the PUD indicated that one of the real reasons for the unofficial organization plan was to provide more opportunities for advancement and job upgrading by creating

more branch heads within the division.[1] This, of course, is legally impossible so long as the plan remains unapproved. However, since the personnel have been operating under the unofficial plan for the past nearly four years, serious problems in the future are highly likely, unless appropriate steps are now taken to correct the situation.

Overfragmentation. Not only is the unofficial plan illegal and a potential source of personnel difficulties, but it also makes little sense.

The total number of employee positions within the division amounts to less than 35. Approximately seven of them are clerical positions, all situated in the office of the executive director and the office services unit. Of the remaining 28 or so positions, one is the position of the executive director, two are the positions of administrators, and one is the position of the chief clerk, all of which are in the office of the executive director. The other relatively small number (not more than 24) of professional positions are assigned by the unofficial plan to a relatively large number of branches. Three branches (rate and tariff, finance, and research) consist of no more than two positions.

In view of the small total size of the staff, such a fragmentation of the staff can hardly be rationalized and justified. Moreover, a closer examination of the functions of the six branches indicates that the unofficial plan attempts to distinguish the branches when there is no real functional difference between and among some of them. For example, the finance and research and statistics branches (which are combined in one branch under the official plan) are sought to be distinguished on the ground that the latter compiles and analyzes "economic data which are not related to finance," yet the two branches perform substantially the same functions. Indeed, as noted above, the proposal to make the unofficial organization the official one was returned to the executive director of PUD by the administrative services officer without any action because there was so little to distinguish between the official and unofficial plans except for the creation of two additional branches.

[1]The other real reason appears to be the desire to minimize certain personality conflicts that then existed. Such personality conflicts were sought to be minimized by placing particular individuals in separate units.

Lack of Cohesion and Coordination

When the official organization plan was adopted in 1966, the reason given for organizing the PUD along functional lines rather than by industries was to make possible the utilization of "multi-function" teams in projects and studies, i.e., to pool together in a team effort the competence and skills of various technical and professional personnel situated in the different branches. The executive director of the PUD and the two administrators in the executive director's office were to supply the needed leadership in coordinating the efforts of these technical and professional people. The unofficial organization plan made no change to this basic theme. However, it appears that such teamwork and coordination of efforts have not materialized. Further, it appears that the unofficial plan has made such coordination even more difficult by fragmenting and compartmentalizing the personnel into small units. Each unit appears to operate as if its functions were totally unrelated to the functions of other units and to go about its business in a rather routine fashion. The extent of this lack of cohesion and coordination is illustrated by the following descriptions of the manner in which the various units perform their functions.

Audit branch. This branch, together with the finance branch and the research and statistics branch, is supposed to be involved in examining various aspects of major utility rate increase requests, especially those pertaining to the cost of money and the rates of return for public utilities. However, the audit branch, like the finance and research and statistics branches, works independently of the others. As a result, there is sometimes duplication of efforts in

terms of making certain calculations and assessing certain financial and economic data. Moreover, the contribution of the audit branch in these rate cases as well as in other cases where the PUC is required to make decisions (e..g, utility financing) is negligible. The audit branch makes no real attempt to engage in any penetrating analysis of the financial positions of the companies being regulated. For the most part, it concentrates simply on verifying the accuracy of the financial reports and other data submitted by the regulated companies to the PUC–i.e., it performs the traditional accounting duties–and it performs this function in a rather routine fashion.

Rates and tariff branch. Despite its name, this branch does not handle utility rate matters, except for minor tariff changes. Its efforts are concentrated mostly in the motor carrier field. This branch, together with the audit branch, is supposed to review the applications from motor carriers for operating authority to provide common and contract motor carrier services. In practice, the rates and tariff branch and the audit branch conduct this function in isolation from each other. The only coordination of their efforts is the inclusion of their separate findings in two different parts of a single written report prepared for each such application.

The other function performed by this branch is to review applications by motor carriers for changes in the tariffs. This function is performed routinely with hardly any input from any other branch. Under the procedure adopted by the PUC, approval of a motor carrier tariff change is automatic after 30 days' notice unless the PUC acts to suspend the proposed change. In 1972, there were 168 motor carrier tariff filings processed by this branch. Of the 168, only ten were suspended, placed on the PUC docket, and subjected to public hearings.

Finance branch. That this branch makes its own assessment in major utility rate increase requests, independently of the audit branch and the research and statistics branch, even though all three are supposed to be involved in such cases, has already been noted. In addition, this branch concentrates heavily on the various financing proposals filed with the PUC by the utility and airline companies in Hawaii. Such applications are filed with considerable frequency. Although it would appear that such financing proposals should also be subject to careful analysis by the audit branch, they are processed almost exclusively by the finance branch.

The finance branch also does most of the staff work relating to proposed utility mergers and acquisitions, although it would appear that other branches, such as the audit and the research and statistics branch, should be heavily involved.

Then there is an oddity in the functions of the finance branch. It has almost nothing to do with financing matters in the transportation field. The branch's exclusion from transportation matters is probably due to the differing philosophies of the branch chief and the transportation administrator, who is supposedly one of the chief coordinators in the PUD. The transportation administrator believes that the PUD should be a neutral body and should simply transmit data and information to the PUC. The finance branch chief believes in an activist role for the PUD in behalf of consumers.

Research and statistics branch. The title of this branch appears to suggest that this branch is an important unit which supports the efforts of the other branches. In fact, this is not the case. One main activity of this branch is to gather various statistics from other units within the PUD, to summarize them, and to submit the summaries to the director of regulatory agencies. However, our audit revealed that the statistics it gathers are not utilized by the other branches. The other branches gather their own statistics rather than rely on those prepared by the research and statistics branch. The statistics supplied by the research and statistics branch and those gathered by the other branches are frequently at variance.

In essence, there has been a decided failure on the part of the research and statistics branch to assist the other branches in performing their functions more effectively. For example, statistical analysis should be of considerable value to the investigation branch in carrying out its motor carrier safety functions. The investigators have no background in statistics and no real understanding of how they might use statistical data in their work. Yet, no attempt has been made to bridge the gap between the investigation branch and the research and statistics branch so as to introduce any statistical analysis into the work of the investigation branch.

Engineering branch. Among the functions performed by this branch are (1) reviewing facility operating and construction expenditures by the utility companies and conducting depreciation studies in major rate cases and (2) reviewing the annual capital budgets of the utilities and processing requests for approval of major capital projects. In carrying out these functions, although other branches are also supposedly involved, the engineering branch acts in its own independent manner.

Another set of duties that this branch performs is processing applications for utility line extensions which are required by law to be approved by the PUC,[2] keeping track of and investigating outages and breakdowns in utility services, and meeting federal requirements regarding gas pipeline inspections and safety. In several respects, these duties are similar to those carried out by the investigation branch. Yet, coordination of efforts of these two branches is minimal.

Although the engineering branch is staffed with engineers and thus apparently capable of contributing to assessments made in the transportation field, this branch has almost nothing to do with transportation matters. In this respect, it is more like the finance branch.

[2]As a result of Act 88, SLH 1974, specific PUC approval of each line extension is no longer required, but all line extensions must comply with standards established by the PUC.

Investigation branch. The two main functions of this branch are: (1) to follow up on complaints filed with the PUC and (2) to administer the PUC's motor carrier safety program. Other duties include making gas pipeline inspections, enforcing the PUC's overhead utility line regulations, and investigating accidents involving public utilities. The similarity of these latter duties to those of the engineering branch has already been noted. With respect to the motor carrier program, the following observations are pertinent.

There is now absolutely no top-level support for the motor carrier safety function. Instead, there is an undisguised desire on the part of top management to be rid of the program as soon as this can be accomplished. In the absence of such transfer, the investigation branch is left to fend for itself and to contend with the program as best it can with whatever resources are already available, and the resources are thin indeed. Although there are some 30,000 to 40,000 vehicles, the branch consists of only three persons. Even if the three men were well trained, fully qualified, strongly motivated, and devoting full-time to this one area, they would find the job an impossible one.[3] It should be little wonder then that the branch is thoroughly demoralized and that its efforts in the motor carrier area have been rendered almost totally ineffective.

The clerical staff. The largest single group within the PUD is made up of the clerical employees who fall into two separate organizational units but who are located in close physical proximity to each other. In one unit are the two secretaries assigned to the office of the executive director. They provide secretarial services for the executive director and the two administrators and serve in a backup position to the chief clerk.

[3]According to an investigation conducted by the federal bureau of motor carrier safety in 1973–1974, less than 10 percent of this branch's time was being devoted to motor carrier safety. Our analysis of the unit's time records indicates that less than 5 percent of the investigators' time is spent on motor carrier safety.

The rest of the clerical staff is placed within the office services section and consists of a supervisor and six other positions. One of the unit's functions is to supply clerical services to the six branches in the PUD. However, through the accretion of other functions and responsibilities, such as those duties which are officially the duties of the chief clerk, the office services section has acquired a status of its own rather than being just an auxiliary service unit to the rest of the division. The section frequently decides what work the division will do and when, and personnel from the branches indicate that meaningful support is hard to come by.

Lack of leadership. The various branches and units within the PUD have been acting quite independently of each other because the leadership which was supposed to have been supplied to coordinate the efforts of the branches and units has not been forthcoming. Under both the official and unofficial organization, the intent was for the executive director and the two functional area administrators (one for public utilities and the other for transportation) to bring together the skills of persons in the functionally related branches and units on specific projects or studies. Indeed, this multi-function team approach lay at the core of the organization plans.

This leadership has not been provided primarily because the office of the executive director has been essentially nonoperative for the past several years. *First,* the position of the executive director, the head of PUD, has been vacant since the end of 1973, and for a period of a year or so prior to the close of 1973, the then executive director was absent from his post more than he was present due to illness.

Second, even in those years that the executive director who retired at the end of 1973 was active with the PUD, it does not appear that he exerted sufficient leadership to cause coordination to occur. He was more the titular head than the actual head of the PUD. As things have operated the past several years, the actual head of the division has been the director of regulatory agencies. However, in light of his many other responsibilities, the director has tended to delegate a good deal of the handling of routine business to the two functional area administrators, and the director has not personally focused his attention on internal management and interbranch relationships within the PUD.

Third, the two administrators in the office of the executive director have not been able to work cohesively in administering the affairs of the PUD. There is a substantial, philosophic difference between the two administrators. The utilities administrator has tended to favor a more active consumer protector role for the PUD, while the transportation administrator has adhered to the position that the PUD should be a passive, neutral provider of information to the PUC. Thus, although the utilities administrator has been acting in the capacity of the executive director since the retirement of the latest incumbent and has sought to discharge the duties of the executive director conscientiously and with dedication, he has not been entirely successful in moving the PUD to work on the team concept. In recent months, however, as it has become obvious that it would be some time before a new, permanent executive director would be appointed, the utilities administrator has begun to exert greater authority as interim director and has begun to exercise more administrative leadership, sometimes to the discomfiture of other members of the staff who have become used to the lack of strong supervision and leadership in the agency.

Recommendations. *We recommend as follows:*

1. That the PUD disband the unofficial organization and that it follow the prescribed procedures outlined in Administrative Directive No. 12 in all future reorganizations of the PUD.

2. That the director of regulatory agencies fill the vacancy in the position of executive director of the PUD as rapidly as possible.

3. That pending the filling of the vacancy in the position of executive director, the director of regulatory agencies and the interim or acting executive director provide the leadership to pull the staff of the PUD together.

Outdated and Obsolete Position Descriptions

Since the PUC was brought within the department of regulatory agencies in 1959 under the Reorganization Act, the PUD has undergone two reorganizations—the official one of 1966 and the unofficial one of 1970–1971. As a result of these two reorganizations, job functions and duties of many of the positions in the PUD have undergone significant change. However, the job descriptions of the various positions have not been brought up to date. Thus, they are presently grossly outdated and obsolete and they do not reflect what the employees are actually doing or are supposed to be doing. There are some job descriptions which date back to 1962 and which contain references to organizational units that were abolished under the 1966 reorganization. Only one of the job descriptions has been prepared and approved since the 1970–1971 unofficial reorganization was put into effect.

One of the most glaring examples of the obsolete character of the position descriptions is that for the public utilities administrator. According to the description of this position, the incumbent also serves as "chief public utilities engineer of the engineering and safety branch." In fact, however, there is another engineer who heads up what is now the engineering branch under the 1970–71 unofficial reorganization. An even more outdated position description is that for a typist III in the office services unit. The description of this position includes among the job duties: "Organize and coordinate clerical, typing work assignments in the Motor Carrier Branch." This position description dates back to 1962. There has been no motor carrier branch since 1966, and rather than organizing and coordinating work assignments, the individual involved is subject to the control and direction of the office services supervisor regarding her work assignments.

Numerous other examples can be cited of job descriptions that are seriously deficient in describing the work actually being performed or the work the employee is being asked to perform.

That so many position descriptions are outdated and obsolete evidences complete neglect and unconcern on the part of those responsible for administering the public utilities program. Indeed, some of the employees in the PUD do not even know under their outdated and obsolete position descriptions what they are supposed to be doing. For example, one of the supervisory employees in the PUD was very intrigued to discover that we had obtained a copy of his position description because he himself had never seen it. His first access to his own position description was through a copy we provided to him. What good this will do him is difficult to determine in view of the fact that the position description is hopelessly outdated and obsolete in terms of what he is actually doing at present.

The failure to maintain position descriptions on a current basis contributes to organizational confusion and ineffectiveness. It provides opportunities for excuses for nonperformance of essential tasks that the employees are really supposed to perform and for buck-passing and duplication of efforts. More important, the absence of current position descriptions is patently unfair to the employees involved. This is because pay scales are tied to position descriptions and job classifications. The means of receiving proper financial recognition for one's work is to have an accurately stated and properly classified position description. When this is not done, employee dissatisfaction and low morale are most surely to result.

Recommendation. *We recommend that the director of regulatory agencies cause the official descriptions of the various positions in the PUD to be brought up to date. Such descriptions should accurately describe the duties and*

responsibilities of each position. In developing the position descriptions, our findings and recommendations contained in other parts of this report should be consulted and incorporated.

Lack of Qualified Personnel

Widespread throughout the public utilities division is the assignment of duties, functions, and responsibilities to persons who are not qualified or lack preparation in terms of training and experience to perform the jobs given to them. Examples follow.

Audit branch. The audit branch consists of six auditors and is the largest branch in the division. Only the branch head is a certified public accountant. We have already noted that the auditing services provided by this staff are for the most part routine and low-level in nature. The staff deals mostly with the duties of accounting and concentrates primarily on verifying the accuracy of financial reports and other data submitted to the PUC by regulated companies. The staff makes no real attempt to apply sophisticated accounting techniques or to engage in any penetrating analysis of the financial positions of the companies being regulated. Both the director of regulatory agencies and the chairman of the PUC agree on the need to strengthen staff capabilities in the area of auditing and accounting. At present, the staff is incapable of playing a significant role in determining strategy or setting policy for the regulation of public utilities, particularly in the utility rate and financing fields.

Research and statistics branch. The research and statistics branch has operated separately from the finance branch since 1970 and consists of two statisticians. The branch chief worked with labor statistics before transferring to the PUD, while the other member of the branch received college training in the statistics field. As handled by this branch, research and statistics consist of compilation and reporting of statistical data rather than any real efforts at statistical analysis.

The main activities of this branch are gathering and reporting various statistics from other units within the PUD and preparing the so-called economic exhibits which the staff presents as part of its case in major rate proceedings. Regarding the first activity, we have already noted that the statistics it gathers are primarily for use in the annual statistical summaries which are submitted to the director of regulatory agencies, and that they are of little use to the other branches. In part this is due to the lack of appreciation on the part of the other branches as to the value of statistics in their work. In the main, however, the problem is that the research and statistics branch does not really seem to comprehend the difference between statistical compilation and reporting and statistical analysis or to visualize any role for itself in analyzing statistics. This means, therefore, that very little statistical analysis is being performed and all effort is being directed at compiling and reporting statistics, regardless of how useful or useless they may be to others in or outside of the agency. Indeed, the research and statistics branch is compiling and reporting statistics but is unable really to explain them and what they mean.

As for the other area of activity, neither member of the branch has any firm grounding in economics and no economists are consulted in the preparation of the staff's economic exhibits. Rather, the exhibits consist of compilations of statistics and data extracted from other reports, such as the economic reports issued by the two major banks in Hawaii. In short, this branch is attempting to provide economic studies when it actually lacks qualifications for making such studies.

Engineering branch. The engineering branch presently consists of three engineers who concentrate almost all of their efforts in the area of the utilities and almost none at all in the field of transportation. In major rate cases, this branch reviews facility operating and construction expenditures by the utility companies and conducts depreciation studies. The performance of this function is limited primarily to verifying data supplied to the PUC

by the utility companies. For almost all sophisticated analysis, a consulting firm is employed and is the one which determines what data are needed and how they should be analyzed. The engineering staff serves mostly to track down the data required and transmit them to the consultant.

The branch's performance of its responsibility in other areas is equally quite perfunctory and often distressingly haphazard. For example, multimillion-dollar capital budgets submitted by the utility companies for approval by the PUC are reviewed in a matter of a few hours with only superficial, if any, questions being posed to the utility companies. Another example is the fact that the telephone company has been allowed to ignore with impunity the legal requirement that all of its major capital projects be specifically approved by the PUC before being initiated. Similarly, line extension approvals have been handled on a piecemeal and hit-or-miss basis.

Having come from the engineering branch, the utilities administrator has tended to continue trying to perform much of the division's engineering work himself with only subsidiary assistance from the engineers. Recently, however, he has been trying to make the branch perform on its own and be held accountable for its output, but so far the results have been less than satisfactory.

Investigation branch. The investigation branch consists of three persons who have had little training and experience for the type of work they are expected to perform. As previously noted, the two main functions of this branch are: (1) following up on complaints filed with the PUC and (2) administering the PUC's motor carrier safety program. Other duties include making gas pipeline inspections, enforcing the PUC's overhead utility line regulations, and investigating accidents involving public utilities. To do this work, they are classified as investigators, but only one of the three investigators has had any real investigative background prior to coming to the PUD.

Qualitatively, this branch is almost totally unequipped to cope with the large responsibilities that have been imposed upon it. Compounding the inability of this branch to perform adequately is the fact, already noted, that the branch has received little top-level support in performing its motor carrier safety inspection function.

The clerical staff. In addition to supplying clerical services to the six branches in the PUD, the clerical staff in the office services section maintains the PUD's central files and library, does most of the billing for the fees required of regulated companies, and processes some of the forms filed with the agency (e.g., under the unofficial organization plan this unit is responsible for the evaluation of physical examination forms submitted for drivers of motor carrier vehicles). In addition, the unit has assumed many of the duties and functions assigned formally to the chief clerk, a position which has been vacant since the end of 1973. The office services supervisor has taken over the duties of assigning numbers to dockets and decisions and orders, determining which documents should be prepared for approval and signing, and keeping indexes of the various documents filed with the agency.

The office services section is failing significantly to perform effectively either the duties it is supposed to perform or those which it has assumed. As pointed out elsewhere in this report, the records of the agency are in a shambles. One of the greatest obstacles to the making of this study was locating needed material which was supposed to exist within the agency. Almost everywhere we looked, items were misfiled or were not filed in a consistent manner. Complete files are frequently being lost. Some items are simply dumped into boxes or file drawers as they are received. Other items are scattered in a number of different places around the office. Confidential items are left so that there is easy access to them in one place while being kept locked up somewhere else. The agency's motor carrier files are clogged with outdated and obsolete data—much of it for companies which have been defunct for years.

A part of the reason for this ineffective performance is that the clerical staff has not been trained to cope with its responsibilities. Training is needed not only with respect to the routine office procedures such as filing but to such other important tasks as evaluating doctors' reports on physical fitness of motor carrier drivers.

The executive director. The need for competent personnel is evident not only at the branch level but also at the top level of the division. The head of the PUD is the executive director. He is appointed and may be removed without regard to chapter 76 of the Hawaii Revised Statutes, which is the State civil service law. The executive director is completely responsible to the director of regulatory agencies, but he is looked to by the commission as the one to serve its administrative needs, to perform a variety of actions in the name of the PUC, and to facilitate the general operations and functioning of the commission. The importance of this position demands that it be filled by a person with broad managerial and professional qualifications. Such, however has not been the case in recent years.

For example, a past executive director was a person whose sole training and experience were in the areas of traffic and motor vehicle safety. As a result, as executive director, he concerned himself primarily with the formal functions of the office and the handling of administrative details—e.g., signing documents, scheduling meetings, setting up agendas, and assigning to various members of the staff incoming mail arriving at the agency each day. He had but little, if any, input upon major policy decisions in the public utility area. Indeed, it appears that the executive director served as executive director in name only, with the director of regulatory agencies in fact being the actual head of the division. The director worked directly with the two administrators in the executive director's office and delegated to these administrators a good deal of the responsibility for the business of the division.

In short, the position of executive director has been largely nonfunctioning for the past several years in terms of the administrative management of the PUD.

The administrators. Directly below the executive director and within the office of the executive director are two coequal administrators—the public utilities administrator and the transportation administrator.

The public utilities administrator is an engineer by training, and has moved up fairly rapidly to his present position. The director of regulatory agencies appears to rely upon him more than upon any other staff member in the agency. However, all of the public utility administrator's training, experience, and background have been in engineering, and as he himself concedes, these really have not been sufficient to provide a thorough grasp of the many aspects of public utility regulation.

As for the transportation administrator, the areas for which he is primarily responsible are suffering the most severely from a lack of proper management and administrative direction. Tariff changes and applications for CPCN's in the transportation area receive scant attention and analysis by the staff. At most, the staff reports in these areas simply restate and summarize the material submitted by the applicants. Then, in the area of motor carrier safety, no significant work has been done. This, of course, is in accord with the prevailing top-level feeling that the PUC and PUD should be rid of the motor carrier safety program. However, the transportation administrator himself has taken little interest in this area and has left his subordinates to wander about by themselves without directions. Indeed, the transportation administrator seems to know very little about how things are being done or should be done in the motor carrier safety area.

The chief clerk. Also located in the office of the executive director is the chief clerk of the agency. Because of the very legalistic nature of the PUC's operations and its status being comparable to that of a circuit court, the chief clerk holds a key position which is analogous to

that held by a court clerk. The importance of the chief clerk's position is clearly indicated by the following provisions contained in General Order No. 1 outlining the duties and functions of the position (section 1.03(b)):

> "OFFICIAL RECORDS. The Clerk-Reporter [i.e., chief clerk] shall have custody of the Commission's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Commission, including the transcripts of testimony and exhibits, with all papers and requests filed in proceedings, the minutes of all action taken by the Commission, and all of its findings, determinations, reports, decisions, orders, rules, regulations and approved forms."

As in the case of the executive director, the chief clerk's position is now vacant. Much of the chief clerk's work was actually performed by other members of the clerical staff even before the vacancy occurred and the chief clerk did not perform the functions which are set forth in the job description. The result of this situation is that: (1) the records of the agency are in considerable disarray, with some docket files being completely lost and with many other records being misfiled; (2) many official records contain incorrect dates and incorrect references to docket numbers and decision and order numbers; (3) minutes of PUC meetings and hearings were frequently allowed to accumulate for long periods of time before being prepared for commission review and approval (e.g., at the PUC meeting on May 5, 1972, 77 separate minutes for meetings held over a period of five months were submitted to the PUC for approval); and (4) despite repeated attempts the chief clerk was never able to provide the audit team with an accurate listing of dockets pending before the agency. Thus, as in the case of the executive director's position, the PUD has had to function for a long period of time with this key position operating at less than full capacity. These deficiencies are explained in greater detail in chapter 7.

Legal services. In addition to the problem of the qualifications of the PUD staff, some comment is in order regarding the quality of the legal services being provided the PUD by the state attorney general. Since the legal counsel plays a key role in the program for the regulation of public utilities, the success of the program is dependent to an important degree on the quality of legal services that the PUD receives.

Initially, it should be noted that full authority to determine which deputy attorneys general will be assigned to work with the public utilities division is vested solely and absolutely in the attorney general. The staff may, of course, express preferences for and voice complaints about particular deputies to the attorney general which may have some influence on his decisions, but in the end the staff is completely dependent upon the attorney general to decide who its legal counsel will be. It is true that the director of regulatory agencies does exercise influence over the selection of the deputies who will handle major cases. However, the bulk of the agency's legal work consists of day-to-day matters where the staff has very little voice in the selection and direction of the attorneys assigned to it but must work with whomever the attorney general chooses to send to the agency. This gives the attorney general considerable authority to influence the effectiveness of the staff's activities without having to assume any real corresponding responsibility.

One handicap under which the public utilities program operates is that there is a fairly high turnover in the deputies assigned to the PUD. The general pattern seems to be for deputies to move from agency to agency in their assignments and quite a few deputies are recent law school graduates who acquire their first years of experience in the attorney general's department. Moreover, despite the fact that a deputy is already assigned full-time to the public utilities division, this does not mean that all public utility matters are necessarily handled by this deputy. Over the past nine years, no less than 11 deputies have worked on public utility

matters, including those deputies who have worked on various federal cases which have had a close relationship to the activities of the public utilities agency. In addition to these regular deputies, there have also been several special deputies who have worked on utility matters and related federal cases during this same period.

The net effect has been that the public utilities division has frequently been serviced by legal counsel who were relatively inexperienced and who devoted only part-time or temporary attention to public utility matters. Considering that public utility regulation is a relatively specialized and complex field of legal practice, this does not appear to be the way to ensure top performance in this field. What is needed is a legal specialist to service the regulatory division, both in its function of consumer advocacy for the director of regulatory agencies and in its function of carrying out the day-to-day business of regulating. It cannot be said at the present time that there is anyone on the attorney general's staff who is an expert or a specialist in the field of public utility regulation. The constant turnover of legal counsel has not permitted the State to develop such legal expertise. In sharp contrast to this situation regarding legal services on the side of the regulatory agency, the major utility companies in Hawaii are represented by specialists who have had decades of experience in this field.

Undue reliance on outside consultants. That the PUD lacks the leadership and qualified personnel it ought to have is graphically illustrated when one perceives that the dominant personality in the administration of the public utilities program is someone who works only part-time for the State of Hawaii and who is not formally a part of the PUD or the DRA, or of the office of the attorney general. This individual is a special deputy attorney general whose work for the most part has been to represent the director of regulatory agencies in proceedings before the PUC. He has also been a key figure in many federal cases in which the State has become involved. He frequently travels to Washington to represent Hawaii before the various federal regulatory agencies. In this sense, the special deputy has been performing those tasks which ordinarily would be performed by the office of the attorney general, except that the office currently has no legal expertise comparable to that possessed by the special deputy.

Indeed, because the office of the attorney general lacks the necessary expertise, the attorney general relies heavily on the special deputy on virtually all important matters relating to public utilities. To all intents and purposes, this special deputy has acted as Hawaii's attorney general in the public utilities field.

Not only has the attorney general relied heavily on the special deputy, but so has the director of regulatory agencies. With the concurrence of the attorney general, since 1970, the special deputy has been employed by the director also as a consultant to review the State's public utility and transportation laws. The review of the laws is yet to be completed, but in the meantime the director has consulted the special deputy on a variety of matters relating to public utilities.

The pervasive influence of the special deputy in public utility matters is readily appreciated when one notes that both the attorney general and the director of regulatory agencies give him an almost completely free hand in the handling of the cases and work assigned to him. In such situations, the entire staff resources of the PUD are under his direct control and supervision, and he sets the strategy (to the extent there is a strategy), directs the staff, and makes most of the policy decisions (with the concurrence of the director of regulatory agencies). In the telephone case where numerous consultants were hired, he is the one who decided what consultants would be used and for what purpose (sometimes to the surprise of the staff), and actually selected the consultants so employed..

The special deputy by training, qualification, and experience, simply overshadows everyone else involved in the

administration of the public utility program. That he is qualified is beyond question. But that it is necessary to engage the services of this special deputy continuously for years speaks ill of the capabilities of the State's PUD and attorney general staff and of the State's ability to train its own personnel. The engagement of outside expertise from time to time is understandable, but the special deputy has been on board for almost ten consecutive years.

Summary. In summary, the public utilities program is currently lacking in personnel of sufficient qualifications. Public utility regulation is a highly complex program. The function of rate-making, for example, is an ongoing, normal function within the program, and it requires input from at least the fields of finance, economics, statistics, and engineering, and skills best described as "analytic." Yet, the program today lacks expertise in many areas and certainly skills in analysis. A look at the backgrounds of many individuals now in the PUD reveals that they are ill-equipped to discharge their job responsibilities.

It should be recognized that in the utility service areas having the greatest impact upon the State and its economy (i.e., the electric, telephone, and gas utilities), the PUC and the PUD have confronting them large, multimillion-dollar corporations with hundreds, and even thousands, of employees and access to vast resources of expert, technical, and professional people in a variety of fields. In the face of these resources available to the industry, the state program cannot be content with performance of simply routine tasks or performance of duties in a routine fashion.

Most disturbing, of course, is that, given the level of competence as it now exists, the State has done virtually nothing to upgrade the skills, knowledge, and capabilities of the staff or otherwise to increase the resource capabilities of the PUD. There is currently no program for indoctrinating new personnel or for training of those already in service. And, of course, in the absence of updated position descriptions, there is no systematic, criteria-based method of making initial appointments to the various positions.

The need for training appears particularly acute among the three investigators. They are the ones who have been delegated almost full responsibility for carrying out the agency's safety functions, but yet they are inexperienced and uninformed in this important area of responsibility. For example, these investigators are regularly engaged in reviewing and approving requests for physical disability waivers when they have had no benefit of any training in making medical evaluations and do not avail themselves of any expert medical assistance in performing this function.

For another example, the investigators are frequently involved in interpreting and enforcing both statutory provisions and provisions of the general orders, but they have had no instruction in these areas. Thus, until we interviewed them, they did not know that the law governing overweight and oversized vehicles had been amended so as to place new legal responsibilities on them. In fact, the only volume of the Hawaii Revised Statutes which they have readily accessible and ever use is Volume 3, which contains chapters 269 and 271, the chapters directly pertaining to the public utilities agency. They are not familiar with Volume 4, which contains most of the statutory provisions relating to highway traffic safety, including provisions affecting their agency. Indeed, they were not even aware that the session laws enacted each year are published in printed form for ready access and handy use.

The investigators, however, are not alone among the staff members in being inadequately prepared to carry out the assignments given to them. The need for upgrading, training, and staff development prevails throughout the PUD, but it has not yet been recognized by those responsible for directing the public utilities program and no steps are being taken to meet this very pressing need.

The only example of any concerted effort to provide training that came to our attention was the assistance provided by one of the agency's frequently used consultants to instruct some of the engineers and investigators on how to make field inspections of utility lines to determine compliance with General Order No. 6, which establishes construction standards for overhead lines. Even this instruction was of only several days' duration and appears to have been provided at the initiative of the consultant rather than of the agency.

Recommendations. *We recommend as follows:*

1. That the director of regulatory agencies and the PUD, in consultation with the department of personnel services, develop in-service training programs to upgrade the skills and competencies of the staff of the PUD.

2. That in the position descriptions to be developed, the skills and qualifications required for each position in the PUD be carefully delineated to ensure that qualified personnel are hired for these positions in the future.

3. That the attorney general develop expertise in his office in public utility matters in order that the need for continuous retaining of outside counsel may be obviated.

Chapter 7

RECORDS AND FINANCIAL MANAGEMENT

In this chapter we briefly review some of the problems currently existing in the PUC and PUD concerning records and finances. Our observations here are symptomatic of the broader organizational and management problems discussed in the previous chapters. Basically, this chapter is concerned with the general disarray in the handling of official PUC and PUD records and information and in the discharge of fiscal responsibilities.

Summary of Findings

In general, our findings are as follows:

1. There is a general lack of a system for the filing of records, documents, and information. They are so widely scattered within the PUD and so poorly handled that files and records are lost, obsolete, inaccurate, and difficult to find. The state of the records is such that even fundamental questions such as how many cases are pending before the PUC cannot be accurately answered.

2. Although the regulation of public utilities is a complex field requiring refined statistical and economic data-gathering and analysis, the PUC and the PUD do not now have the system for generating accurate, reliable, and useful data and for making in-depth analysis.

3. The public utilities program is suffering from gross deficiencies and inadequacies in the area of financial management and fiscal controls. Funds have been improperly spent, and in violation of statutory requirements and the PUC's own rules and regulations, revenues (fees and penalties) have either (a) been overlooked and not collected or (b) assessed in an inequitable, discriminatory, arbitrary, and improper manner.

Records Management and Information Handling

General inadequacies. As pointed out previously, the public utilities agency's proceedings are quite legalistic in nature and the agency enjoys a status comparable to the circuit courts in terms of its actions being directly appealable to the state supreme court. As a result, many of its records are legal records which need to be maintained and protected in much the same manner as court records. In addition to this, the agency is engaged in regulatory activities which touch upon many private rights and which affect the safety and welfare of most of Hawaii's inhabitants. For all of these reasons, therefore, it is extremely essential that the agency 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.

Despite this urgent need for an effective records management and information handling system, the only appropriate way to describe the existing condition of the agency's records is that it is in a shambles. Whole groups of records are scattered in many different places in the agency's offices or simply dumped into boxes or file drawers so as to be virtually unusable. Searching for a particular record becomes the proverbial search for the needle in a haystack. The same types of records are kept in different ways and misfilings of records are a frequent occurrence. Records disposal policies are ignored. Some files are clogged with outdated and obsolete records. Many important files become lost and cannot be located—including in some cases the official docket files of the agency. There is extreme carelessness in the numbering, dating, and cross-referencing of documents so that one can never be sure that the written record correctly identifies events and documents. Confidential records are kept under lock and key in one place while copies of such records are easily accessible in other places.

In making this study, a very serious obstacle we encountered was that of locating and properly identifying the materials we needed to examine. Nor were we alone in this regard; on more than one occasion audit team members were asked by the PUD staff members if the audit team might possibly know where certain materials might be. Moreover, several of the PUD staff members stated they kept their own copies of particular records because they were afraid of being unable to locate the copies which went to the agency's central files.

The agency's recordkeeping deficiencies in the area of motor carrier safety regulation are acutely serious. While the federal government and the state and county governments in Hawaii have been placing great emphasis upon developing and putting into operation a computerized information system for all motor vehicles and drivers, the public utilities agency has been content to struggle along with its very cumbersome, manually operated system for motor carrier vehicles and no system at all for the motor carrier drivers subject to its jurisdiction. Thus, while the county police departments and other agencies have an on-line capability for checking on the current status of all vehicle registrations, all vehicle inspections (except those subject to inspection under the public utilities agency), and all drivers' licenses, the agency does not. Thus, the agency has difficulty locating information on some vehicles subject to its control. Then, even if found, the agency has no assurance that the information is correct. On many vehicles it will have no information at all. As a result of this very inadequate information system, the PUC and PUD are failing to regulate perhaps as many as 20,000 or more vehicles for the regulation of which they are legally responsible. As for motor carrier drivers, they have no idea how many there are, who they are, where they are employed, and whether or not they are currently meeting all of the agency's requirements.

In short, if it can be assumed that an agency is only as effective as its information systems, then we can assume that the public utilities agency is completely ineffective. One requirement for achieving effectiveness and efficiency within the agency, then, is that it completely overhaul its information system.

Since the recordkeeping and information handling operations presently fall primarily within the scope of the responsibilities of the office services section, the existing situation reflects a lack of management attention to the recordkeeping and information handling functions and to the failure of the program managers to exercise adequate supervision over the office services section. Thus, to be successful, any corrective measures taken to change the information handling system and procedure must also be accompanied by appropriate steps to define the proper role of the office services section, to equip the office services section to fulfill this role, to train properly the personnel who are to operate the system, and to make certain top management exercises effective direction and control over the office services section.

Recommendations. *We recommend that immediate steps be taken to review and reform the PUD's present records management and information handling system with the objective of providing the agency with basic source materials that will be accurate, up-to-date, and readily accessible for use in carrying out the various functions and activities of the public utilities program. Such an effort must be closely coordinated with any efforts to revise and overhaul the general systems and procedures of the agency.*

We further recommend that clear responsibility be fixed for the development and maintenance of records management and information handling systems within the PUD and that the role of the office services section relative to these areas of responsibility be properly defined and provided for in terms of staffing resources, training, and overall management supervision and control.

Inadequacies in docket files. A "docket" is a file on a particular case requiring decision. Supposedly, a docket is opened for each case that comes before the commission or PUD, and the PUD maintains a record on each such case so that one should be able to determine how many dockets have been opened and closed, and how many are pending. However, at present, no one knows with any assurance how many dockets have been handled and disposed of over any given period of time or how many cases are left pending and require further action at any point in time. Despite repeated efforts extending over many months, we were never able to obtain an accurate compilation of pending dockets. Every time a new list was prepared, we found that it omitted numerous dockets still pending before the PUC as revealed by our examination of other aspects of the program.

This situation prevails despite the existence of a mechanism which should prevent it from happening. This mechanism is the long-established practice of the staff to attach to the agenda of each month's meeting of the PUC a list of the dockets still pending before the PUC at that time. However, the mechanism has broken down—partly as a result of error and oversight, and partly as a result of a conscious policy to obscure the status of the dockets.

Error and oversight occur as follows. *First,* the agency has no definite and consistent formal means of closing dockets and has no clear definition of pending dockets. Under these circumstances, it should not be surprising to find that no one is really sure when a docket is actually closed and that mistakes are made in the dropping of dockets from the list when they are still pending. *Second,* the staff has the practice of deleting from the pending list those dockets that are to be taken up in any manner at a meeting. Although taken up at the meeting, not all of these dockets are finally disposed of. Unfortunately, the clerical staff sometimes fails to replace on the pending list those dockets which were not finally disposed of at the meeting.

The conscious effort to obscure the docket picture occurs as follows. Dockets are from time to time deliberately dropped from the pending list to suit the wishes and convenience of the agency. In some cases, the dockets are subsequently reinserted on the list, but in other cases they are not. The explanation given for such deliberate deletions from the list is that it has been done to avoid embarrassment for the agency—either because the list would be too long if all pending dockets were included or because certain dockets were very old or were particularly controversial. Decisions of this sort have generally been made at meetings among the chairman of the commission, the executive director of the public utilities division, and the chief clerk (or her substitute) to discuss and set up the agenda for the next meeting of the commission. Such deliberate disregard for accurate reporting and maintenance of records is not only unjustifiable, but is also highly improper and probably illegal in terms of assuring administrative due process to all of Hawaii's citizens who may be affected by such actions.

Thus, it is that dockets appear, disappear, and then reappear on the list of pending dockets

with considerable frequency even though their pending status has not changed in any way during the process. During these gyrations they sometimes become permanently lost, unless for some other reason they are brought to the attention of the agency.

The agency also maintains a docket index which purports to indicate when dockets are closed and which should provide a cross-check for the list of pending dockets attached to the agenda, but this index is no more accurate than the pending list. Dockets are indicated as closed when they are not. Other dockets are indicated as pending when they have been closed. To add to the confusion, posting errors are made regarding decision and order numbers relating to docket numbers. Finally, even where dockets are indicated as pending on the docket index, they are simply ignored and no regular check is made to see why they remain pending so long.

For our audit purposes, to secure a relatively comprehensive view of the number of dockets opened, closed, and pending, we had to go through a very tedious process of checking and trying to reconcile the pending docket lists, commission minutes, the docket index, the decision and order index (which attempts to do for decisions and orders what the docket index attempts to do for dockets), and in numerous cases the actual docket files themselves. Only a thorough examination of all of the docket files going back over the years would provide reasonably full assurance that all pending dockets have been identified, but available time and resources made this completely infeasible. Moreover, with some docket files being missing, it would still be impossible to put together a completely accurate listing. Nevertheless, we were able to develop a much more accurate accounting of the agency's dockets than the agency had itself.

Further confounding the situation with regard to controlling the official docket of the PUC is the fact that there are many items being handled by the PUC and PUD or being processed through the PUC or the PUD which should be docketed, but which are not being docketed. Some of these matters have separate identification and numbering systems which provide some means of trying to keep track of them, but others are simply processed as they are received with no overall system for identifying and accounting for them. Matters handled and processed outside of the regular docketing process include: (1) applications for major modifications of motor vehicles, (2) applications for utility line extensions, (3) certification of vehicle inspection stations, (4) applications for physical disability waivers, (5) applications for safety clearances for private motor carriers, and (6) proposed tariff changes which are not felt to require public hearings. Such deviation from established procedures appears to be both improper and illegal.

Recommendation. *We recommend that all practices relating to the docketing of PUC matters be brought immediately into conformity with all legal and procedural requirements and that effective controls be established forthwith for maintaining an accurate and continuously up-to-date accounting of all matters filed with the PUC. This includes: (1) actually docketing under one system of all matters requiring PUC action, (2) establishing definite and formal means of opening and closing specific dockets, (3) developing a system for reporting continuously the current status of all dockets filed with the PUC, and (4) devising an effective indexing system for cross-referencing all dockets, orders, and decisions and orders of the PUC.*

Nonsystem for data-gathering and the absence of statistical analysis. Both the public utilities commission and the public utilities division engage in a variety of activities and deal with numerous entities and items (e.g., motor carriers, motor vehicles, safety inspections, driver physical examinations, accidents and accident reports, consumer complaints, investigations, rates). Statistical data relating to such things as workload, program size, and program results can be an important management tool for controlling, allocating, and using resources, for budgeting, for program and performance evaluation, and other purposes.

However, at present, the PUD does not collect such data.

This is not to say that the PUD collects no data at all. It does. Indeed, it collects and maintains a multitude of statistics which purport to provide detailed information on the industries being regulated and on the work of the agency. However, most of the statistics being accumulated and reported are not usable at all. They are shot through with inconsistencies, discrepancies, omissions, and inaccuracies. After months of trying to work with the statistics being gathered and reported by the PUD, we were finally forced to conclude that no real reliance can be placed upon any of the agency's data and that at present there are few, if any, valid indicators of work within the agency.

The PUD's data are not reliable because they are being gathered in a highly unsystematic way, without concern for either accuracy or the use to which the data are to be put and because the PUD lacks a sense of organizational responsibility for the generation of accurate, meaningful, and useful information.

The PUD's motor carrier accident log is a good illustration of the haphazard way in which data are collected. No one has really been given the responsibility for maintaining this log. It exists only because one of the investigators took it upon himself to maintain the log. The log, however, is far from accurate. The investigator posts only those accidents which become known to him. While he is in the office, reports on accidents are readily routed to him and he is thus able to post these accidents in the log. But he is frequently in the field. Since there is no system for receiving and filing accident reports, the reports that come to the PUD while the investigator is in the field become widely scattered around the office and there is no assurance that the investigator will ever become aware of these reports. Moreover, no attempt is ever made by anyone to verify the log against the accident reports received. As a consequence, many reports are not entered into the log, and the log is for all practical purposes meaningless and an exercise in futility. Yet, it is used as the source for reporting on the number of motor carrier accidents. Under such conditions, the information being reported by the agency is inaccurate and highly misleading and can lead to serious misjudgments or completely wrong conclusions.

Not only is there a nonsystem in the collection of data, but the statistics gathered are rarely subjected to critical analysis. Raw statistics are one thing; what they are attempting to depict or reveal is another. Yet, no real effort is made to uncover the significance of the data gathered. Thus, statistics are now being gathered and reported, not only inaccurately, but without regard to how useful or useless they may be to people both within and without the PUD.

That there is no organizational sense of responsibility for gathering, analyzing, and reporting meaningful data for use in the management of the public utilities program is evident from the operation of the research and statistics branch. It appears that the creation of this branch under the unofficial organization plan was intended to centralize the responsibility for the production of meaningful statistical information in this branch. Yet, far from centralizing this responsibility, its creation appears to have caused considerable confusion within the PUD as to who is responsible for maintaining, analyzing, and compiling statistics. This confusion has arisen simply because the research and statistics branch has not developed any system for information-gathering, analysis, and reporting. Thus, although, on the one hand the other branches seem to feel that they have been relieved of all responsibility for maintaining and compiling "official" statistics of the agency and that the research and statistics branch is now the central repository for the agency's statistics, on the other hand these other branches, having little confidence in the work of the research and statistics branch, gather and compile their own statistics for their own particular purposes, although their statistics, too, are of questionable validity.

Under the present conditions, the PUD is unable to generate such basic data as (1) the

number and types of dockets it handles each year, (2) the number and types of complaints being processed, (3) the number of motor carriers it should be regulating, (4) the number and types of motor vehicles it should be regulating, (5) the number and types of drivers subject to its regulation, (6) the number of motor vehicle inspections and driver physical examinations being conducted each year, (7) the number and types of tariff changes being approved each year, (8) the length of time it takes to process various matters through the agency, and (9) the number of violations of agency rules cited and their dispositions.

Recommendations. *We recommend*

1. that the PUD develop a system for data-gathering and statistical reporting which will generate accurate, reliable, and useful information to assist in the management of the public utilities program;

2. that steps be taken to pinpoint responsibility for the development and maintenance of the system; and

3. that statistical analytic capabilities be upgraded in the PUD; one way to do this being to provide in-service training of its staff.

Financial Management and Fiscal Controls

The PUC and PUD are revenue-collecting agencies as well as expending agencies. Wherever financial transactions are involved, whether they relate to revenues or expenditures, financial management and fiscal controls are essential. Unfortunately, our examination of the PUC and PUD reveals very serious deficiencies and inadequacies in their overall financial operations. As a result, funds are being improperly spent, the State is being deprived annually of very substantial amounts of revenue, and unequal and inequitable treatment is being accorded to those subject to regulatory control of the PUC. Losses to the State in uncollected revenues probably exceed $100,000 annually.

Some initial notes. At the outset, it is helpful to review the nature of the revenues generated and the expenditures made in the program for the regulation of public utilities, and to describe the scope of our examination of the PUC and PUD fiscal operations. They provide the backdrop for the subsequent discussion on the deficiencies in fiscal controls.

*1. **Sources of revenue.*** The PUC and PUD are responsible for the collection of various fees which are paid into the State's general fund. These fees include public utilities fees, motor carrier fees, vehicle inspection fees for those vehicles subject to safety regulation by the PUC, various application fees, and fines, forfeitures, and penalties for noncompliance with PUC requirements.

- The public utilities fee for each public utility is set at one-eighth of one percent of the gross revenue of the utility for the preceding year, except for air carriers which must pay a fee equal to one-twentieth of one percent of their gross revenues for the preceding year.

- The motor carrier fee consists of a gross weight fee for each motor vehicle owned or operated by common and contract carriers. The gross weight fee is based upon a graduated scale which goes up to a maximum of $36 per year.

- The vehicle safety inspection fee is set at $3 per year per vehicle. This fee only covers the issuance of a safety decal for each vehicle. In addition, a fee not to exceed $3 per inspection is payable to the inspection station conducting the inspection of a vehicle.

- The various application fees apply primarily to the filing of applications relating to motor carrier operations and are payable only at the time of filing.

- The fines, forfeitures, and penalties are also generally applicable to motor carriers for

noncompliance with PUC requirements relating to motor carriers.

2. Overview of revenues and expenditures. The PUC and PUD are funded out of the general fund of the State of Hawaii through the budget for the department of regulatory agencies. As such, expenditures are authorized under legislative appropriations and are subject to the normal executive budgetary controls imposed upon all administrative agencies in the State.

A quick overview of the financial operations of the PUC and PUD is provided in table 7.1 which summarizes the revenues and expenditures of the public utilities program for fiscal years 1971–1972, 1972–1973, and 1973–1974. As this table indicates, the program generates and expends something in excess of one-half million dollars annually, with revenues being somewhat higher than expenditures. The expenditure figures, however, do not include fringe benefit amounts paid for employees in the program. With these costs added, expenditures would probably fairly closely approximate revenues.

3. DRA cash handling not included in this audit. Most of the direct handling of cash within the public utilities program is through the fiscal section of the department of regulatory agencies. These transactions are subject to the internal procedures prescribed by the DRA and constitute an integral part of the DRA's financial operations. Since a separate financial audit was being made of the DRA at the time this audit was being conducted, no special attention was focused upon the DRA's financial operations as they relate to the public utilities program. Rather, in this audit we looked at those areas where the PUC and PUD exercise control and are in a position to make decisions with regard to monies expended and revenues collected. Nevertheless, to the extent that the financial operations of the PUC and PUD fall within the general fiscal responsibilities of the DRA, any deficiencies and inadequacies in the PUC and PUD financial operations also reflect adversely against the financial management and fiscal controls of the DRA.

4. Specific areas examined in this audit. In our examination of fiscal matters within the public utilities program, we focused attention upon the following specific areas of activity: (a) the authorization of payments to individual commissioners; (b) the assessment and billing of the motor carrier (i.e., gross weight) fees; (c) the assessment and collection of the vehicle inspection fees; (d) the assessment and collection of other fees, particularly the vehicle major modification fee; and (e) the assessment and collection of penalties for violations of agency requirements. Each of these specific areas is discussed separately below.

Improper payments to commissioners. Members of the public utilities commission serve only part-time and are paid compensation on a daily basis. The compensation of commissioners is provided for under section 269–2 of the Hawaii Revised Statutes. Up until 1972, the pertinent provisions of section 269–2 read as follows:

> ". . . Each of the members shall receive compensation at the rate of $10 per day while actually engaged in the performance of his duties as commissioner, and such reasonable traveling expenses as may be incurred in the discharge of their duties; provided, that no member of the commission shall in any case receive more than $1,000 as compensation for services for any one year."

With the enactment of Act 118 in 1972, however, these provisions were changed to read as follows:

> "Each of the members shall receive compensation at the rate of $50 per day while actually engaged in the performance of his duties as commissioner, and such reasonable traveling expenses as may be incurred in the discharge of his duties."

Table 7.1

Summary of Revenues and Expenditures for the Public Utilities Program
For Fiscal Years 1971–72, 1972–73, and 1973–74

Revenues:	*FY 1971–72*	*FY 1972–73*	*FY 1973–74*
Fines, forfeitures, and penalties	$ 2,300	$ 2,974	$ 11,225
Public utility fees[1]	461,110	525,279	593,972
Application fees:			
CPCN's[2]	2,075	3,500	3,100
Limited permits	125	100	350
Authority to transfer	1,200	1,500	1,700
Modification	200	150	100
Temporary CPCN's and permits	[25]	–	75
Extension of CPCN's	50	100	600
	3,625	5,350	5,925
Gross weight fees[3]	55,996	57,495	56,652
Safety stickers and decals[4]	66,985	69,188	83,068
Seating capacity fees[5]	16,800	20,521	21,392
Total revenues	$606,816	$680,807	$772,234

Expenditures:	*FY 1971–72*	*FY 1972–73*	*FY 1973–74*
Commission:			
Salaries	$ 5,210	$ 26,100	$ 31,550
Mileage	833	702	857
Interstate travel[6]	12,802	10,682	13,767
Intrastate travel[7]	814	1,474	1,110
Consultant fees	90,864	32,777	34,608
Court reporter fees	19,826	19,903	20,121
Publication of notices	2,097	4,755	7,241
	134,446	96,393	109,254
Staff:			
Salaries	406,892	381,262	438,419
Mileage	167	293	204
Interstate travel[6]	11,172	12,930	11,202
Intrastate travel[7]	962	3,006	2,547
Equipment	2,901	835	7,649
Other[8]	26,201	24,619	29,481
	448,295	422,945	489,502
Total expenditures	$582,741	$519,338	$598,756

[1] Public utility fees include utility company fees and airline company fees based on the gross income from public utility business during the preceding year (for utility companies the fee is based on 1/8 of 1% of the gross income from public utility business or the sum of $15, whichever is greater, and for the airlines, 1/20 of 1% plus 1/50 of 1% of the par value of stock issued by the public utility and outstanding on December 31 of the preceding year).

[2] CPCN fees for passenger or property carriers are $50 per vehicle, with a maximum of $150.

[3] Gross weight fees include penalty for late payment (10% of amount due but not less than $5).

[4] Safety stickers and decals are $3 each. (A $.50 fee is charged for duplicate stickers or decals.)

[5] Seating capacity fees ($1 per passenger seat but not to exceed $25) include penalty for late payment (10% of amount due but not less than $5).

[6] Interstate travel includes air fare, subsistence, incidentals (such as parking fees, taxis, etc.) and U-drive rentals.

[7] Intrastate travel includes air fare, subsistence, and incidentals (such as above and registration fees or tuition for staff).

[8] Other includes supplies, rentals, postage, etc.

Source: Fiscal division, department of regulatory agencies, State of Hawaii.

The effect of the 1972 amendment was, of course, to raise the daily compensation of commissioners and to remove the annual ceiling on the total compensation they might receive. In short, through fiscal year 1971–1972, commissioners were entitled to receive $10 per day for each day of service up to an annual maximum of $1000, but since 1972 they have been entitled to receive $50 per day with no annual maximum.

In addition to these daily rates, each commissioner receives $30 per day to cover per diem expenses when traveling off the island of his residence for more than one day and is reimbursed for transportation and other incidental expenses. When a commissioner performs duties on his island of residence or when he is off the island of his residence for less than a day, he normally collects only travel expenses (including mileage for the use of his own car) and costs of meals (usually lunch).

In the administration of the provisions relating to the compensation of commissioners, our examination has revealed deficiencies, generally resulting in excess payments being made to the members of the PUC. Specific shortcomings in this regard are detailed below.

*1. **Payments in excess of legal limits.*** Table 7.2 has been prepared to show the number of service days attributed to each member of the commission for the fiscal years 1969–1970 through 1972–1973 and the total compensation paid to each commissioner each year for this period, not including per diem and travel expenses. Shown also is the average number of service days for the commission as a whole for each year.

As can be seen from table 7.2 for the fiscal years of 1970–1971 and 1971–1972, three commissioners received in excess of $1000 despite the legal prohibition against exceeding the $1000 limit which was in effect in those years. When we first questioned this apparent violation of the law, fiscal personnel within the PUD and in the DRA indicated that the law did not specify whether the limitation applied to fiscal years or calendar years. Accordingly, they admitted they juggled the use of the two types of time periods to keep the commissioners' compensation within the prescribed legal limits. However, even when the payments are recalculated on the basis of calendar years rather than fiscal years, total payments to the commissioners in question exceed the $1000 limit in almost every case. Hence, during this period the law has clearly been violated and excess payments have been made to the commissioners involved.

*2. **Improper payments for "preparation and review."*** Perhaps more serious than the above violation, because it involves larger amounts, is another highly questionable practice which has persisted for several years. Commissioners have been receiving compensation for days when they have actually performed no services for the agency. This practice dates back to the mid-1960's when the then chairman of the commission and the then executive director of the PUD agreed to have the commissioners come in a day early each month to review various matters informally prior to the holding of formal meetings and hearings and to have the commissioners stay over for another day after the formal meetings and hearings for the same purpose. For these so-called days of preparation and review, the $10 per day payment was authorized. However, somewhere along the course of events, these informal meetings were dispensed with but the payments for them continued. This was on the theory that individual commissioners did "homework" on commission matters before and after the monthly meetings. Thus, if three days of meetings and hearings were scheduled (which was and is frequently the case, usually on a Tuesday, Wednesday, and Thursday), then the commissioners were paid for five days (usually for the Monday before and the Friday after the sessions).

Even assuming this practice is legal (and we know of no provision so authorizing it), such payments could have been justified only if the commissioners could indeed demonstrate that they actually put in such time and effort at

Table 7.2

Summary of Commissioner Service Days and Cost (Salaries)
For the 1969, 1970, 1971, and 1972 Fiscal Years by County

Position	FY 1969–70 Service days	FY 1969–70 Cost at $10 per day	FY 1970–71 Service days	FY 1970–71 Cost at $10 per day	FY 1971–72 Service days	FY 1971–72 Cost at $10 per day	FY 1972–73 Service days	FY 1972–73 Cost at $50 per day
Position A (Chairman)	90	$ 900	13[a]	$ 130	136	$1,360	130	$ 6,500
Position B	91	910	124	1,240	60[d]	600	108	5,400
Position C	98	980	113	1,130	82[e]	820	57[h]	2,850
Position D	92	920	109	1,090	121[f]	1,210	110	5,500
Position E	88	880	81[b]	810	122	1,220	117	5,850
Total	459	$4,590	440	$4,400	521	$5,210	522	$26,100
Average Number of Days per Year	92		115[c]		126[g]		116[i]	

[a]Member in position A resigned on August 15, 1970. The unexpired term was filled on January 18, 1972.

[b]Member in position E resigned on June 23, 1971. The unexpired term was filled on July 1, 1971.

[c]The average is based on service days of members in positions B, C, and D.

[d]Member in position B started on January 18, 1972 to fill the unexpired term of the former member in position A.

[e]Member in position C resigned on March 31, 1972. The unexpired term was filled on January 16, 1973.

[f]Two men sat in position D during this fiscal year, one from July 1, 1971 to December 31, 1971 or 63 days, and the replacement to fulfill the unexpired term from January 18, 1972 to July 31, 1972, or 58 days.

[g]The average is based on service days of members in positions A, D, and E.

[h]A new member in position C started on January 16, 1973 to fill the unexpired term to December 31, 1974.

[i]The average is based on service days of all the commissioners except the one in position C.

Source: Public utilities and fiscal divisions of the department of regulatory agencies, State of Hawaii.

home on commission business. However, we could find no indications that the commissioners were generally well prepared beforehand to take up matters coming before the formal sessions of the commission. Moreover, the commissioners as a general rule do very little of the drafting of their own reports, decisions, and orders so that the preparation of documentary materials could not have taken place while they were at home. Thus, it appears that there was no justification for compensating commissioners for these days of preparation and review. With the increase in daily compensation to $50 per day, such excess payments amounted to $100 per commissioner per month on an average, or $6000 per year for the commission as a whole (i.e., 12 x $100 x 5).

The staff of the PUD which is responsible for authorizing such payments to the commissioners has been aware for some time of the impropriety of these payments but only recently has taken steps to bring the practice to a halt. The public utilities administrator who was acting executive director during much of 1973 when the executive director was absent from the agency for extended periods reports that during one of the times he was acting executive director he discussed this matter with the commissioners and advised them that the practice would be discontinued. With the executive director's full knowledge and concurrence, he instructed the staff who handles the paperwork for the commissioners' claims for payment to stop including the preparation and review days as service days for the commissioners. However, he says that, upon reassuming direction over the division in January 1974 following the retirement of the executive director, he discovered that the practice had not been discontinued. In any event, he now informs us that the matter has again been brought to the attention of the commissioners.

*3. **Inadequate recordkeeping for compensating commissioners.*** There is no adequate recordkeeping system for determining the attendance of commissioners at commission sessions and their entitlement to compensation. The records on this matter are kept in a very unsystematic and haphazard manner so that it is impossible to determine which commissioners were at particular sessions and the amounts they should have been paid. We attempted to unravel the way the information was recorded, but even after numerous tries, it was impossible to arrive at totals which could be verified and which matched the actual payments made through the fiscal office. Thus, while the commissioners may have been improperly paid for preparation and review days, some of them may not have been paid for other days when they were actually eligible for payment. The whole situation emphasizes an urgent need to establish some effective procedures to account for the service days of commissioners and to compensate them accordingly. It should be relatively easy to devise a fairly simple system of having commissioners sign a dated form when they are performing their official duties and to use this as the basis for their compensation.

*4. **Unnecessary service days for some commissioners.*** There are indications that some members have been paid a full day's compensation as a commissioner for performing a very limited task requiring but a few minutes. Thus, coming into the office just to sign a document or to hold a 15-minute discussion with the staff to approve an agenda for a forthcoming meeting have been used as a basis for claiming payment of $50 compensation, plus mileage. With some proper scheduling and some restraint on the part of the commissioners affected, it should be possible to avoid cases where payments are made for a miniscule amount of service rendered.

*5. **Illegal payments to one particular commissioner.*** The points raised above apply generally to the commission as a whole. In addition, there is a situation involving one commissioner to whom payments for travel and other expenses were made over an extended period of time when he was not entitled to receive them.

This case involved a commissioner from a neighbor island who changed his residence to the island of Oahu but continued as a commissioner from that island for more than a year until he

resigned. This commissioner moved in mid-1970, but did not resign from the commission until December 31, 1971. During this period, he not only continued to serve as a full functioning member of the commission, but he also continued to receive travel and per diem payments as if he were still a resident of the neighbor island. This means that when commission meetings were held on Oahu, he submitted claims for payment for travel and other expenses as if he had made a round trip from the neighbor island to Oahu and back to attend the meeting.

This matter was investigated by the attorney general's office and the results of the investigation noted that, while the commissioner did make trips between the neighbor island and Oahu during this period, such trips did not coincide with the meetings of the commission and the point of origin was Oahu and not the neighbor island. The way the department authorizes payment for such travel expenses contributed to making such circumvention of the law possible. In other words, the State simply credited the amounts claimed to the account which the commissioner had with a travel agency. This enabled him to draw upon the account for trips whenever it suited his personal needs and wishes.

The commissioner's change of residence appears to have been common knowledge among the staff and officials of the PUD and the DRA. The attorney general's investigative report indicated that the commissioner purportedly said that he had informed the director of regulatory agencies, the executive director of the public utilities division, and the governor's office of his move. Those persons within the PUD who prepared and approved the commissioner's claims for payment acknowledged that they were aware of the fact that he was no longer a resident of the neighbor island during this period. However, they reported that they processed the claims for payment in accordance with the instructions received from the director of regulatory agencies. The director of regulatory agencies conceded that he so instructed the staff to process the claims as submitted by the commissioner. His rationale for this action was that, if the commissioner's claims were improperly or fraudulently submitted, this was a matter of personal culpability on the part of the commissioner for which he could be held liable and responsible and that it was not the staff's role to question his motives or the propriety of his actions. In our opinion, however, this is not a defensible position. Any public official charged with the responsibility for protecting and safeguarding public funds and their proper expenditure has both a legal and moral obligation to validate the propriety of any expenditure where there is the least suspicion that the funds may be disbursed for illegal or improper purposes. Thus, at a minimum, the director of regulatory agencies and/or the PUD should have sought a ruling from the attorney general on the legality of the commissioner's claiming travel expenses after having changed his residence to another island immediately upon becoming aware of this move, and should have withheld all payments to the commissioner involved until this matter was clearly settled. Unfortunately, however, this did not happen.

The attorney general's and the PUD's conclusion was that the commissioner in question received illegally and improperly $4,582.22 in payment for travel and other expenses during the period when he served on the commission while being a resident of Oahu. Although the investigation by the attorney general with respect to the payment of travel and other expenses had concluded some time ago, at the time of our inquiry in May 1973, there had been no restitution of the funds involved and no action had been taken against the commissioner. At that time the director of regulatory agencies had taken the position that the matter of restitution was being handled by the attorney general and the attorney general had taken the position that the matter was the primary responsibility of the director of regulatory agencies.

Since May 1973, we continued to inquire as to the status of the case. Finally, in January 1974, as a result of our inquiries, the attorney

general's office wrote to the former commissioner advising him of the need to settle the matter expeditiously and informed the director of regulatory agencies that it was taking charge of the case. In its letter, the attorney general's office made it quite explicit that it was taking action because of the inquiries of the legislative auditor's office. It appears that both the director of regulatory agencies and the attorney general have been negligent and remiss in carrying out their official duties. Constant prodding by our office should not have been necessary for either the director or the attorney general to move promptly to seek restitution.[1]

This commissioner's situation raises another important legal point. Upon his moving from the neighbor island to Oahu, was he legally still a member of the commission?

Section 269–2 of the Hawaii Revised Statutes sets forth residence restrictions on the members and chairmanship of the public utilities commission. The pertinent provisions read as follows:

> "There shall be a public utilities commission of five members, to be called commissioners, and who shall be appointed in the manner prescribed in section 26–34. No member of the commission shall be a salaried officer or employee of the State. Two members shall be appointed from the city and county of Honolulu and one from each of the counties of Hawaii, Maui, and Kauai. One of the city and county of Honolulu members shall be the chairman of the commission."

Although the above provisions are not entirely clear on the point, it would appear that compliance with the law would require a commissioner to vacate his position if he should remove his residence from the area from which he was selected to serve on the commission. Thus, if the chairman, who is required to be from Oahu, should move to one of the neighbor islands, he should no longer be eligible to be chairman or to be a commissioner unless appointed to fill an existing vacancy for the island to which he moved. Similarly, if any other member of the commission should move to any other island, he should no longer be able to retain his original position.

If it is determined that the commissioner should not have served on the commission after having made his move to Oahu, there is an additional amount of $1,840 in compensation that was improperly paid to him. However, more importantly, there are very serious questions regarding the legality of actions taken by the commission during this period. It appears that in a number of cases, his vote has been the deciding vote on particular issues. Three votes are required to approve any action, and due to vacancies on the commission and absences of commissioners from particular proceedings, various actions taken during this period could not have been taken without this commissioner's vote.

Recommendations. *The foregoing improper payments to the commissioners have occurred primarily as a result of uncertain policies, malleable guidelines, and haphazard procedures. Thus, some fundamental changes in the policies and procedures of the agency are required to avoid repetition of the above-described conditions. We recommend:*

1. that the PUC develop and adopt clear fiscal policies and procedures relating to the payment of compensation and expenses to the commissioners, including the system to be used in maintaining accurate records on the expenses incurred by individual commissioners; and

2. that the attorney general continue his efforts and take such steps as necessary to bring about to the fullest extent possible the restitution to the State of the losses it has suffered from the clearly illegal payments made in the past.

[1] In November 1974, the commissioner finally repaid the State in the amount of $5,582.70, including interest charges amounting to $1,001.48.

Assessment and billing of motor carrier (vehicle gross weight) fees. Motor carrier (or vehicle gross weight) fees are among the revenues received by the public utilities agency. The agency has primary responsibility for ensuring that the proper amounts are assessed and collected. The agency's functions and responsibilities in this area include: (1) making sure all vehicles subject to the fee are properly identified and registered with the agency, (2) determining the proper amount of the fee to be paid on each such vehicle, and (3) billing and collecting the fees assessed on each such vehicle.

The gross weight fee is provided for under section 271–36(b) of the Hawaii Revised Statutes which reads as follows:

> "(b) In addition to all other fees to be paid by him, every common carrier by motor vehicle and every contract carrier by motor vehicle, including those within section 271–5(11), shall pay to the commission each year at the time of, in connection with, and before receiving his gross weight identification emblem or his identification plate as provided by section 271–29 for each motor vehicle owned or operated by him based upon the maximum gross weight thereof, the following fees for each calendar year or portion thereof remaining:
>
> | | |
> |---|---|
> | Less than 4,000 lbs. ..... | $ 7 |
> | 4,000 lbs. or more and less than 6,000 ..... | 8 |
> | 6,000 lbs. or more and less than 8,000 ..... | 9 |
> | and continuing with increments of $1.00 for every additional 2,000 pounds until the following gross weight fees are reached: | |
> | 56,000 lbs. or more and less than 58,000 lbs. ..... | 34 |
> | 58,000 lbs. or more and less than 60,000 lbs. ..... | 35 |
> | 60,000 lbs. or more ..... | 36 |
>
> The commission may determine, however, that the full amounts of the fees are not needed for any calendar year and may determine fees of lesser amounts to be necessary and reasonable for the year and may vary the schedule accordingly. The emblems shall be affixed in a conspicuous place upon the motor vehicle as prescribed by the commission and shall be so displayed throughout the year. Any transfer or substitution of any emblem shall be unlawful."

Section 271–5(11) referred to in section 271–36(b) reads as follows:

> "Persons transporting unprocessed pineapple to a cannery and returning any containers used in such transportation to the fields."

From the foregoing, it can be seen that the vehicles of all common and contract carriers including those engaged in hauling unprocessed pineapple from the fields to the canneries are subject to the payment of the gross weight fee on a graduated scale according to the maximum gross weight of each such vehicle. However, these provisions are not being properly and equitably enforced. There are numerous deviations from these legal requirements. Set forth below are the most serious deficiencies we detected during our audit.

*1. **Deviation from statutory provisions with regard to seating capacity fees for passenger carriers.*** General Order No. 2 of the public utilities commission contains the rules and regulations which the agency has adopted to implement the statutory provisions relating to the gross weight fee. In so implementing the statutory provisions, however, the agency has taken the very unusual and legally questionable step of treating property and passenger carriers quite differently despite the absence of any such differentiation in the statute.

General Order No. 2, section 10.14(d), restricts the application of the gross weight fee entirely to property carriers, as follows:

> "GROSS WEIGHT FEE. Every *common carrier of property* by motor vehicle and every *contract carrier of property* by motor vehicle, including those within the provisions of Chapter 106G–5(1), to wit, 'persons transporting unprocessed pineapples to a cannery and returning any containers used in such transportation to the fields' shall pay to the Commission each year, at the time of, in connection with, and before receiving his gross weight identification decal for each truck, trailer or semitrailer owned or operated by him, based upon the legal maximum gross weight thereof, as set by the carrier in his application, the following fees: . . . ."[2] [Emphasis added.]

No provision imposing the gross weight fee on passenger carriers is contained in General Order No. 2, but apparently in lieu thereof a seating capacity fee is imposed on passenger carriers under section 10.14(c)(1)b which reads as follows:

> "Passenger motor carriers shall pay an annual fee of one (1) dollar per passenger seat capacity for each vehicle operated for hire, not to exceed $25.00 for any one vehicle. This fee shall be paid prior to the issuance of a vehicle identification card, commencing the calendar year 1963."

In effect, the PUC has set up a dual system of charging fees in place of the single system specified in the Hawaii Motor Carrier Law. The explanation given by the agency for this action is that the passenger seating capacity fee is a more realistic and equitable manner of charging fees to passenger carriers than is the gross weight fee. If this is, indeed, the case, then the solution lies not in ignoring and contravening the law but in seeking legislative amendment to the law. Until the law is so changed, it would appear that the seating capacity fee is being imposed illegally and that passenger carriers should be charged on the basis of the gross weight fee as specified in section 271–36(b) of the Hawaii Motor Carrier Law.

It is not known whether the use of the seating capacity fee results in the receipt of more or less revenues by the State from this source than would be received if the gross weight fee were applied to passenger carriers, but it is entirely possible that some or all such carriers are paying more or less in fees than they should to the agency. We did find some buses, however, that weighed more than 40,000 pounds, which is the maximum weight allowed for the payment of only $25 in gross weight fee. (As indicated above, the maximum seating capacity fee is $25.)

*2. **Inequities in the proration of fees.*** Discriminatory and illogical treatment of the two types of carriers is carried one step further, however, by the agency in that the gross weight fee can be prorated according to the period of the year for which the vehicle is used by the carrier but no proration of the seating capacity fee is allowed. This unequal treatment is not provided for in the formal rules and regulations of the agency, but is the result of informal interpretation and well established practice.

*3. **Inadequate procedures for registering vehicles and for assessing and collecting fees.*** In addition to deviations and inequities in the application of the gross weight fee, it appears that there are revenue losses from the gross weight fee source (as well as the cause of a few overpayments) because of the very inadequate and inaccurate systems and procedures the agency has for registering, identifying the weight (or passenger capacity) of, and billing for

[2]The fees set forth in General Order No. 2, section 10.14(d) are the same as those set forth in HRS, section 271–36(b).

vehicles subject to the gross weight (or seating capacity) fee. In other words, not all vehicles subject to these fees are being properly identified and registered with the agency, or, if so registered, many are not being billed correctly, if at all.

In a selective sampling we made of carriers subject to the jurisdiction of the agency and their vehicles, we discovered that the agency (a) does not have registered for gross weight (or passenger capacity) fee purposes many of those vehicles which are registered to affected carriers in the statewide vehicle registration system maintained by the city and county of Honolulu for the state highway safety coordinator, (b) has vehicles registered to carriers where the statewide vehicle registration system has no records or has registered the vehicles to other owners, (c) is billing carriers for vehicles not registered with the agency, (d) is not billing carriers for vehicles registered with the agency as being subject to the fee, (e) is allowing common carriers to register some of their vehicles as private vehicles, the effect of which is avoidance of the gross weight fee, and (f) is actually double-billing carriers for the same vehicle in some instances. It is difficult to determine with any accuracy the numbers of vehicles which may be escaping payment of the gross weight fee or how many overpayments may be occurring (although the evidence strongly suggests this is a much, much smaller number), but our sampling indicates that probably hundreds of vehicles are either not being billed at all or are not being billed correctly. Revenue losses, therefore, are probably in the thousands of dollars.

Another weakness in the information handling system for assuring that proper gross weight fees are paid is the fact that the fees are calculated on the basis of gross weights reported by the carriers with no really systematic attempt being made by the agency to verify the correctness of these weights. Although some weights are checked when registration cards are filed with the agency, much of this checking is done by clerical personnel who have had no training or background which would qualify them to be very knowledgeable in this field. For the most part, therefore, the reporting of vehicle gross weights depends upon a sort of honor system among the carriers. The net effect may be, however, that it simply penalizes the carriers who have the honor while rewarding those who know how to take advantage of the system. The dimensions of this problem are not known, but there are substantial grounds for believing a problem exists. As detailed elsewhere in this report, there is ample evidence to show that violations of the State's legal restrictions on the size and weight of vehicles are widespread within the motor carrier industry. Similarly, the legal requirement that all major modifications, constructions, and reconstructions of motor carrier vehicles be approved in advance by the public utilities agency is observed more in its breach than in its compliance. Finally, the agency's procedures and practices offer many carriers opportunities for avoiding the payment of the fee on at least some of their vehicles.

Recommendations. *We recommend that*

1. The PUC and the PUD collect the gross weight fee in the manner and in the amounts provided by law. Should the application of such fee to any industry be judged to be infeasible or inequitable, that proper legislation to amend the statute be prepared for consideration by the legislature. Pending such statutory change, however, the PUC and the PUD should adhere to the requirements of the law.

2. Procedures be instituted within the PUD whereby an accurate count of the vehicles and carriers subject to the jurisdiction of the PUC and the PUD may be secured and maintained.

3. A system be instituted whereby the gross weight reported by the carriers may be verified, at least on a sampling and periodic basis.

Motor carrier safety compliance (vehicle inspection) fees. Another important source of revenues controlled by the public utilities agency is the safety compliance (vehicle

inspection) fee which is applicable to all vehicles subject to safety regulation under the Hawaii Motor Carrier Law (HRS, chapter 271). This is an area where the agency through disregard of the law and through questionable administrative practices and procedures is managing simultaneously to overcharge the operators of certain types of vehicles and to allow many other vehicles to escape the fee altogether.

The fee itself is provided for under section 271–36(a) of the Hawaii Motor Carrier Law, which reads as follows:

> "Every motor vehicle operated by a motor carrier or a private carrier of property as provided in section 271–9(a) shall display at all times the safety identification decal or emblem issued every year by the public utilities commission to identify each of the motor vehicles belonging to motor carriers currently complying with the requirements of section 271–9(a). The motor carrier or private carrier of property shall pay the commission for each safety identification decal or emblem, for each of its motor vehicles, the annual fee of $3 at the time the carrier submits its application for the issuance to it of the number of decals or emblems it needs for that calendar year or the portion thereof remaining. Any substitution or transfer of the decal or emblem shall be unlawful. The motor carrier or private carrier of property shall further pay for each safety inspection of each motor vehicle, as required by the commission's rules and regulations, the fee of $3 for each motor vehicle or whatever lesser amount as is determined by the commission to be a necessary reasonable vehicle safety fee. No other safety identification or inspection fee shall be collected by the State or any political subdivision thereof for any other safety inspection of the motor vehicle."

It should be noted that the Hawaii Motor Carrier Law itself makes no specific provision for vehicle inspections but leaves this matter to be covered under the rules and regulations of the public utilities agency. It does specify, however, the fees which the agency can charge motor carriers for compliance with its safety requirements. As set forth in section 271–36(a), safety emblems or identification decals are to be issued each year for each vehicle complying with the agency's safety requirements for which an annual fee of $3 is to be paid. Section 271–36(a) then goes on to provide that an additional vehicle inspection fee not to exceed $3 shall be paid for each safety inspection conducted pursuant to the agency's rules and regulations. This additional fee is actually payable to the inspection station and is not a revenue source for the State. The section concludes with a prohibition against the collection of any other safety inspection fee by either the state government or its political subdivisions.

The agency's rules and regulations implementing these statutory provisions are contained in its General Order No. 2. The pertinent sections of the general order relating to this subject are sections 7.11 and 10.14(a). Section 7.11 sets forth the requirements for periodic inspections of such motor vehicles. In essence, this section provides as follows:

- For motor vehicles in use less than ten years after the date of manufacture, a yearly inspection.
- For motor vehicles in use more than ten years after the date of manufacture and for school buses, semi-annual inspections.
- Additional inspections of any or all vehicles as the commission finds necessary.

For vehicles requiring only annual inspections, the official inspection period begins on January 1 and terminates on March 1 of each year. For vehicles requiring semi-annual inspections, the official inspection period begins on January 1 and July 1 and terminates on

March 1 and August 1 of each year. A decal or sticker is required to be issued after each inspection.

Section 10.14(a) sets forth the fee to be charged for the safety inspection sticker or decal required under section 7.11 and reads as follows:

> "SAFETY IDENTIFICATION STICKER AND DECAL. Every motor vehicle operated by a common or contract carrier or a private carrier of property by motor vehicle shall display at all times the safety identification sticker and/or decal issued by the Commission. A fee of $3.00 will be assessed for such sticker or decal. Any substitution or transfer of such sticker and/or decal shall be unlawful."

Implementation of these provisions has led to several illegal and improper actions on the part of the PUC and the PUD. These are discussed below.

*1. **Illegal double fees for semi-annual inspections.*** From reading in combination the two sections of the general order described and quoted above, it readily becomes apparent that the safety compliance fee is tied in directly with the periodic safety inspections of the vehicles affected. In other words, under the general order, the safety identification emblem fee of $3 is charged each time a vehicle is inspected and passed. For those vehicles subject to annual inspections, the annual charge for the emblem is thus $3, but, where semi-annual inspections are required (i.e., for vehicles in use for ten years or more and for school buses) the annual charge for the emblems is $6. That is to say, vehicles required to undergo semi-annual inspections must pay a total of $6 per year (2 x $3). This is in direct conflict with HRS, section 271–36(a), which specifically provides for an annual charge of only $3 for the emblems. The statute does provide for a charge of $3 for each *inspection,* but this is another matter. The inspection fee is paid not to the State but to the inspecting station. For the *emblems,* the statutory charge is $3 per year, which goes into the state treasury. The result is that many vehicles have been overcharged (by double the legal limit) for their safety emblems.[3] Full compliance with section 271–36(a) would require either a $3 fee for the first inspection emblem issued and no charge for the second or splitting the $3 fee in half and charging $1.50 for each semi-annual emblem.

*2. **Discriminatory reductions in fees.*** Not only is General Order No. 2 in conflict with section 271–36(a) as indicated above, but the agency is also applying the provisions of the general order and the statute in a discriminatory fashion. Although pursuant to the general order it charges virtually everyone $3 for every safety emblem issued, for government vehicles subject to its regulation the agency has decided that only 25 cents per safety emblem (whether annual or semiannual) and 50 cents for replacement emblems need be paid.

*3. **Failure to collect fees from many vehicles subject to inspection.*** In addition to imposing double fees on some vehicles and discriminating in favor of government vehicles, the PUC and PUD are failing to collect inspection fees from a substantial number of vehicles which are subject to the inspection requirement. *First,* many thousands of vehicles presently appear to be avoiding the payment of this fee entirely. For calendar years 1972 and 1973, we estimated on the basis of data shown elsewhere in this report that there should have been approximately 31,800 vehicles in 1972 and 35,000 vehicles in 1973 subject to the agency's safety regulation and therefore subject to payment of the $3 safety compliance fee.[4] This

[3]Note that under HRS, section 286–6, semi-annual inspections of almost all vehicles subject to the agency's safety regulation are required.

[4]These are conservative estimates, and the actual numbers may run higher. For example, the federal bureau of motor carrier safety made an investigation of motor carrier safety in Hawaii in 1973–1974 and reported some 45,000 commercial vehicles being registered in Hawaii. While all of these are not subject to PUC safety regulation, a vast majority of them would fall into this category.

means that in 1972 the agency should have taken in approximately $95,265 in safety compliance fees (3 x 31,755) and in 1973, $104,865 (3 x 34,955). In contrast, estimated actual receipts from this source, disregarding overpayments, for the two years were $55,521 and $60,331, representing a net loss to the State for the two years of $39,744.00 for 1972 and $44,533.75 for 1973. If these losses are reduced by the amounts of the total overcharges for the two years as indicated above, there still would be net losses to the state treasury of $28,002.00 for 1972 and $32,560.25 for 1973. Such losses extend back over prior years and are probably continuing to mount in the period beyond 1973.

Second, although under General Order No. 2 and the statute all vehicles in use ten years or more from the date of their manufacture require semi-annual inspections, emblems are being issued for all trailers, regardless of their age, on an annual basis. If the general order's provisions of semi-annual inspections and of charging $3 for every emblem issued (although contrary to statute) were to be strictly enforced, revenues greater than that actually being realized from the issuance of emblems to trailers should be forthcoming.

4. Statistical indicators of vehicle inspection fee shortcomings. In an attempt to get some picture of the magnitude of the overcharging and undercharging for safety emblems, we have prepared table 7.3. The table is for the calendar years 1972 and 1973 (excluding refunds to inspection stations).[5] This table is broken down to show the sales of emblems by various categories by number of annual emblems and by number of semi-annual emblems for each half of each year.

This table reveals a number of things. First of all, it shows that more emblems are being sold each year than the agency has vehicles registered with it, by a very large margin. In other words, by converting all emblem sales to an annual basis, the agency issued safety emblems for approximately 19,244 vehicles in 1972 and 20,951 vehicles in 1973.[6] Total vehicles registered with the agency as reported by the agency to the state department of transportation for the two years were 15,603 and 16,285,[7] respectively. This would seem to indicate that the agency issued 3641 emblems in 1972 and 4666 emblems in 1973 for vehicles not registered with it. This discrepancy should not be surprising when it is realized that the agency is failing to register more than half of the vehicles for which it is responsible (i.e., some 15,000 to 20,000 or more vehicles are not being registered). It should not be assumed, however, that the agency's performance in the safety inspection area is any more effective than it is in the vehicle registration area. The data shown in table 7.3 merely indicate the number of emblems sold by the agency. The agency has no way of knowing how many inspections are actually conducted (much less how effective such inspections may be). The staff is aware of the discrepancies between registrations and emblem sales, but has not felt impelled to do anything about this situation.

The second thing revealed by table 7.3 is the fact that there is a significant drop-off in the number of semi-annual emblems sold each year between the first half and second half of the year. This strongly indicates that many carriers are not bothering to have the second semi-annual inspection made each year. Again, the staff is aware of this aberration, but has let it continue to occur without any followup action.

[5]Such refunds are granted despite the absence of any provision in the rules for them—$1068 for 362 emblems in 1971–1972 and $1788 for 596 emblems in 1972–73.

[6]For purposes of these calculations, the semi-annual safety emblem sales for the second half of the year have been disregarded on the assumption that safety emblems for most of these vehicles were sold during the first half of the year also.

[7]Even these figures are overstated because our examination of the agency's vehicle registration records indicates there are many obsolete and inaccurate records contained in the agency's files. This is primarily the result of having no system for periodic reregistration of vehicles.

Table 7.3

Summary of Safety Emblems Issued by the Public Utilities Division with the Revenues Received (Excluding Refunds) for the Calendar Years 1972 and 1973

Type of Safety Emblem	1972		1973	
	Total No. Issued	Revenues Received	Total No. Issued	Revenues Received
Annual				
Nongovernment sales (@ $3 each)	9,447	$28,341.00	9,486	$28,458.00
Government sales (@ $0.25 each)	553	138.25	614	153.50
Subtotal	10,000	$28,479.25	10,100	$28,611.50
Semi-Annual (First Six Months)				
Nongovernment sales (@ $3 each)	4,566	$13,698.00	4,616	$14,568.00
Government sales (@ $0.25 each)	205	51.25	240	60.00
Subtotal	4,771	$13,749.25	4,856	$14,628.00
Semi-Annual (Second Six Months)				
Nongovernment sales (@ $3 each)	3,900	$11,700.00	3,975	$11,925.00
Government sales (@ $0.25 each)	168	42.00	194	48.50
Subtotal	4,068	$11,742.00	4,169	$11,973.50
Trailer				
Nongovernment sales (@ $3 each)	4,427	$13,281.00	5,932	$17,796.00
Government sales (@ $0.25 each)	46	11.50	63	15.75
Subtotal	4,473	$13,292.50	5,995	$17,811.75
Total – Nongovernment sales	22,340	$67,020.00	24,009	$72,027.00
Total – Government sales	972	243,00	1,111	277.75
Grand Total	23,312	$67,263.00	25,120	$72,304.75
Actual emblems issued and revenues received	23,312	$67,263.00	25,120	$72,304.75
Less no. of vehicles to which more than one emblem issued and duplicate fees (semi annual, second six months)	[4,068]	[11,742.00]	[4,169]	[11,973.50]
Approximate no. of vehicles to which emblems were issued and approximate revenues if duplicate fees were not paid	19,244	$55,521.00	20,951	$60,331.25

Sources: Investigation and compliance section; public utilities division and fiscal division, department of regulatory agencies, State of Hawaii.

The third thing revealed by table 7.3 is, as stated earlier, that no trailer is being inspected on a semi-annual basis although by statute and General Order No. 2 all vehicles in use ten years or more from the date of their manufacture require semi-annual inspections.

Finally, table 7.3 indicates that there were approximately 4068 vehicles in 1972 and 4169 vehicles in 1973 for which double fees were charged in violation of HRS, section 271–36(a). This is on the assumption that most of the emblems sold for the second half of each year at the $3 rate were for vehicles for which emblems at the $3 rate had already been purchased in the first half of the year. In terms of total excess charges for the two years, these amounted to approximately $12,204 in 1972 and $12,507 in 1973, if the number of doubly charged vehicles is multiplied by $3.

Recommendations. *We recommend:*

1. That the double assessment of emblem fees for vehicles issued on a basis more frequently than once a year be terminated.

2. That the practice of discriminating in favor of government-owned vehicles be ceased.

3. That a system be devised to prevent the unauthorized issuance of safety emblems.

4. That the PUC and PUD enforce the requirement that all vehicles, including trailers, in use more than ten years from the date of manufacture be inspected semi-annually.

Other fees–vehicle major modification fee. The PUC and PUD are responsible for collecting a number of other fees, but attention is focused here on only one of them–namely, the so-called vehicle major modification fee.

HRS, section 271–9(a)(6), places in the PUC and PUD responsibility over vehicle major modifications as follows:

> "To review and approve all plans and specifications for the construction in the State or modification of motor vehicles which will at any time be operated upon the highway by common carriers, contract carriers or private carriers of property."

Pursuant to this provision, the PUC has adopted rules and regulations on the subject in its General Order No. 2. The affected sections of the general order are section 1.40 and section 10.14(c)6. Section 1.40 sets forth the general requirement for obtaining agency approval for vehicle modifications and reads as follows:

> "MODIFICATION OF MOTOR VEHICLE.
>
> "(a) All carriers covered by this order will notify this Commission, in writing, of any modification of any vehicle which has been previously issued a safety decal; and
>
> "(b) Any major modification, construction or reconstruction of the body of any vehicle must have prior approval of this Commission. Description of change, together with detailed plans and specifications, must be submitted in writing."

Section 10.14(c)6 sets the fee that must be paid when an application for a vehicle modification approval is submitted, and stipulates as follows:

> "Approval of plans and specifications for major modification, construction or reconstruction of a motor vehicle or a group of motor vehicles (Section 1.40 (a) and (b) – $50.00."

The PUC and PUD are failing abysmally to fulfill their responsibilities and to perform effectively in this area. This applies both to the substantive work to be handled and to the fiscal controls and responsibilities involved. Elsewhere in this report we detail the many deficiencies in

the procedures for approving plans and specifications for modifications of vehicles. The emphasis here is to point up the deficiencies in the area of fiscal policies and procedures.

There are basically two serious deficiencies regarding the vehicle major modification fee. The first of these is the failure to follow rules and regulations by not imposing the fee on all carriers filing applications with the agency. This not only deprives the State of income to which it is entitled, but it is also highly discriminatory. The second deficiency, and this is one with fairly significant financial implications, is the agency's almost complete failure to fulfill its duties. The result is that a vast majority of the vehicles being modified are not brought to the attention of the PUC and PUD and escape altogether paying the $50 application fee specified in General Order No. 2.

*1. **Discriminatory application of rules and regulations.*** Concerning the first deficiency, the agency has consistently disregarded the provisions of General Order No. 2 ever since they were adopted and has only imposed this fee upon common and contract carriers while completely exempting private carriers. When queried on the point, no one within the agency could explain why the fee had not been imposed upon private carriers nor provide any rationale or justification for such discriminatory treatment. The only comment offered was to the effect that this is the way the two types of carriers had always been treated.

Over the years, very few applications for vehicle major modifications have been filed with the agency, but the bulk of these is made up of those filed by private carriers. Thus, of the limited number of applications being handled, the agency is allowing a major proportion to be filed without payment of the required fee. In fiscal year 1971–1972, the agency received only $200 in vehicle major modification fees and in 1972–1973 the amount was only $150. During the same two-year period, however, the agency actually processed 32 applications which should have produced $1600 in income to the agency if the $50 fee had been collected on each application. This means the agency failed to collect a total of $1250 which should have been collected during this period, or 78 percent of the total fees due under this category. Although the amounts are relatively small, the principle of the matter is important. The amounts could be significant if the agency were processing applications for all vehicles actually being modified.

*2. **Failure to ensure compliance with approved requirements.*** A much more serious deficiency is the agency's failure to make sure that applications are filed for prior approval of all vehicle modifications. The purpose of this requirement is, of course, to ensure that the modifications do not significantly detract from the safety of the vehicle being modified. That is, the objective of the agency in this area is not to raise revenues but to contribute to the promotion of public safety. Nevertheless, since the law also provides for the imposition of reasonable fees for the processing of such applications, the failure to enforce the requirement for the filing of applications results in a loss of income to the State.

While it is impossible to determine with any great accuracy how many vehicles are being modified each year without the expenditure of more resources than we had available to us for this study, we did uncover enough data to indicate that very substantial numbers of vehicles are being modified annually—probably numbering at least several hundred each year. Considering the agency only processes a dozen or so applications each year, this means it may be failing to exert jurisdiction over more than 90 percent of the vehicles falling into this category for which it has a regulatory responsibility. If it is assumed that the number of vehicles being modified each year is only 200 (which is probably a conservative estimate), then this means that the agency should be taking in $10,000 annually from this source instead of the $100 to $200 being obtained. Of much deeper concern than the dollars lost, of course, is the fact that there are now probably thousands of modified vehicles on Hawaii's highways which should have been evaluated for the safeness of

the changes made but which have not been so evaluated.

Recommendations. *We recommend:*

1. That payment of the fee prescribed by PUC General Order No. 2 be required for all applications for approval of vehicle modifications.

2. That the PUC and PUD take such steps as are necessary to ensure that applications for approval are filed for all modifications to vehicles under the PUC jurisdiction.

Assessment and collection of penalties. The imposition of penalties for failure to comply with agency requirements represents the exercise of sanctions in order to strengthen and increase the effectiveness of enforcement procedures and thereby achieve compliance with such requirements. However, the meaningfulness and effectiveness of the sanctions themselves can be seriously compromised and undermined if the sanctions are only threatened and seldom or never actually exercised and implemented. In other words, sanctions are likely to be most effective if those subject to them are convinced that they will be quickly and swiftly imposed whenever infractions of the rules are detected. Regrettably, agency performance in this area is no better, and may be worse, than it is in all other areas of responsibility pertaining to financial management.

*1. **Discrepancies in availability of penalties in the utilities field and the transportation field.*** Severe discrepancies exist between the availability of monetary penalties in the public utilities field and their availability in the motor carrier area. In the public utilities area, there is a virtual nonavailability, whereas in the motor carrier area, stiff penalties are possible (e.g., $100 for the first offense plus $50 per day for continuing offenses). This is not to say, however, that the agency is powerless to impose fines in the public utilities area; simply that it is not as easy as in the case of motor carriers. HRS, section 269–28, provides for fines up to $1000 for violations of the provisions of HRS, chapter 269, or any lawful orders of the commission. However, such fines cannot be imposed directly, but must be sought through court action. No policies or procedures have been developed by the agency to implement and carry out this provision so as to give it any real meaning.

That there may be a real need for and value of imposing penalties in the public utilities area is evidenced by the fact that: (a) for both 1971 and 1972, 11 of 13 utility companies were delinquent in filing their annual financial reports with the agency (including one which was approximately seven months late) and (b) for the utility fees due in July 1972, two companies were delinquent (one by about a month and the other by about three months). These were violations by companies which gross millions of dollars annually and the operations of which vitally affect much of Hawaii's population and economic well-being. By contrast, a motor carrier with one vehicle and grossing less than $25,000 annually can be assessed fines amounting to thousands of dollars for the same offenses.

*2. **Extreme leniency in the imposition of penalties.*** Even in the motor carrier area, however, where fairly substantial penalties are provided and where there is always the ultimate threat available to the agency of suspending or revoking a carrier's operating rights, we have found that the agency appears extremely reluctant to invoke the penalties prescribed and require their payment. By way of illustration, our examination of the treatment of financial reporting violations reveals that the agency has been extremely lenient in accommodating the carriers which are chronic violators of the reporting requirements. We found, for instance, numerous carriers whose records showed a pattern over the years of habitual delinquency continuing to be given extensions of several months beyond the due dates to comply with the requirements without incurring any penalty for each new violation.

For example, one carrier failed to file financial reports for December 31, 1971 and

June 30, 1972 (due on April 15, 1972 and August 15, 1972, respectively) but was granted an extension to October 31, 1972 to comply without penalty. This particular carrier had at the time a long history of violations for nonfiling or late filing of required financial reports, including specific violations in 1962 and 1963 and for each year between 1966 and 1970. By December 31, 1972, the carrier still had not complied, and it was only at that time that the staff requested the commission to issue an order to the carrier to show cause why its operating authority should not be suspended, changed, or revoked for failure to comply with commission requirements.

In another case, the carrier was delinquent in submitting required reports due on February 15, 1971, April 15, 1971, and August 15, 1971, but was granted an extension to September 23, 1971, to comply despite the fact that it had previously had its operating authority revoked for failure to comply and had been delinquent in filing the required reports for the prior year. Thus, for three consecutive years the carrier had been delinquent in meeting this requirement. Even the granting of the extension to September 23, 1971, did not cause the carrier to submit its report by that date because on January 3, 1972 (more than three months after the expiration of the extended due date) the staff had to go to the commission to request the issuance of a new show cause order against the carrier for this latest violation.

The tendency to be overly lenient persists even after the formal decision to invoke sanctions is made. Under section 271–27(g) of the Hawaii Revised Statutes, the penalty for violations is set at $100 for each offense, and for continuing offenses up to $50 per day may be charged. The penalty becomes due when the offender is advised in writing of the offense and that the penalty is due. The commission may, however, upon written application received within 15 days remit or mitigate any penalty on such terms as it may deem proper. This provision would seem to restrict the commission's authority to remit or mitigate fines to those cases where applications for relief are received within 15 days after notice has been served. In fact, however, it frequently makes substantial reductions in the fines that must be paid, and in doing so disregards the 15-day limitation. By way of a specific example, one carrier filed a delinquent financial report to the commission on September 24, 1971, and was advised on October 6, 1971 that a fine of $900 was due, but that a request for mitigation could be filed within 15 days. The company made no attempt to pay the fine nor to seek mitigation of the imposition of the fine, but on November 16, 1972, the commission ordered the payment of $100 of the fine and suspended the $800 balance. The company finally paid the $100 on December 18, 1972, more than 14 months after being informed that it was being fined $900. In another case, the carrier was assessed a penalty of $1200 for the late filing of its financial report but was given the usual 15 days within which to request a mitigation of the fine. The company failed to pay the fine or to seek relief so that the staff finally recommended that a show cause order be issued to recover the fine. The commission's ultimate action, however, was to fine the company only $100 and to suspend the $1100 remainder of the penalty.

The commission has from time to time considered adopting a policy regarding the payment of fines for the first, second, and third offenses, but has yet to implement its declared intentions of strictly enforcing the prescribed penalties. When confronted with actual decisions on such questions, the general tendency has been to impose only a light penalty (usually $100) and to waive the remainder (sometimes amounting to several thousand dollars). Similarly, the staff has been overly lenient in granting extensions and has failed to follow up on cases involving repeated and continuing violations of agency requirements. The result is that carriers can continue doing what they had been doing for long periods of time without any real fear of retribution on the part of the regulatory agency.

*3. **Failure to add interest charges to penalty payments.*** Section 10.14(g) of General Order No. 2 provides as follows:

"PENALTY FOR NONPAYMENT OF FEES. On or before the due date of the payment of any fees, as listed, all motor carriers shall pay to the Commission the amount of fees due from them. There shall be added to the fee as a penalty a sum equal to 10% of the amount so due and unpaid but not less than $5.00 on all delinquent accounts.

"Fees and penalties not paid within 15 days of the due date shall result in an interest payment of 8% per annum on the unpaid balance. Failure to pay the fee, penalties and interest shall result in legal action to enforce payment."

Despite this general order, the agency never calculates and assesses the 8 percent interest charge. When queried on this point, the agency stated that the main reason for not imposing this interest charge is that such small amounts were involved that it was not considered worth the time to calculate the interest. Presumably, based upon this reasoning, if significant amounts should be involved, then the extra charge would be calculated. This would, of course, be an unequal application of the rule. Apart from this, however, considering the agency has a staff of auditors, it should be no great burden to calculate the 8 percent interest charge. Or, if it is, then the rule should be changed to eliminate the requirement.

Recommendations. *We recommend:*

1. HRS, chapter 269, be amended to provide for easier and more direct assessment of penalties for violations by public utilities.

2. The PUC and PUD more strictly enforce the penalties and interest charges provided by law for violations by motor carriers.

PART III

RESPONSES OF THE AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this audit was transmitted to the public utilities commission and to the department of regulatory agencies for their comments on the findings and recommendations contained in the report. A copy of the preliminary draft was also sent to the attorney general for his review.

A copy of the transmittal letter to the public utilities commission is included as attachment 1 of this part. A similar letter was sent to the director of the department of regulatory agencies. The letter to the attorney general left to his discretion whether or not to submit any written comments on the report.

The responses of the public utilities commission and of the department of regulatory agencies are included as attachments 2 and 3 of this part. Although the attorney general has not submitted any written comments on the report, in an informal discussion with us he has indicated that the various findings and recommendations relevant to his department are being considered for possible implementation.

We are pleased to note that both the public utilities commission and the department of regulatory agencies are in substantial agreement with the findings and recommendations of the audit and are ready to proceed with the implementation of the recommendations as expeditiously as possible. We especially wish to commend the agencies for the procedural changes already inaugurated whereby they have been able to speed up action on some of the major rate cases handled since the completion of the audit.

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

ATTACHMENT NO. 1

CLINTON T. TANIMURA
AUDITOR

March 5, 1975

Mr. Lorrin W. Dolim, Chairman
Public Utilities Commission
State of Hawaii
Honolulu, Hawaii

C O P Y

Dear Mr. Dolim:

Enclosed are five copies of our preliminary report on the *Management Audit of the Public Utilities Program, Volume I, The Organization for and the General Management of the Public Utilities Program.*

The term "preliminary" indicates that the report has not been released for general distribution. Copies of the report have been distributed to the governor, the presiding officers of both houses of the legislature, the director of regulatory agencies, and the attorney general.

The report contains a number of recommendations. I would appreciate receiving your written comments on the recommendations directed to the commission, including information as to the specific actions that have been taken or will be taken with respect to the recommendations. Please have your written comments submitted to us by March 17, 1975. Your comments will be incorporated into the report and the report will be finalized and released shortly thereafter.

If you wish to discuss the report with us, we will be pleased to meet with you, at our office, on or before March 12, 1975. Please call our office to fix an appointment. A "no call" will be assumed to mean that a meeting is not required.

We appreciate the assistance and cooperation extended to us during the examination.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

[Note: A similar letter was sent to the director of the department of regulatory agencies.]

ATTACHMENT NO. 2

GEORGE R. ARIYOSHI
GOVERNOR

WAYNE K. MINAM
EDWIN H. HONDA
DIRECTOR OF REGULATORY AGENCIES

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF REGULATORY AGENCIES
P. O. BOX 541
HONOLULU, HAWAII 96809

RECEIVED
MAR 17 1975
OFFICE OF THE AUDITOR
STATE OF HAWAII

March 14, 1975

Mr. Clinton T. Tanimura,
Legislative Auditor
The Office of the Auditor
STATE OF HAWAII
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Responding to your March 5 letter inviting our comments on your recommendation contained in the management audit, attached is our report.

Pending the Legislature's final decision on your recommendations, in cooperation with the PUD and DRA, we will expedite the corrections of the deficiencies noted in your findings.

Please accept our sincere congratulations on the thorough audit and your sensible recommendations.

Sincerely,

Lorrin W. Dolim

Lorrin W. Dolim,
Chairman

THE ORGANIZATION FOR HAWAII'S PUBLIC UTILITIES PROGRAM

RECOMMENDATIONS:

1. That the basic utility laws be overhauled. HRS, chapter 269, and any other related parts of the Hawaii Revised Statutes should be amended by:

a. Sorting out the activities now performed in the name of public utility regulation and reassigning responsibility for the various activities as follows:

(1) The public utilities commission be vested with full authority (policy-making, adjudicatory, and administrative) over those activities with economic objectives; and

(2) Other state agencies performing similar functions be assigned those activities having noneconomic objectives. Specifically, the function of ensuring the safe operable condition of motor carriers should be assigned to the highway safety coordinator for standards and to the county police departments for enforcement; the activity to ensure the safe working conditions for employees should be assigned to the department of labor; and certification and licensing of the kind necessary to protect consumers should be assigned to the director of regulatory agencies. Activities relating to ensuring the safety of the general public with regard to public utility operations should also be transferred to the department of labor. This latter action will require an expansion of the labor department's authority and responsibility, however, but a precedent has already been set in this respect relative to construction sites and amusement rides.

b. Excluding the sale, lease, installation, and maintenance of telephone interconnect systems from regulation by the public utilities commission.

c. Deregulating motor carriers except as to their safety aspect, the responsibility for which should be assigned as recommended above.

PUC COMMENTS:

We endorse the recommendations of Chapter 4 with the following exception:

(2) b. We feel that interconnect should be regulated rather than deregulated. Deregulation would not be in the public interest because of the many service and other problems that would arise.

d. Assigning the responsibility for the regulation of privately owned water supply and sewage disposal systems to the counties.

e. Placing the staff for the public utilities commission directly under the supervision and control of the commission rather than the director of regulatory agencies and providing the director with such staff as necessary to assist him in the discharge of his functions to represent consumer interests in proceedings before the commission.

2. That the public utilities commission engage its own counsel and the attorney general represent only the director of regulatory agencies.

3. That the state department of budget and finance, together with the department of regulatory agencies, amend the state program structure to reflect the economic objectives of utility regulation and place the regulation of public utilities in a category which is in harmony with such objectives.

Recommendation. We recommend that cable television be placed under the jurisdiction of the public utilities commission.

Recommendation. We recommend that the public utilities commission be made a full-time body and the number of members and their terms of office be determined on the basis of whether a body of experts or a representation of the populace is desired.

Recommendation. We recommend that the public utilities commission be transferred out of the department of regulatory agencies and be assigned for administrative purposes to the department of planning and economic development.

POLICIES AND PROCEDURES OF HAWAII'S PUBLIC UTILITIES PROGRAM: A GENERAL ASSESSMENT

RECOMMENDATIONS:

We recommend:

1. That the PUC establish a system for the development and maintenance of current comprehensive and integrated rules:

2. That rules be established for the various facets of its regulatory responsibilities, including rules on the internal operations of the PUD, so as to enable the PUC and the PUD to perform effectively and efficiently; and

3. That the PUC give its rule-making function the attention it deserves.

PUC COMMENTS:

We agree with the recommendations in Chapter 5 without exception.

INTERNAL ORGANIZATION FOR REGULATING PUBLIC UTILITIES

RECOMMENDATIONS:

1. That the PUD disband the unofficial organization and that it follow the prescribed procedures outlined in Administrative Directive No. 12 in all future reorganization of the PUD.

2. That the director of regulatory agencies fill the vacancy in the position of executive director of the PUD as rapidly as possible.

3. That pending the filling of the vacancy in the position of executive director, the director of regulatory agencies and the interim of acting executive director provide the leadership to pull the staff of the PUD together.

Recommendation. We recommend that the director of regulatory agencies cause the official descriptions of the various positions in the PUD to be brought up to date. Such descriptions should accurately describe the duties and responsibilities of each position. In developing the position descriptions, our findings and recommendations contained in other parts of this report should be consulted and incorporated.

PUC COMMENTS:

We agree with each of the recommendations in Chapter 6 with the exception that if the full-time commission is effected then we maintain the recommendations be the function of the PUC.

Recommendations

We recommend as follows:

1. That the director of regulatory agencies and the PUD, in consultation with the department of personnel services, develop in-service training programs to upgrade the skills and competencies of the staff of the PUD.

2. That in the position descriptions to be developed, the skills and qualifications required for each position in the PUD be carefully delineated to ensure that qualified personnel are hired for these positions in the future.

3. That the attorney general develop expertise in his office in public utility matters in order that the need for continuous retaining of outside counsel may be obviated.

Chapter 7

RECORDS AND FINANCIAL MANAGEMENT

RECOMMENDATIONS:

Recommendations. We recommend that immediate steps be taken to review and reform the PUD's present records management and information handling system with the objective of providing the agency with basic source materials that will be accurate, up-to-date, and readily accessible for use in carrying out the various functions and activities of the public utilities program. Such an effort must be closely coordinated with any efforts to revise and overhaul the general systems and procedures of the agency.

We further recommend that clear responsibility be fixed for the development and maintenance of records management and information handling systems within the PUD and that the role of the office services section relative to these areas of responsibility be properly defined and provided for in terms of staffing resources, training, and overall management supervision and control.

Recommendation. We recommend that all practices relating to the docketing of PUC matters be brought immediately into conformity with all legal and procedural requirements and that effective controls be established forthwith for maintaining an accurate and continuously up-to-date accounting of all matters filed with the PUC. This includes: (1) actually docketing under one system all matters requiring PUC action, (2) establishing definite and formal means of opening and closing specific dockets, (3) developing a system for reporting continuously the current status of all dockets filed with the PUC, and (4) devising an effective indexing system for cross-referencing all dockets, orders, and decisions and orders of the PUC.

PUC COMMENTS:

We agree with each of the recommendations contained in Chapter 7 without exception.

Recommendations. We recommend:

1. that the PUD develop a system for data-gathering and statistical reporting which will generate accurate, reliable, and useful information to assist in the management of the public utilities program;

2. that steps be taken to pinpoint responsibility for the development and maintenance of the system; and

3. that statistical analytic capabilities be upgraded in the PUD; one way to do this being to provide in-service training of its staff.

Recommendations: The foregoing improper payments to the commissioners have occurred primarily as a result of uncertain policies, malleable guidelines, and haphazard procedures. Thus, some fundamental changes in the policies and procedures of the agency are required to avoid repetition of the above-described conditions. We recommend:

1. that the PUC develop and adopt clear fiscal policies and procedures relating to the payment of compensation and expenses to the commissioners, including the system to be used in maintaining accurate records on the expenses incurred by individual commissioners; and

2. that the attorney general continue his efforts and take such steps as necessary to bring about the fullest extent possible the restitution of the State of the losses it has suffered from the clearly illegal payments made in the past.

Recommendations: We recommend that

1. The PUC and the PUD collect the gross weight fee in the manner and in the amounts provided by law. Should the application of such fee to any industry be judged to be infeasible or inequitable, that proper legislation to amend the statute be prepared for consideration by the legislature. Pending such statutory change, however, the PUC and the PUD should adhere to the requirements of the law.

2. Procedures be instituted within the PUD whereby an accurate count of the vehicles and carriers subject to the jurisdiction of the PUC and the PUD may be secured and maintained.

3. A system be instituted whereby the gross weight reported by the carriers may be verified, at least on a sampling and periodic basis.

Recommendations. We recommend:

1. That the double assessment of emblem fees for vehicles issued on a basis more frequently than once a year be terminated.

2. That the practice of discriminating in favor of government-owned vehicles be ceased.

3. That a system be devised to prevent the unauthorized issuance of safety emblems.

4. That the PUC and PUD enforce the requirement that all vehicles, including trailers, in use more than ten years from the date of manufacture be inspected semi-annually.

Recommendations. We recommend:

1. That payment of the fee prescribed by PUC General Order No. 2 be required for all applications for approval of vehicle modifications.

2. That the PUC and PUD take such steps as are necessary to ensure that applications for approval are filed for all modifications to vehicles under the PUC jurisdiction.

Recommendations. We recommend:

1. HRS, chapter 269, be amended to provide for easier and more direct assessment of penalties for violations by public utilities.

2. The PUC and PUD more strictly enforce the penalties and interest charges provided by law for violations by motor carriers.

ATTACHMENT NO. 3

GEORGE R. ARIYOSHI
GOVERNOR

WAYNE MINAMI
DIRECTOR
BANK EXAMINER
COMMISSIONER OF SECURITIES
FIRE MARSHAL
INSURANCE COMMISSIONER

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF REGULATORY AGENCIES
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

March 14, 1975

RECEIVED
MAR 14 1975
OFFICE OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for your letter of March 5, 1975 wherein you invite our written comments on recommendations made in your office's management audit of the public utilities program.

We agree with the general concepts contained in the audit and will begin implementation of many of the recommendations. Some of the recommendations require additional in-depth study and discussions before they can be implemented. Priorities will be established as necessary and the staffing and funding must be secured for certain changes.

We have not addressed ourselves to each specific recommendation in the audit. Instead, we concentrated on recommendations addressed to the Public Utilities Division (hereafter PUD).

Chapter 4 - Organization and General Management

1. That the basic public utility laws be "overhauled" to reflect:

   a. appropriate assignment of activities to the PUC.

b. appropriate assignment of activities to other State agencies or the counties.

c. possible deregulating of certain activities.

d. staffing requirements of both the PUC and the Director of Regulatory Agencies.

Comments:

We agree with recommendations a and b as noted above, and will review the activities of both, keeping in mind the economic and non-economic objectives of the activities.

We will give serious consideration to the arguments set forth for deregulating motor carriers and excluding the telephone interconnect systems from regulation.

Much of the criticism of the PUD personnel is based on the confusion of roles: is the personnel to serve as staff of the PUC or as staff of the Director of Regulatory Agencies in representing the consumer. We welcome the Auditor's recommendation that the PUC and its need for staff be considered separate and apart from the Director's need for staff.

2. That the state program structure be amended to reflect the economic objectives of utility regulation.

Comment:

We will pursue this recommendation with the Department of Budget and Finance.

3. That the Cable Division be placed under the jurisdiction of the Public Utilities Commission.

Comment:

This matter should be studied further to see if the Legislature's goal of efficiency and the need to expedite action in this area has been accomplished.

4. That the Public Utilities Commission be made a full-time body.

Comment:

We agree that there should be a full-time Public Utilities Commission and have submitted administrative bills to that effect to the 1975 Legislature. We agree that the Public Utilities Commission should be placed in a department other than the Department of Regulatory Agencies. Such placement will recognize the differing objectives of the PUC and the PUD and facilitate the process of dividing the activities which at the present time are collectively grouped in this department.

Chapter 5 - Policies and Procedures

1. That the PUC give its rule-making functions the attention it deserves and establish a system for the development and maintenance of current comprehensive and integrated rules in the various facets of its regulatory responsibilities, including rules on the internal operations of the PUD.

Comment:

We agree with the above recommendations. With reference to the regulatory lag or delay, we call your attention to new procedures instituted in Gasco, Inc.'s application for rate increase in mid-1974. At the prehearing conference held immediately after the public hearing, deadlines were set for the submission of requests for information, formal exhibits and testimonies by the parties and rebuttal exhibits and testimonies. Hearing dates were also set at the prehearing conference. At the hearing, testimony was limited to cross-examination on the written testimony submittals. This procedure greatly expedited the decision on the application.

Work on a general procedural manual for handling various matters in the PUD has already been commenced.

Chapter 6 - Internal Organization of the Public Utilities Commission

1. That the PUD disband the unofficial organization and follow the prescribed procedure in all future reorganization.

Comment:

Steps have been taken to define functional responsibilities and duties. Future reorganization of the Division will be in accordance with the prescribed procedures.

2. That the Director of Regulatory Agencies fill the vacancy in the position of executive director of the PUD as rapidly as possible. In the interim, the Director of Regulatory Agencies and the Acting Executive Director provide the leadership to pull the staff of the PUD together.

Comment:

Although we have sought candidates for the position, the extensive and varied responsibilities of the position have limited the field of candidates.

The audit's finding that there is a lack of cohesion and coordination in the PUD is not entirely correct. While the charge may be true in certain cases, rate increase proceedings have been and cannot help but be a team project. In order to present a unified position before the PUC, the testimonies prepared by the different branches must be coordinated. Cross-examination of PUD staff members by utility counsel has also made coordination imperative.

There are other statements in the chapter which we question. In some cases, new procedures have already been implemented. In others, we draw differing conclusions in assessing the efforts of the various branches.

3. That position descriptions be updated.

Comment:

New position descriptions for clerical positions and the chief clerk were submitted to the Department of Personnel Services in 1974. Other position descriptions will be revised to reflect the duties and responsibilities of each position.

4. That in-service training programs be developed for the staff of the PUD.

Comment:

We agree with this recommendation. In August 1974, an in-service training program for PUD was submitted to the Department of Personnel Services. Follow-up on this submittal has been made. Additions to the original program are being prepared in accordance with the recommendations of the audit.

Chapter 7 - Records and Financial Management

1. a. That immediate steps be taken to

i. review and reform the PUD's present records management and information handling system.

ii. develop a system for data-gathering and statistical reporting.

b. That responsibility for developing and maintaining the above two systems be pinpointed.

Comment:

We agree with the above recommendation. Procedures will be instituted in accordance therewith.

separation is accomplished, each can pursue its goals and objectives without being subject to compromises or delays. Your recommendation that the PUC be made full-time is welcomed as an initial step in this process. Separation of these functions, however, requires the development of a comprehensive legislative and administrative program by both the PUC and the PUD. The PUD will give this top priority. An early resolution by the Legislature of the question of whether the PUC should be full or part-time will obviously facilitate this goal.

The Public Utilities Division faces a tremendous workload in implementing the recommendations contained herein. However, we are willing to make that effort since we believe the eventual organization will be better for the people of this State.

In a more personal note, I might add that much of the criticism of the efforts of the PUD employees is a result of the basic organizational ambiguity between the Director of Regulatory Agencies and the PUC. In my years in state government, I have not seen a group of employees who are more dedicated to public service than the PUD employees. They work under the pressures of deadlines and they respond without complaint. They are dedicated to doing what is best for the people of Hawaii and I am sorry that your audit did not include this observation.

Very truly yours,

Wayne Minami

Wayne Minami
Director

APPENDICES

APPENDIX A

MAJOR STATE SERVICES

Regulatory Functions of State Public Utility Commissions

State or other jurisdiction	*Commissions have jurisdiction over rates of privately owned utilities rendering the following services*												
	Transportation										*Communications*		
	Street railways	*Inter-urban railways*	*Motor buses*	*Motor trucks*	*Electric light and power*	*Manufactured gas*	*Natural gas*	*Water*	*Oil pipeline*	*Gas pipeline*	*Telephone*	*Telegraph*	*CATV*
Alabama	(a)	(a)	(b)	(b)	(c)	(a)	*	*	–	–	*	*	–
Alaska†	(d)	(d)	(d)	(d)	*	*	*	*	(e)	*	*	*	*
Arizona	(a)	(a)	*	*	*	*	*	*	*	*	*	*	–
Arkansas†	(d)	(d)	(d)	(d)	*	*	*	*	(d)	*	*	*	–
California	*	*	*	*	*	*	*	*	*	*	*	*	–
Colorado†	*	*	*	*	*	*	*	*	*	*	*	*	–
Connecticut†	(a)	(a)	*	*	*	(a)	*	*	*	*	*	*	*
Delaware	*	*	*	–	*	*	*	*	–	–	*	*	–
Florida	–	*	*	*	*	–	*	*(f)	–	–	*	*	–
Georgia	–	–	*	*	(c)	*	*	–	–	*	*	*	–
Hawaii	–	–	*	*	*	*	–	*	–	–	*	–	(d)
Idaho	(a)	*	*	*	(c)	(a)	*	*	*	*	*	*	–
Illinois	(a)	*	*	*	*	(a)	*	*	(f)	(f)	*	*	–
Indiana†	*	*	*	*	*	*	*	*	–	*	*	*	–
Iowa†	–	*	*	*	*	*	*	*	–	–	*	*	–
Kansas†	*	*	*	*	*	–	*	*	*	*	*	*	(g)
Kentucky	–	–	(d)	(d)	*	*	*	*	*	*	*	*	–
Louisiana	*	*	*	*	*	*	*	*	(h)	(f)	*	*	–
Maine†	(a)	(a)	*	*	*	*	*	*	–	*	*	*	–
Maryland†	(a)	(a)	*	*	*	*	*	*	–	–	*	*	–
Massachusetts†	*	*	*	*	*	*	*	*	–	–	*	*	(d)
Michigan†	(a)	(a)	*	*	*	*	*	*	*	*	*	–	–
Minnesota†	(a)	(a)	*	*	–	–	–	–	–	–	*	–	(d)
Mississippi	–	*	*	*	(c)	–	*	*	–	(f)	*	*	–
Missouri	(a)	(a)	*	*	(c)	(a)	*	*	–	*	*	*	–
Montana†	*	*	*	*	(c)	*	*	*	*	*	(c)	*	–
Nebraska	–	*	*	*	*	–	–	–	(h)	(h)	*	*	–
Nevada	(a)	(a)	*	*	*	–	*	*	*	*	*	*	*
New Hampshire†	(a)	(a)	*	*	*	*	*	*	*	*	*	*	–
New Jersey†	*	*	*	–	*	*	*	*	*	*	*	*	*
New Mexico†	(d)	(d)	(d)	(d)	*	*	*	*	(d)	(d)	(d)	(d)	–
New York†	(d)	(d)	(d)	(d)	*	*	*	*	–	*	*	*	(d)
North Carolina	–	–	*	*	(c)	*	*	*	*	*	(c)	*	–
North Dakota	(a)	*	*	*	(c)	(a)	*	(a)	*	*	*	*	–
Ohio	–	(b)	(b)	(b)	(i)	(i)	(i)	(i)	*	*	*	–	–
Oklahoma	(a)	*	*	*	*	–	*	*	*	*	*	*	–
Oregon	*	*	*	*	*	*	*	*	–	–	*	*	–
Pennsylvania†	*	*	*	*	*	*	*	*	*	*	*	*	–
Rhode Island†	*	*	*	*	*	*	*	*	–	*	*	*	*
South Carolina	*	*	*	*	*	*	*	*	–	*	*	*	–
South Dakota†	–	*	*	*	–	–	–	–	–	–	*	*	–
Tennessee	–	*	*	*	*	*	(j)	*	–	–	*	*	–
Texas	–	*	*	*	–	–	*	–	*	*	–	–	–
Utah	*	*	*	*	*	*	*	*	–	*	*	*	(f)
Vermont†	*	*	*	*	*	*	*	*	–	*	*	*	*

MAJOR STATE SERVICES

Regulatory Functions of State Public Utility Commissions (*Continued*)

State or other jurisdiction	*Commissions have jurisdiction over rates of privately owned utilities rendering the following services*												
	Transportation										*Communications*		
	Street railways	*Inter-urban railways*	*Motor buses*	*Motor trucks*	*Electric light and power*	*Manufactured gas*	*Natural gas*	*Water*	*Oil pipeline*	*Gas pipeline*	*Telephone*	*Telegraph*	*CATV*
Virginia	*	*	*	*	*	*	*	*	–	*	*	*	–
Washington†	(a)	(a)	*	*	*	*	*	*	*	*	*	*	–
West Virginia†	(a)	(a)	*	*	*	*	*	*	*	*	*	*	–
Wisconsin†	(a)	(a)	*	*	*	*	*	*	–	*	*	*	–
Wyoming†	(a)	(a)	*	*	*	*	*	*	*	*	*	*	–
District of Columbia	–	–	*	–	*	*	*	–	–	*	*	*	–
American Samoa	–	–	*	–	–	–	–	–	–	–	–	–	–
Puerto Rico†	(a)	(a)	*	*	–	*	*	*	*	*	*	(a)	–
Virgin Islands	–	–	*	–	–	–	–	–	–	–	–	–	–

†Commission regulates some aspect of municipally owned public utilities.

(a) Statute confers jurisdiction but no utility now renders this service.

(b) Jurisdiction applies only to operations outside of corporate limits not contiguous. In Ohio exemption from regulation applies when the transportation line is wholly within a municipality and its immediately contiguous municipalities.

(c) Authority does not extend to rural electric cooperative units. Mississippi: except for service areas; Missouri: operational safety only except for full authority over a few requesting cooperatives; North Carolina: service areas where there is found to be discrimination as to rates or service.

(d) Regulated by another governmental unit. Alaska: Transportation Commission; Arkansas: Commerce Commission; Hawaii: Dept. of Regulatory Agencies; Kentucky: Dept of Motor Transportation; Massachusetts: CATV Commission; Minnesota: CATV Commission; New Mexico: Corporation Commission; New York: Dept. of Transportation, Commission on CATV.

(e) Jurisdiction is limited to those situations wherein the consumer has no alternative in his choice of supplier of a comparable product and service at an equal or less price.

(f) Limited jurisdiction. Florida: in some counties at the request of county commission; Illinois, Louisiana, Mississippi: natural gas pipelines; Utah: attachment to utility poles.

(g) Jurisdiction over radio common carriers.

(h) If common carrier.

(i) Original jurisdiction in unincorporated areas, within corporate limits upon appeal.

(j) Local distribution only.

Source: *The Book of the States, 1973–74*, Volume XX, The Council of State Governments, Lexington, Kentucky, 1974.

APPENDIX B

Public Utility Regulatory Commissions of the Various States

Commission	Original Statute	Present Statute
Alabama Public Service Commission	1881	1915
Alaska Public Service Commission	1960	1963
Alaska Transportation Commission	1966	1966
Arizona Corporation Commission	1911	1912
Arkansas Commerce Commission	1957	1957
Arkansas Public Service Commission	1899	1935
California Public Utilities Commission	1879	1912
Colorado Public Utilities Commission	1907	1914
Connecticut Public Utilities Commission	1853	1911
Delaware Public Service Commission	1949	1949
District of Columbia Public Service Commission	1913	1913
Florida Public Service Commission	1887	1951
Georgia Public Service Commission	1879	1922
Hawaii Public Utilities Commission	1913	1913
Idaho Public Utilities Commission	1913	1951
Illinois Commerce Commission	1871	1921
Indiana Public Service Commission	1913	1933
Iowa State Commerce Commission	1878	1963
Kansas State Corporation Commission	1911	1933
Kentucky Department of Motor Transportation	1924	1934
Kentucky Public Service Commission	1934	1934
Kentucky Railroad Commission	1880	1934
Louisiana Public Service Commission	1898	1921
Maine Public Utilities Commission	1858	1914
Maryland Public Service Commission	1910	1910
Massachusetts Department of Public Utilities	1869	1919
Michigan Public Service Commission	1909	1919
Minnesota R. R. and Warehouse Commission	1871	1911
Mississippi Public Service Commission	1884	1938
Missouri Public Service Commission	1875	1913
Montana Board of Railroad Commissioners	1907	1913
Nebraska State Railway Commission	1906	1906
Nevada Public Service Commission	1907	1919
New Hampshire Public Utilities Commission	1844	1911
New Jersey Bd. of Public Utilities Commission	1911	1911
New Mexico Public Service Commission	1941	1941
New Mexico State Corporation Commission	1912	1941
New York State Public Service Commission	1907	1921
North Carolina Utilities Commission	1891	1949
North Dakota Public Service Commission	1889	1919
Ohio Public Utilities Commission	1911	1913
Oklahoma Corporation Commission	1907	1907
Oregon Public Utility Commissioner	1907	1931
Pennsylvania Public Utility Commission	1907	1937
Rhode Island Division of Public Utilities	1912	1939
South Carolina Public Service Commission	1896	1922
South Dakota Public Utilities Commission	1889	1897
Tennessee Public Service Commission	1883	1919
Texas Railroad Commission	1891	1891
Utah Public Service Commission	1917	1941
Vermont Public Service Board	1886	1908
Virginia State Corporation Commission	1816	1902
Washington Util. and Trans. Commission	1905	1949
West Virginia Public Service Commission	1913	1915
Wisconsin Public Service Commission	1874	1905
Wyoming Public Service Commission	1915	1915

Source: Charles F. Phillips, Jr., *The Economics of Regulation,* Richard D. Irwin, Inc., Homewood, Ill., 1965, p. 92.

Status of CATV Companies and Systems in Hawaii as of June 30, 1974

Company (island) and principal stockholders[1]	Date started	Service areas[2] Grandfathered[3]	Service areas[2] New	Completion date for full system	Total cable miles in system	% cable miles completed FY 1972-73	% cable miles completed FY 1973-74	No. of potential subscribers[4]	No. of subscribers FY 1972-73	No. of subscribers FY 1973-74	% penetration[5] 1972 –73	% penetration[5] 1973 –74
Pacific Network, Inc. (Oahu) Francis H. I. Brown (99.5%)	1/ 6/61	East Honolulu	Waialae-Kahala Black Point	8/12/73	71	56%	56%	12,136	2,202	2,366	18%	20%
Kaiser Teleprompter, Inc. (Oahu) Kaiser-Aetna, Hawaii Kai (50%) Teleprompter Corporation (50%)	2/14/61	Hawaii Kai	–	None	128	84%	87%	3,498	3,983	4,667	100+%[6]	100+%[6]
Cablevision, Inc. (Oahu) Kenneth F. Brown (51%) Gene Piety (49%)	7/31/63	Waianae	Ewa Ewa Beach	8/12/73	95	84%	96%	10,313	3,721	4,708	36%	46%
TV Systems, Inc. (Oahu) Milton Cades (26.7%) Lloyd Char (26.7%) Felix Giso (18.1%) Dudley Simmons (10.0%)	4/16/64	Palolo Kalihi Kapahulu Kailua Kaneohe	Windward Oahu Moanalua Kaimuki	8/12/73	418	15%	24%	59,430	3,700	7,578	6%	13%
Cablevision Holdings, Inc. (Oahu)[7] Consolidated Amusement Co., Ltd. (17%) CTW Communications, Inc. (24%) Fred Welsh Antenna Systems (15%) Evergreen Cablevision, Ltd. (10%)	8/30/73	Mililani Central Oahu	Central Oahu Waikiki	8/30/75	572	7%	16%	89,276	1,797	1,800	2%	2%
COMTEC, Inc. (Hawaii) Realty Investment Company (100%)	7/16/69	–	South Hilo	6/10/73	115	57%	100%	9,275	–	1,262	–	14%
CAMP, Inc. (Hawaii) Robert S. Anderson (100%)	10/31/69	–	Kau	6/10/73	25	100%	100%	994	428	522	43%	52%
West Hawaii CableVision, Ltd. (Hawaii) The Hawaii Land Corporation (100%)	9/14/73	–	South Kohala North Kona South Kona	12/14/74	177	–	11%	3,919	–	–	–	–
Hawaii Cablevision Corporation (Maui) D. W. Carter (33-1/3%) H. J. Geist (33-1/3%) W. J. Galione (33-1/3%)	6/ 1/67	Lahaina	–	None	35	95%	100%	1,762	1,807	2,082	100+%[6]	100+%[6]
Derby Cablevision, Inc. (Kauai) Estate of Marshall T. Derby (100%)	4/ 7/69	Kalaheo	Kawaihou Lihue Waimea	10/ 1/73	135	55%	Not available	8,551	700	1,150	8%	15%

[1] Principal stockholders hold 10% or more of stocks.

[2] Service areas are assigned on the basis of census tract areas.

[3] Grandfathered areas were granted to CATV systems in operation on or before June 1, 1969.

[4] Number of potential subscribers (household units, excluding hotels) are based on 1970 census data.

[5] Penetration represents percent of subscribers relative to number of potential subscribers.

[6] Discrepancies are due to the rapid population growth since the 1970 census.

[7] Cablevision Holdings, Inc., acquired on 9/14/73 the permit of Oceanic Cablevision Inc. Oceanic Cablevision, Inc., held a franchise for the area since 10/22/70 which had previously been held by Rainbow Television, Inc., Mililani Cablevision, Inc., and Island Cablevision. Prior to 10/4/71, the latter three companies were all subsidiaries of Oceanic Cablevision, Inc.

Source: CATV division, department of regulatory agencies, State of Hawaii.

Public Utilities Commissioners and Their Terms of Office
For the Period Since 1960 to 1974, by Counties from Which They Were Appointed

County/Commissioner	Position	Position no.	Date appointed	Date reappointed	Term expired	Date resigned	Remarks
Honolulu:							
O'Dowda, J. M. Manager, Tidewater Oil Co.	Chairman		5/ /57	3/21/60	12/31/63	4/ 1/64	Served as "holdover" chairman from 1/1/64 through 4/1/64
Moranz, V. President, Hawaiian Savings and Loan	Commissioner		1/ 2/59		12/31/61	8/22/60	
Ames, R. President, American Pacific Life Insurance	Commissioner		10/27/60	4/ 4/62	12/31/61 12/31/65	8/31/63	Appointed to complete Mr. Moranz's unexpired term and served as "holdover" commissioner from 1/1/62 through 4/3/62 until reappointment
Vivas, A. J. President, National Electric Supply Company	Commissioner Chairman Chairman	00415 E	9/17/63 4/ /64	1/31/66	12/31/65) 12/31/65) 12/31/69	8/15/70	Appointed to complete Mr. Ames' unexpired term Appointed chairman replacing Mr. O'Dowda Reappointed chairman and remained as "holdover" chairman from 1/1/70 through 8/15/70
Chock, H. Vice President, A. C. Chock, Ltd.	Commissioner	00416 E	5/15/64		12/31/67	4/11/67	Appointed to complete the Oahu commissioner term (1/1/64 – 12/31/67) which was held by Mr. Moranz until he resigned
Dolim, L. President, Holsum Hawaii	Commissioner Comm/Chrm	00416 E	4/18/67		12/31/67 12/31/71 12/31/75		Appointed to complete Mr. Chock's unexpired term Reappointed and served as "acting chairman" from 8/16/70; served as "holdover" acting chairman from 1/1/71 to 4/4/72 until reappointment for term 4/5/72 through 12/31/75
Horikawa, D. Businessman (self-employed)	Commissioner	00412 E	1/18/72	1/ 1/74	12/31/73 12/31/77		Appointed to complete the Oahu commissioner term (1/1/70 – 10/31/73) which was held by Mr. Vivas until he resigned. Reappointed to serve Oahu commissioner term
Hawaii:							
Lycurgus, L. Manager, Hilo Hotel, Ltd.	Commissioner		4/ /47		12/31/62	11/ 8/62	
DeLuz, D. Manager, Big Island Rambler Co.	Commissioner		4/21/64		12/31/66	12/31/66	Appointed to complete the Hawaii commissioner term (1/1/63 – 12/31/66)
Okazaki, S. Employee, Paauhau Sugar Co.	Commissioner	00415 E	12/ 9/67		12/31/70	3/31/72	Completed the 1/1/67 – 12/31/70 term for Hawaii commissioner and remained as "holdover" commissioner until he resigned on 3/31/72.
Lapenia, E. Employee, Pepeekeo Sugar Co.	Commissioner	00415 E	1/16/73		12/31/74		Appointed to complete the Hawaii commissioner term (1/1/71 – 12/31/74)
Yasutake, T. Employee, Laupahoehoe Sugar Co.	Commissioner	00415E	5/16/74		12/31/74		Appointed to complete Hawaii commissioner term (1/1/71 – 12/31/74)

Maui:							
Manary, F. Retired engineer, HC&S	Commissioner		1935		12/31/63	12/31/63	Was commissioner for approximately 28 years before resignation
Kon, S. Public accountant (self-employed)	Commissioner	00485 E	1/ 9/64		12/31/67	9/16/68	Completed the Maui commissioner term (1/1/64 – 12/31/67) and remained as "holdover" commissioner until he resigned
Ushijima, J. Waterfront clerk	Commissioner		9/17/68		12/31/71	1/ 2/69	Appointed to complete the Maui commissioner term (1/6/68 – 12/31/71) but resigned before completion of term
Wasano, E. Businessman (self-employed)	Commissioner		5/29/69		12/31/71	12/31/71	Appointed to complete the unexpired term of Mr. Ushijima
Arakaki, C. Businessman, Al Castendyle	Commissioner	00485 E	1/18/72		12/31/75		Appointed to complete the Maui commissioner term (1/1/72 – 12/31/75)
Kauai:							
Shinseki, M. President, Kauai Finance Factors	Commissioner		6/ /53		12/31/60		Served prior to Reorganization Act
				1/ 1/61	12/31/65	3/28/62	Reappointed to serve the Kauai commissioner term (1/1/61 – 12/31/65) but resigned before completion of term
Muraoka, T. Grove Farm	Commissioner		4/ 4/62		12/31/65	9/ /63	Appointed to complete the unexpired term of Mr. Shinseki but he also resigned before completion of term (1/1/61 – 12/31/65)
Fernandez, J. B. Legislator (retired)	Commissioner		9/13/63		12/31/65	6/23/71	Completed the Kauai commissioner term (1/1/61 – 12/31/65) after Mr. Shinseki and Mr. Muraoka
				1/31/66	12/31/69	6/23/71	Reappointed to serve the Kauai term (1/1/66 – 12/31/69) which he completed and remained as "holdover" commissioner from 1/1/70 – 6/23/71
Gomez, H. Retired, McBryde Plantation Businessman (self-employed)	Commissioner	00410 E		6/24/71 1/ 1/74	12/31/73 12/31/77		Appointed to complete the Kauai commissioner term (1/1/72 – 12/31/73). Reappointed to serve Kauai commissioner term

Source: Public utilities commission files; executive director's files, public utilities division; department of regulatory agencies, State of Hawaii. Legislative reference bureau, *The Hawaii Public Utilities Commission,* Report No. 6, pp.

General Orders of the Public Utilities Commission, State of Hawaii
As of February 1975

General Order No.	Description	Date Initiated by PUC	Docket No.	Statewide Public Hearing Held	Quorum Decision Date	Order		Filed with Lt. Gov.
						Date	No.	
1	Rules of Practice and Procedure Before the Public Utilities Commission of the State of Hawaii. (Effective date: June 16, 1966)	2/17/65	1634	March 1965 February 1966	5/26/66	5/31/66	1765	6/ 6/66
2*	Rules and Regulations to be Observed by Motor Carriers in the State of Hawaii. (Effective date: May 1, 1966)	2/17/65	1642	March 1965	3/18/66	4/15/66	1728	4/21/66
3**	Classifications of Property Carriers by Motor Vehicles in the State of Hawaii. (Effective date: May 1, 1966)	2/17/65	1641	March 1965	3/18/66	4/15/66	1729	4/21/66
4***	Rules and Regulations to be Observed by Common and Contract Carriers of Property and/or Persons Governing the Form and Filing of Tariffs and Schedules, Rules Governing the Payment of Rates Charges, and Rules for the Handling of C.O.D. Shipments. (Effective date: February 23, 1968)	2/17/65	1640–A	March 1965	5/26/66	5/31/66	1766	2/13/68
5***	Revised Rules and Regulations, Uniform System of Accounts for Motor Carriers Chart of Accounts (Effective date: June 24, 1974)	10/ 8/70	1886	December 1971	1/24/72	2/23/72****	None	6/14/74
6	Rules for Overhead Electric Line Construction. (Effective date: March 9, 1969)	11/22/66	1734	November 1966	3/23/67	(undated)	2345	2/27/69
7	Standards for Electric Utility Service in the State of Hawaii. (Effective date: October 1, 1965 and amended February 23, 1968)	2/17/65 11/22/66	1637 1734	March 1965 November 1966	9/8/65 3/23/67	9/20/65 5/31/67	1625 1949	9/21/65 2/13/68
8	Standards for Telephone Service in the State of Hawaii. (Effective date: October 1, 1965)	2/17/65	1636	March 1965	9/ 8/65	9/20/65	1626	9/21/65
9	Standards for Gas Service, Calorimetry, Holders and Vessels in the State of Hawaii. (Effective date: October 1, 1965)	2/17/65	1635	March 1965	9/ 8/65	9/20/65	1627	9/21/65
10	Rules for Construction of Underground Electric and Communications Systems. (Effective date: February 18, 1968)*****	5/25/66	1708	November 1966	3/23/67	2/ 8/67	2079	2/13/68

*Supersedes commission's General Order No. 7 and MCB General Order No. 2, November 16, 1961.

**Docket 1887 (opened 8/27/70) proposed rule-making for passenger carriers (General Order No. 3–A) deferred until further notice. Docket closed per quorum decision on 10/24/72, Decision and Order 3074, filed 12/22/72.

***Docket 1869 (opened 6/25/70) on General Order 4–A, adoption of Rules and Regulations Governing Water Common Carriers Transporting Passengers and/or Property Between Points in the State of Hawaii and General Order 5–A, adoption of Rules and Regulations Governing the Filing of Reports and Uniform System of Accounts for Water Common Carriers was approved by the commission (3 members) on January 24, 1972. The order was not signed until October 1973. These rules have not been filed with the lieutenant governor's office since the passage of Act 94, 1974 (Hawaii Water Carrier Act) renders them moot.

****This date appears in the unnumbered order of General Order No. 5 but the order was not signed by all of the commissioners until February 1974.

*****Effective date designated in general order, but order was not filed until February 13, 1968, which would make February 23, 1967 the effective date under the Hawaii APA.

Note: General Order Nos. 11 and 12 on the Adoption of Revised Uniform System of Accounts for Gas Utilities and the Adoption of Revised Uniform System of Accounts for Electric Utilities were initiated by the PUC on October 24, 1973 (Docket 2319 and Docket 2357), respectively. Decisions and Orders 3361 and 3360 were being prepared at the time of this writing. Filing with the lieutenant governor's office will not take place until the rules and regulations are typed for filing.

APPENDIX F

Illustration of the Operation of General Order No. 1
Of the Public Utilities Commission, State of Hawaii
Procedural Steps Involved in the Processing of a Rate Increase (Decrease) Request
As of July 1, 1973

1. Application filed (original and eight copies).
   a. Copies officially received (dated, time-stamped, docket number assigned).
   b. Docket file prepared and original application filed.
   c. Copies distributed to executive director, five commissioners, legal counsel (deputy attorney general), and administrator affected. (Copies are made also for section chiefs affected.)
   d. Original copy is retained for the official docket file(s).

2. Application received at commission quorum meeting (month of filing or at the following month's quorum).
   a. Application officially received by the commission.
   b. Application is referred to staff for investigation.

3. Public hearings scheduled by commission (public participation) generally two to six months after date of application.
   a. Invitation to public to participate through testimony and/or discussion.

4. Public hearings held on island(s) affected—on all islands if statewide.
   a. Commissioners preside over hearings.
   b. Applicant's representative presents company's position and justification therefor.
   c. Staff representative(s) present to answer questions primarily relating the effect of increase to the consumer.

5. Prehearing conference scheduled (not held in all cases and generally follows public hearings [public participation phase]).

6. Prehearing conference general procedures, if held.
   a. Purposes:
      To consider procedures for the economic hearings (merits of the case).
      To determine a timetable for the economic hearings.
      To clarify issues that may be raised during the proceedings.
   b. Introduction of counsel(s) for applicant and for the staff and commission.
   c. Timetable for submission of prepared testimony and exhibits is set.
   d. Applicant's witnesses are named.
   e. Staff's witnesses are named.
   f. Scope of hearing and issues are set.
   g. Timetable for hearings – presentation of written testimony and exhibits prior to hearings, cross-examination scheduled.
   h. Petitions for intervention are taken if petitioner(s) is present; if not, a special hearing is scheduled or the petition will be heard on the opening day of hearing.
   i. Prehearings order is prepared by applicant's counsel or staff at the request of the commission.

Illustration of the Operation of General Order No. 1
Of the Public Utilities Commission, State of Hawaii
Procedural Steps Involved in the Processing of a Rate Increase (Decrease) Request
As of July 1, 1973 (*continued*)

7. Public hearings scheduled based on previously agreed upon timetable (generally two to four weeks following a pre-hearing conference or informal meeting).**

8. Economic hearing held–public hearing on the merits of the case (if any parties are granted intervenor or participant status by the commission prior to the opening of these hearings or during the initial stages of the hearings, they are also involved).

   a. Applicant's case is presented – (written or oral testimony and exhibits).

   b. Cross-examination by counsel for the staff (public utilities division) of applicant's witnesses.

   c. Staff's case is presented (testimony and exhibits) approximately one month later.

   d. Cross-examination by applicant's counsel and/or rebuttal witness presentations.

9. Economic hearings closed.

   a. Oral arguments presented by applicants and staff's counsel if commission deems them necessary. (It could occur after filing of briefs.)

   b. Date for filing of briefs by both parties set by the commission, if made a requirement.

10. Briefs filed (they are not always required).

    a. If required, they may contain findings of facts and conclusions of law which must be covered in the commission's final decision and order in the case.

11. Commission's decision made at a quorum meeting (by commissioners who heard the case) subsequent to the close of hearings and the filing of briefs (if required).

12. A form letter from the executive director indicating the commission's decision (approval or denial of the application) sent to the applicant.*

    a. This letter does not set any conditions of the decision but is merely an announcement that a decision has been reached.

13. Decision and order drafted.

    a. In cases where the decision has been favorable to the applicant, the commission may request that applicant's counsel draft the decision and order.

    b. In cases where the decision is controversial or unfavorable, the staff, with or without counsel, may be directed to draft the decision and order.

    c. Since July 1, 1972, the commission has directed its own counsel (special deputy attorney general or deputy attorney general) to file a draft decision and order in some cases.

    d. In some cases, both applicant's counsel and staff are requested to file a draft decision and order.

14. Draft decision and order filed with commission by one of the above parties or more.

15. Decision and order ratification procedure.*

    a. For checking of completeness and accuracy in the decision and order, the final draft is generally routed to the following in this order by the administrator affected.

       1) The executive director.
       2) The deputy or special deputy attorney general assigned to the case.
       3) The commission chairman.
       4) The administrator (public utilities or transportation) affected.

b. Following approval by the above parties, the decision and order is prepared for filing by the public utilities division's office services section. (Original and 18 to 25 copies are made.)

c. Decision and order filed at the public utilities division.

1) Original is signed and time-dated by the chief clerk (regular or substitute) assigned to the case on the face of the decision and order.

2) The executive director (or his designate) signs the decision and order for the commission indicating the date of filing and the quorum meeting date of the commission decision for the actions in the decision and order.

3) Filed copies of the final decision and order are sent (or hand carried) to the following:

Applicant's counsel
Applicant
Other parties (intervenors or participants, counsel and parties, if any)
Commission staff (section heads) involved in the case

d. Commission ratification sheet (undated) is prepared for signatures by the commissioners who heard the case and the deputy or special deputy attorney general (approval as to form).

1) Commissioners sign the sheet at time of scheduled hearings and quorum meeting, generally subsequent to the date of filing.***

2) Completed ratification sheet (undated) is attached to the original decision and order file copy.

e. Decision and order is received for the commission's record at a subsequent quorum meeting.

Note: Where the decision and order sets forth conditions or specifies follow-up procedures and/or requires actions, there is no formalized procedure for assuring compliance with conditions or required actions.

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*Indicates steps not specifically covered in General Order No. 1.

**Informal meeting differs from prehearing conference. No court reporter is present to make a transcript of the proceedings. Minutes of informal meetings may be recorded by the chief clerk.

***If a commissioner disagrees, he may file a dissenting opinion. If a majority disagrees, then the decision and order may be recalled and revised. This has happened on several occasions.

(To be made one and twelve copies)

APPENDIX G

THE SENATE

SIXTH ..... LEGISLATURE, 19 72

STATE OF HAWAII

S.R. NO. 28, S. D. 1

SENATE RESOLUTION

COPY

REQUESTING A REVIEW OF ALL PUBLIC UTILITIES COMMISSION LAWS.

WHEREAS, the Public Utilities Commission is empowered to watch and regulate the activities of all public utility companies, including the telephone, electric, and gas companies, trucking, tour buses, bus companies, inter-island water carriers, some water suppliers, and certain financial matters of island airlines; and

WHEREAS, Public Utilities Commissioners are expected to balance considerations of general public interest and the long-range viability of a utility in reaching decisions; and

WHEREAS, in this process, the Public Utilities Commission has an obligation to make its rationale on such decisions clear in terms of general public action; and

WHEREAS, a number of companies under Public Utilities Commission scrutiny are owned by interests outside of Hawaii, making the Public Utilities Commission's job even more complex; and

WHEREAS, the operation of these companies has a direct bearing on the interest of the residents of Hawaii in terms of rates and service; and

WHEREAS, in view of the recent telephone rate dispute, it is becoming clear that the complexities of the cases being heard by the Commission are on the increase; and

WHEREAS, it is in the public interest to review, update, and clarify existing statutes on the Public Utilities Commission so that it can more effectively discharge its responsibilities to the general public and to the regulated companies; now, therefore,

BE IT RESOLVED by the Senate of the Sixth Legislature of the State of Hawaii, Regular Session of 1972, that the Legislative Auditor, be, and it hereby is, requested to conduct a comprehensive review of Chapter 269, HRS, assisted by the Legislative Reference Bureau. This review should include, but not be limited to:

1. The organizational structure of the Public Utilities Commission.

2. The policies and procedures under which the Commission is presently operating.

3. Updating and eliminating of sections that are obsolete or no longer applicable; and

BE IT FURTHER RESOLVED that the findings, conclusions, and recommendations be submitted to the 1973 Legislature no later than 20 days before it convenes; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the President of the Senate, the Legislative Auditor, the Director of the Legislative Reference Bureau, the Director of the Department of Regulatory Agencies, and the Chairman of the Public Utilities Commission.

PUBLISHED REPORTS OF THE LEGISLATIVE AUDITOR

AUDIT REPORTS

1966 1. Examination of the Office of the Revisor of Statutes, 66 pp. (out of print).

1967 1. Overtime in the State Government, 107 pp.

2. Management Audit of Kula Sanatorium, 136 pp.

1968 1. Financial Audit of the Department of Health for the Fiscal Year Ended June 30, 1967, v.p. (out of print).

2. Financial Audit of the Department of Planning and Economic Development for the Fiscal Year Ended June 30, 1967, v.p. (out of print).

3. Financial Audit of the Department of Regulatory Agnecies for the Fiscal Year Ended June 30, 1967, v.p. (out of print).

4. Financial Audit of the Department of Hawaiian Home Lands for the Fiscal Year Ended June 30, 1967, 54 pp.

5. Financial Audit of the Oahu Transportation Study for the Period July 1, 1962 to August 31, 1967, 68 pp.

6. Financial Audit of the Hawaii Visitors Bureau for the Period July 1, 1966 to January 31, 1968, 69 pp. (out of print).

7. State Capital Improvements Planning Process, 55 pp. (out of print).

8. Financial Audit of the Hilo Hospital for the Fiscal Year Ended June 30, 1967, 43 pp. (out of print).

9. Financial Audit of the Hawaii Visitors Bureau for the Period July 1, 1967 to June 30, 1968, 42 pp.

1969 1. Financial Audit of the General Fund, State of Hawaii, for the Fiscal Year Ended June 30, 1968, v.p. (out of print).

2. Financial Audit of the Judicial Branch, State of Hawaii, for the Fiscal Year Ended June 30, 1968, v.p. (out of print).

3. Financial Audit of the State Department of Budget and Finance for the Fiscal Year Ended June 30, 1968, v.p.

4. General Audit of the Department of Personnel Services, State of Hawaii, 129 pp. (out of print).

5. A Summary of the General Audit of the Department of Personnel Services, 53 pp.

6. Financial Audit of the Samuel Mahelona Memorial Hospital for the Fiscal Year Ended June 30, 1968, 34 pp.

7. Financial Audit of the Honokaa Hospital for the Fiscal Year Ended June 30, 1968, 41 pp.

8. Financial Audit of the Kohala Hospital for the Fiscal Year Ended June 30, 1968, 34 pp.

9. Financial Audit of the Kona Hospital for the Fiscal Year Ended June 30, 1968, 44 pp.

10. Financial Audit of the Kauai Veterans Memorial Hospital for the Fiscal Year Ended June 30, 1968, 30 pp.

11. An Overview of the Audits of the Act 97 Hospitals, 18 pp.

1970 1. Management Audit of the Department of Water County of Kauai, 65 pp.

2. Audit of the Kamehameha Day Celebration Commission, 47 pp.

3. Audit of the Medical Assistance Program of the State of Hawaii, 392 pp.

1971 1. Financial Audit of the State School Lunch Services Program, Department of Education for the Fiscal Year Ended June 30, 1970, v.p. (out of print).

2. Audit of the County/State Hospital Program, 124 pp. (out of print).

3. Audit of the State Vendor Payment Process, 63 pp.

4. Audit of the Hawaii Educational Television System, 153 pp.

1972 1. Audit of the Office of the Public Defender, 39 pp.

2. Financial Audit of the Department of Agriculture for the Fiscal Year Ended June 30, 1971, v.p.

3. Financial Audit of the Department of Labor and Industrial Relations for the Fiscal Year Ended June 30, 1971, v.p.

4. Audit of Utility Facility Relocation in Street Widening Projects, 73 pp.

5. Audit of the School Construction Program of the State of Hawaii, 297 pp.

1973 1. Management Audit of the Department of Education, 410 pp.

2. Audit of the University of Hawaii's Faculty Workload, 61 pp. (out of print).

3. Financial Audit of the Department of Education, 73 pp. (out of print).

1974 1. Financial Audit of the Department of Regulatory Agencies, 67 pp.

2. Financial Audit of the State Department of Defense and Civil Air Patrol (Hawaii Wing), 52 pp.

1975 1. Financial Audit of the Hawaii Housing Authority, 78 pp.

2. Program Audit of the School Health Services Pilot Project, 80 pp.

SPECIAL REPORTS

1965 1. Long and Short Range Programs of the Office of the Auditor, 48 pp. (out of print).

2. A Preliminary Survey of the Problem of Hospital Care in Low Population Areas in the State of Hawaii, 17 pp.

1966 1. Procedural Changes for Expediting Implementation of Capital Improvement Projects, 9 pp.

1967 1. The Large School: A Preliminary Survey of its Educational Feasibility for Hawaii, 15pp.

2. State-City Relationships in Highway Maintenance, and Traffic Control Functions, 28 pp.

3. Manual of Guides of the Office of the Legislative Auditor, v.p.

1969 1. Transcript of Seminar in Planning-Programming-Budgeting for the State of Hawaii, 256 pp.

2. Airports System Financing Through Revenue Bonds, 9 pp. (out of print)

3. Second Annual Status Report on the Implementation of Act 203, Session Laws of Hawaii 1967 (Relating to State-County Relationships), 13 pp. (out of print).

4. An Overview of the Governor's 1969-70 Capital Improvements Budget, 61 pp. (out of print).

5. A Supplementary Report on the Audit of the Hawaii Visitors Bureau, 2 pp. (out of print).

1970 1. A Study of the Compensation of Coaches of Interscholastic Athletics of the State Department of Education, 31 pp.

1971 1. A Study of the State Highway Special Fund, 14 pp.

1972 1. A Study of Hawaii's Motor Vehicle Insurance Program, 226 pp.

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